

Decision for dispute CAC-UDRP-105333

Case number	CAC-UDRP-105333
Time of filing	2023-04-20 10:58:43
Domain names	www.newsoccervista.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Livesport s.r.o.
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Respondent

Organization	GOALSNOW, LDA
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the domain name "SoccerVista.com", which it acquired in 2021 for a significant amount. Between 2019 and 2021 the mark "SoccerVista" was used to offer sports betting services and information. The website of "SoccerVista" had over 35 million users and 3,3 billion pageviews.

The Complainant argues that "SoccerVista" is an unregistered well known trademark.

FACTUAL BACKGROUND

The Complainant concluded a domain name transfer contract on May 14, 2021 including the domain name "soccervista.com" and including the mark "SoccerVista". The website offered content on sports and betting information and predictions. The content of the website consisting of code, graphic and functionality was not part of the deal between the seller and the Complainant as the Complainant planned to build its own website. The domain name was temporarily redirected to another domain. Currently, the Complainant is offering sports and betting information on "soccervista.com".

The disputed domain name "newsoccervista.com" has been registered with the Respondent on May 31, 2021. The Respondent started using the domain name to present content including sport bet predictions, identical to the content that was previously available on website "soccervista.com".

The Respondent is not affiliated with the Complainant.

COMPLAINANT'S CONTENTIONS

The Complainant states that the disputed domain name is confusingly similar to the unregistered trademark "SoccerVista". "SoccerVista" is considered a well-known and market-established sports brand. The Respondent has been using the disputed

domain name immediately after registration. The Complainant is under the impression that the registration was linked to the purchase of the trademark by the Complainant. The disputed domain name is only accompanied by the prefix "new" and therefore refers to something existing rather than distinguishes two domain names. In addition, the header of the Respondent's website as well as the logo present a direct reference to "SoccerVista".

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the domain name, since the Respondent is not licensed or authorized to use Complainant's mark.

Furthermore, the disputed domain name has been registered and is being used in bad faith. The Respondent wants to present its domain name as a successor of "SoccerVista" and tries to establish a connection to this mark. The Respondent's offer is functionally equivalent to that of the Complainant and therefore operates in direct competition on the relevant market. According to the Complainant, the Respondent bought the website content from the previous seller in bad faith and with the goal to operate the content as a new version of the well-known mark "SoccerVista". In addition, the Respondent has started to redirect visitors of its website "www.newsoccervista.com" to a new domain operating under the name "SoccerVital", which the Complainant considers to be an implicit acknowledgement regarding the aforementioned violations.

RESPONDENT'S CONTENTIONS:

The Respondent claims that the Complainant does not meet the requirements of the UDRP, because "SoccerVista" is neither a trademark nor a service mark. The Respondent has the right to register any name including the words "soccer" and "vista", since they are common names. Moreover, the estimated value of "SoccerVista" is only about 9.000 USD.

Further, the domain name has not been registered and is not being used in bad faith. The disputed domain name was only registered and used after the Complainant closed the prognostic service and the domain was redirected to the website "betexplorer.com" until April 2023. In the Respondent's opinion, the Complainant started using the domain name again in order to benefit from the number of users of the disputed domain name.

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 15(a) of the Rules instructs this Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable. Taking the statements and documents submitted by the Complainant and by the Respondent under careful consideration, the Panel concludes, that the Complainant has established all the elements entitling it to relief. The relief shall therefore be granted.

1. The disputed domain name is confusingly similar to the unregistered trademark "SoccerVista" of the Complainant.

The Complainant has not referred to any registered trademarks.

However, it is undisputed and accepted practice (see e.g. UDRP Case No. 103332, Advanced ChemBlocks Inc v lianqliang wang; UDRP Case No. 102204, SANATORIUMS.COM s.r.o. v Book sanatorium s.r.o.; UDRP Case No. 103432, Transport Exchange Group Limited v Martin Miller; UDRP Case No. 101587, Fitness People B.V. v Jes Hvid Mikkelsen), that paragraph 4(a) (i) of the Policy refers only to a "trademark or service mark" in which the Complainant has rights, and does not expressly limit its application to registered trademarks or service marks.

To establish unregistered trademark rights for UDRP purposes, the Complainant must demonstrate that its mark has become a distinctive sign that consumers associate with the Complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness includes various factors such as: (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

The Complainant has provided summarised information regarding its business activities and duration of use of the trademark "SoccerVista". It follows that the duration of use of "SoccerVista" is approximately 23 years, since 2000. The Complainant demonstrated a high degree of actual public via media reports and pageviews as well as user numbers in the past. The Complainant stated undisputedly, that between 2019 and 2021 the mark "SoccerVista" was used to offer sports betting services and information. The website of "SoccerVista" had over 35 million users and 3,3 billion pageviews during this time. Although there was a decrease of numbers in 2022 compared to the years of 2019 to 2021, Complainant explained that this was due to a process of incorporating "SoccerVista" into the structures of Complainant after the acquisition of "SoccerVista". The Complainant also used a significant financial amount for the transfer of the domain name "soccervista.com".

