

Decision for dispute CAC-UDRP-104284

Case number	CAC-UDRP-104284
Time of filing	2022-02-07 09:54:09
Domain names	kasinotampere.com, kasinotampere.info

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Veikkaus Oy
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Complainant representative

Organization	Berggren Oy
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Respondent

Organization	Fairwin Media Ltd
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant has provided evidence in the form of trademark searches to show that it owns and has rights in a portfolio of trademarks which either consist of, or incorporate the mark CASINO, and in particular relies on its rights in Finnish registered trademark CASINO, registered on September 27, 2005 for goods in class 16.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant has an established Internet presence and owns several domain names which incorporate the word "casino" which are used by the Complainant to promote its gambling services in Finland. The disputed domain name <kasinotampere.com> was registered on January 14, 2020.; and the disputed domain name <kasinotampere.info> was registered on January 15, 2020. There is no information available about the Respondent except for that provided in the Complaint, the Registrar's WhoIs and the information provided by the Registrar to the Center in response to the request for verification of the registration details of the disputed domain names.

Each of the disputed domain names have been registered availing of a privacy service to conceal the identity of the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims rights in the CASINO trademark established by its ownership of its portfolio of trade mark registrations described above and its use of the mark in its gambling business in Finland for which it has an established Internet presence, owning several domain names which incorporate the word "casino".

The Complainant submits that it was founded in 1940 for sports betting and following the reform of the Finnish gaming system in 2017, it merged with two other entities and holds the exclusive right to operate casinos in Finland. The Complainant submits that the monopoly has been granted for public policy reasons and revenue is used for the benefit of Finnish society generally.

Requesting this Panel to note that the spellings of the words "kasino" and "casino" are used interchangeably in the Finnish language, the Complainant alleges that the disputed domain names <kasinotampere.com> and <kasinotampere.info> are highly similar to its registered trademark CASINO and also, identical to the Complainant's pre-existing domain names incorporating the words "casino" and "kasino" including <kasinotampere.fi> and <casinotampere.fi> which were registered in 2016 and 2017 respectively.

The Complainant argues that each of the disputed domain names incorporate identically Complainants CASINO trademark with the addition of the element "Tampere", which refers to the eponymous city, where the Complainant has recently opened its second casino in Finland which is promoted on its website at <www.casinotampere.fi>.

The Complainant submits that the name "Tampere" has no distinctive character it is simply a geographical location and adds that Internet users are therefore likely to assume that also the disputed domain names belong to the Complainant, particularly as the Complainant has the exclusive right, by statute, to establish a casino in that city, and it has been well publicised that in December 2021 the Complainant exercised that right and opened its second casino in Finland in Tampere. The Complainant submits that since it is the only casino operator in Finland, consumers will automatically presume that the disputed domain names are either owned by the Complainant or have some other connection to it. According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("the WIPO Overview"), section 1.7 it is stated that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin).

The Complainant adds that according to the section 1.8 of the WIPO Overview, where the relevant trademark is recognizable within the disputed domain names, the addition of other terms would not prevent a finding of confusing similarity.

The Complainant next submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names arguing that it is no coincidence that the disputed domain names which are confusingly similar to the Complainant's marks were chosen and registered.

The Complainant submits that according to the searches conducted by the Complainant on the internet and in the trademark databases, the Respondent does not have any rights preceding those of the Complainant to the name "KASINO" or to the disputed domain names <kasinotampere.com> and <kasinotampere.info>. The disputed domain name <kasinotampere.com> was registered on January 14, 2020.; and the disputed domain name <kasinotampere.info> was registered on January 15, 2020, which the Complainant asserts was long after it established its rights in the CASINO mark including by its Finnish trademark registration no 238841 which was registered for lottery tickets in class 16 in 2005.

To the Complainant's knowledge, the Respondent is not commonly known by the disputed domain names and its use of the disputed domain names is neither non-commercial nor fair use.

Furthermore, the Complainant has not granted anyone any rights or license to use the name CASINO or its derivatives. The use and registration of the disputed domain names has not been authorized by the Complainant and they do not approve of the use and registration of the disputed domain names.

The Complainant asserts that the Respondent is neither affiliated with the Complainant nor authorized by it in any way to use the trademark CASINO. The Complainant does not carry out any activity for, nor has any business with the Respondent. On the contrary, the Respondent's website links the visitor to gambling sites that are in breach of Finnish law.

