

Decision for dispute CAC-UDRP-103624

Case number CAC-UDRP-103624

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Domain names galottery.co

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Georgia Lottery Corporation

Complainant representative

Organization The Pawlak Law Firm

Respondent

Name Milen Radumilo

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of service marks for GEORGIA LOTTERY including, by way of example only, United States service mark, registration number 1,883,912 for GEORGIA LOTTERY in class 36, registered on March 14, 1995.

FACTUAL BACKGROUND

The Complainant was established in 1992 and is the owner and operator of the lottery operated in the state of Georgia in the United States. This is branded as GEORGIA LOTTERY and the Complainant has registered many trade marks to protect this trading style, including the mark referenced above. The Complainant also owns and operates the domain names <galottery.com> ("ga" being the widely recognised abbreviation for the state of Georgia) and <georgialottery.com>, from which its services can be accessed.

The disputed domain name was registered on December 22, 2019. It resolves to a directory page which contains a number of per-per-click ("PPC") links associated with the Complainant and its services, including "Georgia Winning Lottery Numbers", "Winning Ticket Electronic Claim Submission Software" and "Lottery Ticket System". These links apparently take the user to websites providing unrelated goods and services, such as retirement annuities.

The disputed domain name is virtually identical to the Complainant's GEORGIA LOTTERY mark and is being used to refer to services which are identical to those in which the Complainant has rights.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods and services. The Respondent has not been commonly known by the disputed domain name, nor is it making a legitimate non-commercial or fair use of the disputed domain name. The Respondent has used a privacy service to hide its identity and has not replied to the cease and desist letter sent on behalf of the Complainant.

The disputed domain name has been registered and is being used in bad faith. The Respondent had constructive knowledge of the Complainant's rights and has sought to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website. The Respondent is using the disputed domain name for services in the same classes as those for which the Complainant's trade marks are registered. Thus, it can be assumed that the Respondent knew about the Complainant's trade marks.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Rights

So far as the first element is concerned, the Complainant's trade mark registrations for GEORGIA LOTTERY including the trade mark in respect of which full details are provided above, establish its rights in the trade mark.

For the purpose of comparing the disputed domain name with the Complainant's mark, it is established practice to disregard the generic Country Code Domain, that is ".co" in the case of the disputed domain name, as this is a technical requirement of registration. The remaining element of the disputed domain name comprises the letters "ga", which are widely recognized in the United States as the abbreviation for the state of Georgia, coupled with the word "lottery". Although each of these components, when taken individually, is descriptive, in combination they are confusingly similar to the Complainant's GEORGIA LOTTERY service mark in that the disputed domain name simply substitutes the abbreviation for the state of Georgia, namely "ga", for the word "Georgia".

The fact that the Respondent intended the disputed domain name to be confusingly similar to the Complainant's mark is evident from the fact that the PPC links on the webpage to which the disputed domain name resolves are associated with the Complainant's services. In these circumstances, the nature of the Respondent's website is a factor which the Panel can take into account when considering the first element; see *Golden Goose S.p.A. v. Phillipp Fischer*, WIPO Case No. D2017-1010.

The Panel accordingly finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

Rights and legitimate interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarised briefly: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate non-commercial or fair use of the domain name.

So far as the first circumstance is concerned, the only known use of the disputed domain name, has been to resolve to web page containing pay-per-click links which are likely to be associated with the Complainant's provision of lottery services. Whilst there is nothing inherently objectionable in the use of domain names for directory pages of this type, this is subject to the important limitation that neither the domain name nor the hosted links should compete with, or capitalize on, the reputation and goodwill of a complainant's mark or otherwise mislead Internet users; see by way of example, CAC Case No. 102314 SHOWROOMPRIVE.COM v Super Privacy Service LTD c/o Dynadot.

In these proceedings, the fact that the disputed domain name is confusingly similar to the Complainant's mark and resolves to a website containing links relevant to the Complainant's services points to the Respondent having registered the disputed domain name because it was aware of the Complainant. The confusing similarity between the disputed domain name and the Complainant's mark, will have increased the volume of Internet traffic to its website and the description of the links will increase the likely click-through rate. A website with these characteristics does not comprise a bona fide offering of goods and services. See, by way of example, CAC Case No. 102314 SHOWROOMPRIVE.COM v Super Privacy Service LTD c/o Dynadot.

There is no evidence that the Respondent has been commonly known by the disputed domain name, nor does the Respondent's holding of the domain name amount to making a legitimate non-commercial or fair use of it. Furthermore, as the disputed domain name, is confusingly similar to the Complainant's mark, it carries with it a risk of implied affiliation. The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, *Amedei S.r.l. v sun xin*. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

Having regard to the fact that the only known use by the Respondent of the disputed domain name has been to use in connection with a webpage hosting PPC links which relate directly to the services provided by the Complainant, it is evident, on a balance of probabilities, that the Respondent registered the disputed domain name with an awareness of the Complainant and its trade mark rights and in order to take advantage of them. Registration of a domain name with knowledge of a complainant's trade mark rights in these circumstances amounts to bad faith; see, by way of example, CAC Case No. 101448, Severina Kojić v Orbis d.o.o.

Whilst the use of a domain name to point to parking pages hosting pay-per-click sponsored links is not inherently objectionable, it has been well established in previous decisions under the Policy that such conduct can constitute bad faith use if the combination of the characteristics of a domain name and the nature of the links on the website to which it points are intended to mislead Internet users. See, for example, Yahoo! Inc. v. Hildegard Gruener, WIPO Case No. D2016-2491, in which the panel explained that "the use, to which the disputed domain names are put, namely parking pages featuring sponsored advertising links, is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. The object has to be commercial gain, namely pay-per-click or referral revenue achieved through the visitors to the site clicking on the sponsored advertising links. Even if visitors arriving at the websites to which the disputed domain name resolve become aware that these websites are not such of the Complainant, the operators of these websites will nonetheless have achieved commercial gain in the form of a business opportunity, namely the possibility that a proportion of those visitors will click on the sponsored links". This reasoning precisely reflects the Respondent's bad faith use of the disputed domain name in these proceedings.

For these reasons the Panel finds that the disputed domain name was both registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. GALOTTERY.CO: Transferred

PANELLISTS

Name	Antony Gold
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DATE OF PANEL DECISION 2021-05-29

Publish the Decision