

Decision for dispute CAC-UDRP-105914

Case number	CAC-UDRP-105914
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Time of filing	2023-10-26 10:08:11
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Domain names	veikkauksen.com
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	Petri Ikonen
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <veikkauksen.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark, amongst others:

- Finnish trade mark registration no. 248158, with priority and application date from 27 September 2005, for the mark VEIKKAUS, in classes 35 and 42 of the Nice Classification.

(hereinafter, the Complainant's trade mark; the VEIKKAUS trade mark and the trade mark VEIKKAUS interchangeably).

The disputed domain name was registered on 13 January 2021 and, at the time of writing of this decision, it resolves to an active website, the particulars of which are discussed further below ('the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Complainant is a Finnish gaming company which is owned entirely by the Finnish State. The Finnish gaming system was reformed in 2017, resulting in the merge of the previous three operators Fintoto (horse racing games), RAY (casino), and Veikkaus (betting and lottery). The Complainant, whose purpose is to operate games responsibly and mitigating the possible risks involved therefrom, holds the exclusive right to operate all the gambling games that are offered in Finland.

Approximately 40 per cent of adult Finns play VEIKKAUS games and use their betting services weekly, and more than 80 per cent have played VEIKKAUS games at least once in their lives.

In addition to the trade mark set out in the above section 'Identification Of Rights', and many more in its portfolio, the Complainant owns numerous domain names containing the trade mark VEIKKAUS, most notably <veikkaus.com> (registered on 20 December 1996).

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant states that the disputed domain name incorporates the trade mark VEIKKAUS in its entirety, and that 'veikkauksen' is the genitive form of the word 'veikkaus' in Finnish language. Consequently, Internet users are likely to assume that the disputed domain name belongs to the Complainant, which is the only official betting service provider in Finland.

In order to further support this UDRP Policy ground, the Complainant alludes to the WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 1.7 ('the WIPO Jurisprudential Overview 3.0'), according to which UDRP decisions have held domain names to be confusingly similar if the entirety of a trade mark, or at least a dominant part of it, is recognisable in the domain name.

The Complainant therefore concludes that the disputed domain name is confusingly similar to the Complainant's trade mark.

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

The Complainant states that the Respondent does not hold any rights preceding those of the Complainant to the name 'Veikkaus' nor does the Respondent have prior rights to 'veikkauksen' or to the disputed domain name. The Respondent is not affiliated with, nor authorised by, the Complainant to use the trade mark VEIKKAUS. The Complainant does not carry out any activity for, nor has any business relationship with, the Respondent.

The Complainant further states that the Respondent's website provides links to third party gambling websites, in breach of Finnish law, and that Internet users are likely to be misled into thinking that those third-party websites are affiliated with the Complainant.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant avers that the disputed domain name was registered in bad faith with the sole purpose of targeting the Complainant's trade mark VEIKKAUS, and to derive profit from the likely Internet consumer confusion between the Respondent's website and the Complainant.

The Complainant further avers that the Respondent is trading on the Complainant's goodwill and obtaining commercial gain by marketing Finnish online casinos on the Respondent's website, in violation of Finnish law.

The Complainant reiterates that it is the only company entitled to legally offer gambling, betting and lottery services in Finland, and that the Complainant is under strict monitoring and control. In view of this, there is a substantial risk that Internet consumers will be mistaken by the third-party websites advertised on the Respondent's website and, quite possibly, led to believe that they were maintained by, or on behalf of, the Complainant.

The Complainant therefore claims that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's submissions are uncontested.

RIGHTS

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

NO RIGHTS OR LEGITIMATE INTERESTS

The Panel makes no ruling on this UDRP Policy ground for the reasons set forth in section 'Principal Reasons for the Decision' further below.

BAD FAITH

The Complainant has failed to demonstrate that the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the UDRP 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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant is required to establish for the granting of the relief sought (transfer of the disputed domain name):

- i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- 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.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The test under the first UDRP Policy ground provides for a juxtaposing approach, according to which the textual, auditory, and visual components of the disputed domain name and the Complainant's trade mark are to be compared side by side.

In order to succeed, the Complainant must provide evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant's trade mark.

The Panel is satisfied that the Complainant owns trade mark rights in 'VEIKKAUS' since 2005.

Having established the Complainant's trade mark standing for the purpose of this UDRP administrative proceeding, it rests with the Panel the juxtaposing exercise between the Complainant's trade mark and the disputed domain name.

The disputed domain name is <veikkauksen.com> and the Complainant states that 'veikkauksen' is a genitive form of the word 'veikkaus' in Finnish language. The Complainant's statement is, however, regrettably unsupported by evidence eliciting the Complainant's position.

Notwithstanding the above, the Panel considers the term 'veikkau' to be the most distinguishable component of the disputed domain name string, particularly as it features at the beginning of the domain name string. The Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark VEIKKAUS. The Complainant has therefore met the requirement under paragraph

4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

In light of the Panel's finding under section D below, the Panel shall not consider this UDRP Policy ground as any such finding would consequently be immaterial to the outcome of this UDRP administrative proceeding.