Referring to screen captures of the websites to which the disputed domain names resolve, which have been submitted in an

annex to the Complaint and translated into the English language at the request of the Panel, the Complainant submits that the disputed domain name <kasinotampere.info> resolves to a news page, with information unrelated to gaming, and appears to be just on hold.

The screen captures show that the disputed domain name <kasinotampere.com> resolves to a website which the Complainant alleges contains references and links to other gambling activities in violation of Finnish gaming legislation, relating to games are mainly operated and managed from Malta. For example, a title "Parhaat kasinot netissä", which link leads to "Wheelz Kasino". The Complainant explains that casino and gambling operations are strictly regulated in Finland and may only be carried out by the Complainant. The Complainant has recently (December 2021) opened the second casino in Finland, in the city of Tampere under the authority of Article 11 of the Government Decree 1414/2016 which provides that "[the Complainant] may operate one gaming casino in the City of Helsinki and in one gaming casino in the City of Tampere." The Complainant next submits that the disputed domain names were registered in bad faith, for profit and to prevent the Complainant from registering them.

The disputed domain names were registered in January 2020, whereas the first speculations about the opening of Finland's second casino in Tampere begun in the news in February-March 2015 as shown in the information provided by the Complainant in an annex to the Complaint.

The disputed domain name <kasinotampere.com> contains information and links to news about the Complainant opening the new Casino Tampere. Additionally, the website contains links such as "Parhaat Nettikasino 2021" ("Best Online Casinos 2021") to third party gaming, gambling, and betting services and companies and gambling websites.

The Complainant submits that all this information is likely to lead consumers to search and drift to the other gaming websites, which businesses are prohibited in Finland, since they are not carried by the Complainant and argues that the Respondent will obviously benefit from the Complainant's business activities.

The Complainant adds that the website to which the <kasinotampere.com> domain name resolves provides a direct link to a paid online casino Wheelz and on these pages there is a link to the so-called "Affiliate program" ("or Kumppanuusohjelma" in Finnish). In practice, the "Affiliate program" means that the code on the <www.kasinotampere.com> website links to a specific account, which is the so-called "affiliate account" and if a visitor clicks through to an affiliated website and plays games on the site, the Respondent, as owner of the affiliate account at <kasinotampere.com> will receive a percentage of any revenue.

By Article 11 of the Finnish Lottery Act (23.11.2001 / 1047) stipulates that Veikkaus has the exclusive right to conduct gambling in Finland. According to Article 12 of the same Act, "The company's task is to engage in gambling activities in such a way as to guarantee the legal security of participants in gambling, to prevent abuses and crimes and to prevent and reduce economic, social and health harm caused by gambling."

Complainant submits that it has an obligation to gamblers and holds a responsibility for gambling in all its operations. In addition, section 14 b of the Act strictly regulates the marketing of gambling, which e.g. The National Police Board of Finland ("PoHa") monitors. In the guidelines for the marketing of gambling issued by the PoHa on 3 June 2015 in section 3.2., it is expressly stated that the marketing of gambling is permitted only to the gambling associations mentioned in Article 11 of the Lotteries Act, and that it must be clear from the marketing that it is carried out by the gambling community.

When visiting the websites to which the disputed domain names resolve, consumers may make the mistake of thinking that these websites are maintained by the Complainant itself or is at least financially supported by the Complainant.

In addition, consumers may easily think that the Finnish-language gaming website, which advertises for example that "SuomiKasino – The Best Games of Finland" has some connection to the Complainant's well-regulated gambling activities. The Complainant adds that the disputed domain names cause serious harm to the Complainant's tightly regulated business and even to the Finnish consumers.

Given the above facts and as there are no business relations between the Parties, the Complainant submits that it is evident that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

The Complainant next argues that the disputed domain names were registered and are used in bad faith to attract Internet users to the website for commercial gain or that the domain was registered primarily for the purpose of disrupting the business of a competitor.

The Complainant alleges that the disputed domain names were registered with the intention to attract Internet users to the Respondents website, creating a likelihood of confusion with registered and well-known CASINO trademark and casino operations of the Complainant.

The Respondent has clearly been aware of the Complainant's business and plans to open Casino to Tampere, as well as the Complainant's existing domain names as above listed. This is evident from the use of the disputed domain names by the

Respondent.

