Decision for dispute CAC-UDRP-105075

Case number	CAC-UDRP-105075
Time of filing	2022-12-22 09:47:20
Domain names	urheiluveikkaus.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Veikkaus Oy

Complainant representative

Organization	Berggren Oy

Respondent

Organization	Raketech Group Limited

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 Owner of trademarks in Finland. The earliest application for a Trademark that includes the term “veikkaus” was on February 5th, 2013.

E.g. he has following valid trademarks with the term VEIKKAUS:

Trademark: VEIKKAUS (word)

Reg. No: 266351

Reg. Date: 08.04.2016

Classes: 9 16 28 35 36 38 41 42

Trademark: VEIKKAUS (word)

Reg. No.: 267852

Reg. date: 31.10.2016

The Complainant also provided evidence that he owns several domain names, e.g. <veikkaus.com>, <veikkaus.eu> and <veikkaus.fi>, without registration date.

The Disputed Domain Name <urheiluveikkaus.com> is registered on November 5th, 2007.

FACTUAL BACKGROUND

The Complainant, Veikkaus Oy, is a lottery, game of chance and betting service provider operating in Finland. “Sports betting” is “urheiluveikkaus” in Finnish.

One of the most known games of the Complainant is sports betting. The Complainant is the only legally operating betting and game of chance service provider in Finland and owned by the Finnish State. It holds a monopoly position that is based on law. As the Finnish law contains rules and processes for use of the company’s profits for the benefit of the society, the games of Veikkaus enjoy strong goodwill.
The Complainant brought forward, that about 40 percent of Finnish adults play Veikkaus games and use their betting services weekly and for example more than 80 percent of adults have reported playing Veikkaus at least once.

The Disputed Domain Name predates the rights of the Complainant.

The Respondent has been using privacy shield to conceal its identity.

The Respondent is a Maltesian citizen, using a hidden domain holder name, who is represented by his Registry. He was using the <URHEILUVEIKKAUS.COM> for commercial purposes about 15 years.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant argues that given to the monopoly status of it in Finland, any references to the term “Veikkaus” on the website urheiluveikkaus.com refer to the Complainant company and contain significant and detailed similarities between trademarks and other intellectual property rights of the Complainant.

Hence, the Complainant orders the transfer of the Disputed Domain Name.

RESPONDENT: 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, not shown the Disputed Domain Name has been registered 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

It is necessary for the Complainant, if it is to succeed in this administrative proceeding, to prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

(A) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; and

(B) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and

(C) the disputed domain name has been registered and is being used in bad faith.

The Disputed Domain Name incorporates entirely the Complainant's registered trademark VEIKKAUS with a generic indication "urheilu" which means in English "sports". The parties acting on the same business field. The Disputed Domain Name is fully generic. "veikkaus" means betting.

The addition of the TLD ".com" does not add any distinctiveness to the Disputed Domain Name. See as an example the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), paragraph 1.11. as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following: "In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ".com") is to be disregarded under the confusing similarity test". The same reasoning should apply in the current case.

A likelihood of confusion is possible.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant has not granted the Respondent any right to use the VEIKKAUS trademark within the Disputed Domain Name, nor is the Respondent affiliated to the Complainant.

Even a legitimate interest of the Respondent in holding the Disputed Domain Name could be discussed but it is not necessary to discuss it further because of the third element of the policy as shown below.

Under the third element of the Policy, the Complainant must prove that the Disputed Domain Name was registered and is being used in bad faith. The requirements are conjunctive; hence no bad faith is normally found where the trademark relied on by the complainant postdates the Disputed Domain Name.

If the Complainant had no trademark at the registration of the Disputed Domain Name, it would be difficult to prove that the Respondent targeted the Complainant's trademark and business.

From the Respondent's perspective, the Respondent hold a generic domain name with proper use for years and was caught by surprise of somebody who got a little distinctive trademark "betting", Finnish <VEIKKAUS>.

The Complainant could not show bad faith of the Respondent when he registered the Disputed Domain Name in 2007.

Recent examples include the WIPO case D2021-0528 <levio.com>, where the panel has held the complainant guilty of reverse domain name hijacking considering that: "the Complainant should have taken into account that the Respondent has been the owner of the disputed domain name for a long period of time, which started years before the registration of the Complainant and of the LEVIO trademark, and that there is an established Policy precedent that where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent."

A similar situation is here, the Panel found. On the other hand, it is clear that the Complainant is not acting itself in bad faith. The Complainant acted according to Finnish law. But there is no evidence that the Respondent acted in bad faith at the time the Complainant had no trademark in the European Union. The registrations of Complainants trademarks are from 2016.

Beneath the conclusion that the third element within the meaning of paragraph 4(a)(iii) of the Policy is not fulfilled does it not mean that the acting of the Respondent is free without limits and not bound to other law principles. Distortion of competition and violating consumer rights is possible but not under the jurisdiction of UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **urheiluveikkaus.com**: Remaining with the Respondent

PANELLISTS

Name	**Harald von Herget**

DATE OF PANEL DECISION 2023-01-26

Publish the Decision