

## Decision for dispute CAC-UDRP-105932

Case number **CAC-UDRP-105932**

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Domain names **pitkavetovihjeet.org**

### Case administrator

Organization **Iveta Špiclová (Czech Arbitration Court) (Case admin)**

### Complainant

Organization **Veikkaus Oy**

### Complainant representative

Organization **Paula Sailas Lawyer, Licensed Legal Counsel, European Trademark and Design Attorney (Berggren Oy)**

### Respondent

Organization **Jani Naumanen (FanBet Media OU)**

#### 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 registrant of the Finnish trademark registration No. 276534 "PITKÄVETO", registered on January 7, 2020, for goods and services in classes 9, 16, 28 and 41.

#### FACTUAL BACKGROUND

The Complainant is a lottery, a game of chance and betting service provider operating in Finland. It was founded in 1940 for sports betting in Finland and currently has a monopoly position as regards betting and game of chance services in Finland.

The Complainant is the owner of the trademark "PITKÄVETO" (see above section "Identification of rights" for details) and of the domain names <pitkaveto.fi> and <pitkäveto.fi>.

The disputed domain name was registered by the Respondent on January 25, 2021. It resolves to a website which contains betting tips from experts for different sports, as well as links to third parties betting websites.

## PARTIES CONTENTIONS

### COMPLAINANT:

The Complainant clarifies that "Pitkavetovihjeet" means "long-betting tips" in English. The Complainant notes that the disputed domain name relates to one of its main businesses, namely, betting services. The Complainant observes that the disputed domain name resolves to a website where all the information is in Finnish and is related to the Complainant's services, namely betting and games of chance, and to third party gambling services. The Complainant argues that, given that the above-mentioned website is in Finnish language, it is aimed at the Finnish consumers. The Complainant submits that the Respondent gets financial benefits from the disputed domain name because it is used as a part of affiliate marketing scheme. The Complainant underlines that it has provided betting services under the "PITKÄVETO" brand since 1993 and the registration of the "PITKÄVETO" trademark predates the registration of the disputed domain name. The Complainant clarifies that "Vihjeet" is a generic term, and refers to tips. The Complainant argues that the disputed domain name is confusingly similar to the Complainant's prior "PITKÄVETO" trademark because the above-mentioned trademark is recognizable within the disputed domain name, and the addition of the generic word "Vihjeet" does not prevent a finding of confusing similarity. The Complainant points out that the term "Vihjeet" is directly linked to betting services. The Complainant argues that it is likely that Internet users assume that the disputed domain name belongs or has some other close connection to the Complainant, as the latter is the only official betting service provider in Finland and is also the owner of similar domain names. The Complainant states that the Respondent does not have any rights to the name "PITKÄVETO", to the wording "PITKAVETOVIIHJEET" or to the disputed domain name. The Complainant declares that the Respondent is neither affiliated with the Complainant nor authorized by it to use the trademark "PITKÄVETO". The Complainant clarifies that it does not have any business relation with the Respondent. The Complainant considers that the Respondent's website provides links to gambling websites that are in breach of Finnish law. The Complainant argues that the Respondent has registered the disputed domain name in bad faith, for obtaining a profit and for preventing the Complainant from registering it. The Complainant stresses that the Respondent seeks commercial benefit from directing Internet users to gambling webpages under an affiliate marketing scheme. The Complainant observes that, given that it is the only official betting service provider in Finland, the sole purpose of a third party to register the disputed domain name would be to exploit its reputation and to take financial advantages from its trademarks. The Complainant considers that, in the light of the Finnish rules on gambling services, the Respondent's activities related to the disputed domain name cause a harm to the Complainant's business and to the Finnish consumers. The Complainant argues that the use and registration of the disputed domain name by the Respondent has been done with the intention to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademarks.