The Complainant submits that the intention of Respondent, the intention should be determined by an objective test as stated in the case *Paule Ka v. Paula Korenek* (WIPO Case No. D2003-0453): "The proper test in this Panel's view, is whether the objective consequences or effect of the Respondent's conduct is a free-ride on the Complainant's goodwill, whether or not that was the primary (subjective) intent of the Respondent."

Referring to the fact that the Respondent is using the disputed domain names, which are each confusingly similar to its CASINO mark, and each references the Complainant's new casino business in Tampere thereby causing confusion among Internet users, who are likely to be misled into believing that the websites associated with disputed domain names are owned or associated with the Complainant, it is contended that the Respondent is therefore using the disputed domain names in bad faith.

The Complainant concludes arguing that the Respondent's conduct also causes harm and inconvenience to the Complainant's strictly regulated business and the Respondent derives undue commercial and financial gain as a result of users visiting the website and adds that when considering the issues of bad faith registration and use, it should also be noted that the Respondent has availed of a privacy service to hide its true identity.

RESPONDENT:

No administratively compliant Response was received.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

Complainant's Rights

The Complainant has provided convincing evidence that rights in the CASINO mark, established by its ownership of its portfolio of trademark registrations described above and its use of the mark in its gambling business at two locations in Finland.

Confusing Similarity

Each of the disputed domain names <kasinotampere.com> and <kasinotampere.info > consists of the word "kasino", in combination with the word "tampere" and the respective generic Top-Level Domain ("gTLD") extension.

This Panel accepts the submission that the word "kasino" is almost identical to The Complainant's CASINO mark. The Complainant's uncontested submission is that the words "kasino" and "casino" are used interchangeably in the Finnish language and the words are aurally identical.

The word "kasino" is the initial element in each of the disputed domain names and the other element "tampere" being a geographical placename, has no distinguishing character.

The gTLD extensions ".com" and ".info" would in each case be considered a necessary technical requirement for a domain name registration and do not prevent a finding of confusing similarity.

This Panel finds therefore that each of the disputed domain names is confusingly similar to the CASINO mark in which the

Complainant has rights and the Complainant has therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

Rights or Legitimate Interests in the disputed domain names

The Complainant has made out a prima facie case that Respondent has no rights or legitimate interests in the disputed domain names arguing that it is no coincidence that the disputed domain names which are confusingly similar to the Complainant's marks were chosen and registered; according to the searches conducted by the Complainant on the internet and in the trademark databases, the Respondent does not have any rights preceding those of the Complainant to the name "KASINO" or to the disputed domain names <kasinotampere.com> and <kasinotampere.info>; the disputed domain name <kasinotampere.com> was registered on January 14, 2020.; and the disputed domain name <kasinotampere.info> was registered on January 15, 2020, and each registration was long after Complainant established its rights in the CASINO mark including its registered trade mark rights established by its Finnish trademark registration in 2005; the Respondent is not commonly known by the disputed domain names; Respondent's use of the disputed domain names is neither non-commercial nor fair use; the Complainant has not granted anyone any rights or license to use the name CASINO or its derivatives; the use and registration of the disputed domain names has not been authorized by the Complainant and the Complainant does not approve of the use and registration of the disputed domain names; the Respondent is neither affiliated with the Complainant nor authorized by it in any way to use the trademark CASINO; the Complainant does not carry out any activity for, nor has any business with the Respondent; the Respondent's website links the visitor to gambling sites that are in breach of Finnish law; the screen captures of the websites to which the disputed domain names resolve, which have been submitted in an annex to the Complaint and translated into the English language at the request of the Panel, show that the disputed domain name <kasinotampere.info> resolves to a news page, with information unrelated to gaming, and appears to be just on hold; the screen captures and translations also show that the disputed domain name <kasinotampere.com> resolves to a website which contains references and links to other gambling activities in violation of Finnish gaming legislation, relating to games are mainly operated and managed from Malta; the website to which the <kasinotampere.com> domain name resolves provides a direct link to a website on which a third party host an online casino from which the Respondent profits by receiving pay-per-click revenue as an "affiliate"; Internet users including consumers, visiting the websites to which the disputed domain names resolve, consumers may make the mistake of thinking that these websites are maintained by the Complainant itself or is at least financially supported by the Complainant; content on the Finnish-language gaming website to which the disputed domain name <kasinotampere.com> domain name resolve, such as "SuomiKasino – The Best Games of Finland" creates the impression that there is some connection between the Respondent's website and the Complainant's well-regulated gambling activities, resulting in serious harm to the Complainant's tightly regulated business and even to the Finnish consumers.