The Respondent has sought to challenge the claim of the Complainant, since he points out that the estimated market value is only about 9.000 USD and the Complainant closed the website and redirected the domain name "soccervista.com" to a different website for two years in the duration of June 2021 to April 2023. Therefore, the Complainant could not refer to the trademark "SoccerVista".

However, the Respondent does not successfully challenge the Complainant's claim to the satisfaction of the Panel. Contrary to the view of the Respondent, the protection of the mark "SoccerVista" does not cease, only because the Complainant redirected the domain name "www.soccervista.com" to a different domain name for a certain period of time. Undisputed, the domain name has been in use for more than 20 years until June 2021, as the redirecting is regarded use of this domain name in the view of the Panel. Therefore, it is not a passive holding of the domain name, which could indicate that the Complainant lacks rights and legitimate interests in the domain name/ mark in the first place. Instead, the temporary redirect of the domain name to its other services is sufficient to demonstrate active use of the domain name and does not result in reduced protection of the trademark "SoccerVista".

Lastly, the disputed domain name shows a confusing similarity to the unregistered trademark "SoccerVista". It is well-established that a domain name that wholly incorporates a Complainant's trademark may be sufficient to establish confusing similarity for purposes of the UDRP (see e.g. WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin). Even the Respondent agrees that the similarity between the disputed domain name and "SoccerVista" is indeed a "fact".

Adding the word "new" does not eliminate the similarity between the two. The Panel does not share the opinion of the Respondent that "SoccerVista" is a mere combination of the generic words "soccer" and "vista". Rather, the linking of the two words in exactly this order is what makes the trademark unique. The Panel further agrees with Complainant's contention that the descriptive component "new" added to Complainant's trademark even adds to the confusion by leading users to believe that the Complainant operates an improved or subsequent version of the website.

Summarised, for the purposes of proceedings under the Policy, all of this evidence is relevant. The Panel concludes that the Complainant has met the requirements and therefore has rights in respect of the unregistered trademark "SoccerVista".

2. The Respondent has no rights or legitimate interests in respect of the domain name.

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to use its trademark in a domain name.

Moreover, the facts that the disputed domain name is only accompanied by the prefix "new" and the website offers similar services as well as a logo with direct reference to "SoccerVista" can be seen as evidence that the Respondent lacks rights and legitimate interests in the disputed domain name. The meaning of the word "new" suggests that it is a successor or at least a new version of "SoccerVista" and therefore may lead users to conclude that it is a related domain name. The circumstance that "SoccerVista" is – as shown before – established for more than 20 years in the sector of sports and betting services indicates that the Respondent must have known "SoccerVista" before the registration on May 31, 2021. The Respondent claims that he only opened and used the domain name, when "SoccerVista" was redirected to another domain name. This is not convincing, since the Respondent has already registered his domain in May and states himself that the redirect "started around June". Furthermore, the fact that the domain name was redirected is not sufficient to be determined as passive holding. Therefore, the Respondent could not immediately assume that the Complainant would finally close its business.

In addition, the domain name at stake does not correspond to the name of the Respondent and he did not provide any further evidence that he would be commonly known as "SoccerVista".

Finally, the fact that the disputed domain name links to a website with similar content as the previous content of "soccervista.com" shows that it is not a bona fide offer of goods or services or a legitimate non-commercial or fair use.

3. The disputed domain name has been registered and is being used in bad faith within the meaning of the Policy.

Firstly, the timing of the registration of the disputed domain name indicates the Respondent's bad faith in registering such domain name, as, at that time according to the provided evidence, the Complainant's trademark "SoccerVista" was already well-known for several years in the industry of sports betting and predictions.

Also, the Complainant has, to the satisfaction of the Panel, shown that the prefix "new" was intentionally designed to be confusingly similar to the Complainant's trademark. Therefore, it also follows that the Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant's trademark. Such likelihood of confusion is also evidence of bad faith registration and use.

Lastly, the Respondent's bad faith is indicated by the fact that shortly after filing the complaint the Respondent registered a new domain name under the name "www.soccervital.com", which corresponds both functionally and visually to the website of "www.newsoccervista.com".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. www.newsoccervista.com: Transferred

PANELLISTS

Name **Dominik Eickemeier**

DATE OF PANEL DECISION **2023-05-22**

Publish the Decision