### RESPONDENT:

The Respondent considers that the disputed domain name cannot be considered identical or confusingly similar to a trademark that is not distinctive enough. The Respondent adds that the term "Pitkäveto" is a widely recognized Finnish translation of "fixed odds betting". The Respondent takes the view that even the Complainant has made that clear in the text of some English versions of the Complainant's website. The Respondent explains that its website offers betting tips (i.e. predictions) for the fixed odds betting part of the whole betting field. The Respondent states that the disputed domain name has not been registered in bad faith. The Respondent submits that the disputed domain name was chosen due to the fact that "Pitkavetovihjeet" is one major keyword in search engines and widely recognized as regards fixed odds betting predictions and not as a trademark of the Complainant. The Respondent contends that the term is not mixed with the "Pitkäveto" brand. The Respondent clarifies that it is not a Complainant's competitor and that the website does not offer gambling or lottery services in Finland because the visitors cannot gamble on its website. The Respondent claims that it introduces betting sites located in Europe and that it publishes its betting predictions with the highest odds of the fixed odds betting market. The Complainant alleges that it uses reliable service providers only.

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### 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).

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### 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).

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### 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).

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## 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.

Similarly, to another case where the Complainant was involved (CAC case No. CAC-UDRP-104551), also in this case the Panel is unable to decide whether the content of the Respondent's website in its concrete form complies with Finnish law or not. Also, in the opinion of the Panel, this question must be clarified in proceedings before the national courts or the national competent authorities and does not relate to the question of the permissibility of the registration and use of the disputed domain name per se. Therefore, the Panel considers that that the subject matter of this specific issue is beyond the scope of the Policy.

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## PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

- (i) The disputed domain name is identical or confusingly similar to a trademark 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.

### IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "PITKÄVETO", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

The disputed domain name differs from the Complainant's trademark "PITKÄVETO" by the replacement of the letter "Ä" by the letter "A", by the addition of the term "VIHJEET" and by the presence of the top-level domain ".ORG".

It is a common view that where a trademark is the distinctive part of a domain name, the domain name is considered to be confusingly similar to the trademark (see, for example, WIPO case No. D2017-1266). Furthermore, the obvious replacement of a letter does not prevent a finding of confusing similarity (see, for example, WIPO case No. D2022-3506).

In the present case, the word "VIHJEET", which is a generic word which relates to the Complainant's activity, has no impact on the distinctive part "PITKÄVETO". It is well established that where the relevant trademark is recognizable within the domain name, the addition of a word would not prevent a finding of confusing similarity (see, for example, WIPO case No. D2022-0073).

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

The claim that the Complainant's trademark would not be distinctive enough, therefore the disputed domain name could not be considered identical or confusingly similar to it, must be rejected. Another panel, in similar circumstances, has considered as follows as regards an alleged lack of distinctiveness:

*"[the Complainant's trademark] has been registered as a trademark and the Panel cannot go behind that fact, because the Finnish Patent and Registration Office must have gone through the process of examining the application for the trademark, whether it met the requirements of the Trade Marks Act 544/2019 of Finland and its predecessors, whether there were objections to the grant of the trademark and, if there were, how they were resolved. The trademark was issued and on the presumption of regularity, apart from anything else, the Panel must give due recognition to that fact. [...] Moreover, this Panel has no jurisdiction to engage in any such process of questioning the validity of the trademark. [...] The internet user who saw the domain name would therefore naturally consider that it may well be an official domain name of the Complainant and that it would lead to an official website of the Complainant dealing with the odds given in a gambling or related activity being offered by the Complainant. The combination of those circumstances leads to the conclusion that the domain name may well be identifying the Complainant and one of its principal functions, giving rise to the confusing similarity between the domain name and the Complainant's trademark" (CAC case No. CAC-UDRP-105107). The Panel shares this view and considers this reasoning applicable, *mutatis mutandis*, also to this dispute and in particular to the alleged lack of distinctiveness and to the linguistic issues raised by the Respondent.*

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark "PITKÄVETO".