It is well established that once a Complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

Respondent has failed to discharge that burden and therefore this Panel must find that Respondent has no rights or legitimate interests in the disputed domain names.

The Panel is conscious that the CASINO mark on which the Complainant relies to establish its rights is descriptive of the services for which it is used and descriptive of the services provided by the Respondent on the website to which the disputed domain name <kasinotampere.com> resolves and furthermore the word "Tampere" which is a geographical place name and as such is available for anyone to use in a domain name. While it may have been possible for the Respondent to argue a case that it has rights in the disputed domain names, it has failed to do so and as it has not discharged the burden therefore the Complainant must succeed.

Complainant has therefore succeeded in the second element of the test in Policy paragraph 4(a)(ii).

In making this finding, this Panel observes that this case illustrates that the tests applying to a Complaint under the Policy, are very different from the tests applied by Courts in determining trade mark infringement or passing off. In this case the Complainant relies on a very descriptive mark and the Complainant's prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name went unchallenged and therefore the burden of production shifted to the Respondent who failed to discharge the burden. It is easy to imagine how these points might have been differently

addressed, if not necessarily differently determined, in trademark infringement or passing off court proceedings, or even in a contested complaint under the Policy.

Bad Faith Registration and Use

The disputed domain names are descriptive of the Complainant's business and almost identical to the Complainant's CASINO mark with only the similarity sounding letter "k" replacing the letter "c" in each case. They also include a reference to the city of Tampere where the Complainant, the holder of a monopoly right under Finnish law has in December 2021 established a new casino which has been in planning since 2015.

It is beyond coincidence that the registrant or registrants of the disputed domain names chose to combine the word "kasino" with the name of the location where the Complainant has so recently opened its second casino in Finland at Tampere. It is also most improbable that the disputed domain names, each with the same combination of elements, were chosen and registered without knowledge of Complainant and its casino business.

The Complainant has an established Internet presence and owns several domain names which incorporate the word "casino".

The disputed domain name <kasidotampere.com> was registered on January 14, 2020; and the disputed domain name <kasidotampere.info> was registered on January 15, 2020. In each case the registrations took place soon after the Complainant had opened its new casino in Tampere in December 2021.

On the balance of probabilities therefore, this Panel finds that the disputed domain names were registered in bad faith with the intention of targeting and taking predatory advantage of the reputation that the Complainant is establishing for its second casino which was announced as early as 2015 and opened in December 2021 with attendant publicity.

With regard to the alleged bad faith use of the disputed domain names by the Respondent, the uncontested evidence shows that the disputed domain name <kasidotampere.info> resolves to a news page, with information unrelated to gaming, and appears to be just on hold, whereas the disputed domain name <kasidotampere.com> resolves to a website which the Complainant alleges contains references and links to other gambling activities.

This Panel is not convinced that a finding of bad faith use of the disputed domain names may be made because one of them is used by the Respondent to host a website with links to third party gambling websites for the reasons given by the Complainant. If the Respondent or its affiliates host a gambling website in a jurisdiction which permits such websites, then it would be a stretch to hold that there is some extraterritorial power exercised by the Finnish Government over the foreign third party.

It is not however necessary to explore this allegation further because this Panel is satisfied to find that on the balance of probabilities, the Respondent is using both of the disputed domain names to misdirect and confuse Internet users who may be seeking information about the Complainant's new casino by creating an initial interest confusion. The Respondent is going even further with the disputed domain name <kasidotampere.com> to bait and switch traffic intended for the Complainant's website to a third-party location from which the Respondent is making an unfair profit from the Complainant's reputation.

As this Panel has found that the disputed domain names were registered and are being used in bad faith, Complainant has succeeded in the third element of the test in Policy paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. KASINOTAMPERE.COM: Transferred
2. KASINOTAMPERE.INFO: Transferred

PANELLISTS

Name	Mr James Jude Bridgeman
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DATE OF PANEL DECISION 2022-04-03

Publish the Decision