D. Registered and Used in Bad Faith

In order to succeed under this UDRP Policy ground, the Complainant must provide evidence that the disputed domain name was registered and is being used in bad faith. The UDRP Policy enumerates non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

- 1) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- 2) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- 3) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- 4) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel has considered the evidence put forward by the Complainant, and has also performed independent, albeit limited, factual research on certain aspects of this UDRP administrative proceeding. The Panel takes the view that the circumstances in this case which are material to the assessment of bad faith registration and use are intertwined and, as such, will be dealt with by the Panel concurrently.

The Complainant avers that the Respondent has registered and is using the disputed domain name as a vehicle for commercial gain, by obtaining monetary compensation through an affiliate marketing scheme. The Complainant also claims that the Respondent's website contains links to Finnish online casinos and that this behaviour is against Finnish law. The Panel notes that the Complainant's claims are, again, unsupported by compelling evidence nonetheless.

The Respondent's website purports to be an independent review outlet aimed at providing feedback on the Complainant's gaming offering. The Complainant, nonetheless, does not make any reference to the 'review' character of the Respondent's website (the Complaint is entirely silent on this point, and the Panel is unaware of the Complainant's views on whether the Respondent's website is to be considered a genuine review website). The Respondent's website's look and feel, which is very dissimilar to the Complainant's own website, appears to display genuine feedback content, in Finnish language only, and on a wide range of Complainant's games.

The Panel further notes that there is no disclaimer on the Respondent's website regarding the relationship with the Complainant (or the lack thereof) nor any information about the Respondent itself. Nevertheless, there is a mention to the Complainant at the bottom of the Respondent's website which states: 'Soveltuvilta osin © 2023 Veikkauksen.com, Veikkaus.fi.', or in the English translation: 'Where applicable © 2023 Veikkauksen.com, Veikkaus.fi.'. The Panel takes the view that such mention may well operate as a de facto disclaimer that the parties are different entities. Moreover, the Panel considers that the target audience being Finnish nationals and Finnish speakers, such circumstance should be factored into the Panel's overall assessment of the case, particularly as this, in the Panel's view, may well dilute the risk of affiliation between the parties, given that consumers likely would be aware that the Complainant holds the exclusive right to operate all the gambling games that are offered in Finland. Again, the Complaint was silent on this point.

The Panel notes that, at the time of writing this decision, the Respondent's website displays only one hyperlink inserted into the text headed (in English translation) 'every Finnish online casino' (original in Finnish: kukin suomalainen nettikasino), from which Internet users are redirected to the Complainant's own website (<https://www.veikkaus.fi/fi/nettikasino>). The Respondent's website does not appear to display any other link to, or advertisement of, third parties.

The Complainant contends that *'there are several commercial links to gambling, games of chance, and betting services that are not provided by Veikkaus'*, and that *'with reference to the documents in Annexes 3a and 3b, namely printouts/translations taken from veikkauksen.com website, the marketing of the Finnish online casinos, including the direct links to these websites on the veikkauksen.com website, is exploitation of the domain for commercial purposes. The website veikkauksen.com provides direct links to the paid online casinos and if a person creates an account for and plays games on the site, the owner of the veikkauksen.com domain will receive provision of any revenue or similar monetary compensation'*. However, the Complainant did not submit supporting evidence of its claims. In particular, from annexes 3a and 3b to the Complaint (or any other evidence submitted by the Complainant), it is not clear to the Panel that the Respondent's website would contain third party links. The Panel briefly reviewed the Respondent's website, and it appears that the links are internal links (linking to other pages on the Respondent's website, rather than third party links). As mentioned earlier, there is also a direct link to the Complainant's own website. In each case, the Complaint does not include convincing evidence of the Complainant's assertions regarding third party commercial links.

For all the above reasons, it is not entirely clear to the Panel the extent to which the Respondent's website is being used as a vehicle for commercial venture within the parameters of paragraph 4(b)(iv) of the UDRP Policy. Similarly, the Panel is unconvinced that the

Respondent's behaviour would fall within any of the other three (non-exhaustive) circumstances laid down in the UDRP Policy for registration and use in bad faith. Furthermore, in the Panel's view, the factual and legal matrices of this UDRP administrative proceeding would not warrant a deviation from the four UDRP Policy circumstances for bad faith registration and use of the disputed domain name. The UDRP Policy requires evidence of bad faith registration and use of the disputed domain name, and the available record does not evidence that the Respondent is using the disputed domain name in bad faith within the parameters of the UDRP Policy. The Complaint must therefore fail.

In conclusion, the Panel finds that the Complainant did not provide sufficient convincing argumentation nor evidence that any of the circumstances of paragraph 4(b) of the UDRP Policy (or any other circumstances of bad faith at registration or during use of the disputed domain name) are present. The Panel reiterates that the burden of proof under this UDRP Policy ground lies with the Complainant. On balance, and given the lack of convincing evidence of bad faith, the Panel finds that the Complainant has failed to establish the third ground of paragraph 4(a) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

- 1. **veikkauksen.com**: Remaining with the Respondent

PANELLISTS

Name	Gustavo Moser
Name	Dominik Eickemeier
Name	Bart Van Besien

DATE OF PANEL DECISION 2023-12-05

Publish the Decision