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

## RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use 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 or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or
- (iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Complainant states that:

- the Respondent does not have any rights to the name "PITKÄVETO", to the wording "PITKAVETOVIHJEET" or to the disputed domain name;
- the Respondent is neither affiliated with the Complainant nor authorized by it to use the trademark "PITKÄVETO";
- the Complainant does not have any business relation with the Respondent;
- the Respondent's website provides links to gambling websites that are in breach of Finnish law.

The Respondent puts forward:

- the fact that its website offers betting tips (i.e. predictions) for the fixed odds betting part of the whole betting field;
- the choice of the wording "Pitkävetovihjeet" because it is one major keyword in search engines and widely recognized as regards fixed odds betting predictions and not as a trademark of the Complainant;
- the statement that the term used in the disputed domain name is not mixed with the "Pitkäveto" brand;
- the fact that the Respondent is not a Complainant's competitor and that the website does not offer gambling or lottery services in Finland because the visitors cannot gamble on its website;
- the statement that it introduces betting sites located in Europe and that it publishes its betting predictions with the highest odds of the fixed odds betting market and uses reliable service providers only.

As regards the issue of compliance with Finnish law of the Respondent's activity, the Panel refers to section "Procedural factors" above.

In line with the approach taken by other panels in similar cases (see, for example, WIPO case No. D2012-2382 and CAC case No. CAC-UDRP-105107), including where the same wording "Pitkävetovihjeet" was used in similar circumstances (CAC case No. CAC-UDRP-105931), the Panel considers that in the above-described circumstances, no right or legitimate interest in the disputed domain name may be demonstrated by the Respondent. When offering betting tips, the Respondent's aim is to rely on the false suggestion of a connection with the Complainant's business to attract Internet users to its site for some commercial gain. In these circumstances, no rights or legitimate interests may arise in the Respondent.

The fact that a wording is a major keyword in search engines and widely recognized in the relevant field, insofar as it includes a

registered trademark, is not sufficient to demonstrate rights or legitimate interests in a domain name.

The facts that the Respondent is not a direct competitor of the Complainant and that reliable providers are introduced are not relevant for demonstrating rights or legitimate interests in a domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Internet users, particularly in Finland, would be more likely than not to assume that the disputed domain name was invoking the trademark of the Complainant and one of its principal activities, instead of the generic meaning of the wording.

In the light of the above, the Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. That prima facie case has not been successfully rebutted by the Respondent.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

#### BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

- (i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or
- (ii) [the Respondent] [has] registered the [disputed] 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 [the Respondent] [has] engaged in a pattern of such conduct; or
- (iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] 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 [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel observes that it is well established that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative. Therefore, even where a complainant is not able to demonstrate the literal application of one of the above-mentioned scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant's trademark would also satisfy the complainant's burden.

The Panel notes that the Complainant's trademark predates the registration of the disputed domain name, which is confusingly similar to the Complainant's mark. The website includes links to other providers of betting and gaming services in competition with the Complainant. This goes beyond *bona fide* offering of services. Another panel in a similar case observed that "*By including links to competitors' websites the overall impression is that the Respondent is targeting the Complainant and its customers, either to disrupt the business of the Complainant or to intentionally attempt to attract for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and its mark*" (CAC case No. CAC-UDRP-105085; in the same vein see also WIPO case No. D2022-3601, WIPO case No. DIO2023-0020, CAC case No. CAC-UDRP-105931 and CAC case No. CAC-UDRP-105086). The Panel shares that view and considers the same argument applicable to this dispute.

The Panel, in line with the view of another panel in a similar case (CAC case No. CAC-UDRP-105553), considers that in these circumstances the fact that the disputed domain name is made of dictionary terms does not prevent a finding of bad faith.

The Panel has not found, in the arguments put forward by the Respondent, anything able to justify registration and use in good faith of the disputed domain name.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Accepted

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

1. **pitkavetovihjeet.org**: Transferred
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## PANELLISTS

Name	<b>Michele Antonini</b>
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DATE OF PANEL DECISION 2023-12-17

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Publish the Decision

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