Decision for dispute CAC-UDRP-106059

Case number	CAC-UDRP-106059
Time of filing	2023-12-19 10:10:51
Domain names	playstationportal.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Sony Interactive Entertainment Europe Ltd
Organization	Sony Interactive Entertainment Inc.

Complainant representative

Organization	Coöperatie SNB-REACT U.A.

Respondent

Name	Vedran Ikica

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 Complainants rely on the following registrations of the word mark "PLAYSTATION":

- Australian trademark no. 826701, registered since 13 January 2003 inter alia in classes 9, 16, 28, 38, 41 and 42; and

- EU trademark no. 001545094, registered on 24 October 2003 inter alia in classes 9, 16, 28, 38, 41 and 42.

The Complainants also rely on various other registrations of "PLAYSTATION" in stylised fonts and on common law rights, but it is not necessary to consider these for the purposes of this decision.

FACTUAL BACKGROUND

The Complainants' group of companies have supplied hardware for computer games and computer games on a very large scale around the world under the mark "PLAYSTATION" since the 1990s. This mark has been registered as a word mark in Australia and the EU as set out above. The Second Complainant, Sony Interactive Entertainment Inc., is the proprietor of the Australian registration, no. 826701. The First Complainant, Sony Interactive Entertainment Europe Limited, is the proprietor of the EU

registration, no. 001545094. The mark is also registered in stylised fonts in various countries.

The disputed domain name was registered on 21 March 2021 and locates a website offering "Jailbreak" software enabling illegal use of the Complainants' products by circumventing technical measures to prevent unauthorised use. At least one of the "Jailbreak" products offered is described on this website as "official".

Following notification of the Complaint, the Respondent filed a statement which said "I agree with all of the above, I have turned off the hosting and am ready to transfer the domain name to a new user." However, no settlement was agreed.

PARTIES CONTENTIONS

The Complainants contend that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

RIGHTS

The Panel finds that the Complainants have registered rights in the mark "PLAYSTATION".

The disputed domain name consists of this mark followed by the generic word "portal" and the generic top level domain name suffix, .com. These additions do not distinguish the disputed domain name from the Complainants' mark. The Panel finds that the disputed domain name is confusingly similar to the Complainants' mark

The Complainants have, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to a trademark in which they have rights within the meaning of paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

In the view of the Panel, the Respondent's use of the disputed domain name, to promote software enabling illegal use of the Complainants' products, does not constitute a bona fide offering of goods and services. Nor is it a legitimate non-commercial or fair use of the disputed domain name. On the contrary, the Respondent is using the disputed domain name for commercial gain to misleadingly divert consumers and to tarnish the Complainants' mark. The Panel is further satisfied on the evidence that the Respondent is not commonly known by the disputed domain name and that he has not been authorised by the Complainants to use it.

The Complainants have, 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 Panel finds that the Respondent has used the disputed domain name intentionally to attract Internet users to his website for commercial gain by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation or endorsement of this website. In accordance with paragraph 49b)(iv) of the UDRP this constitutes evidence of registration and use of the disputed domain name in bad faith.

The Respondent was well aware of the Complainants and their protected rights when registering the disputed domain name.

In addition, the Respondent's use of the disputed domain name to promote software to facilitate violation of the Complainants' rights is itself in bad faith.

The Complainants have, 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

The disputed domain name consists of the Complainants' well-known registered mark followed by a generic term and the generic top level domain name suffix. It is plainly confusingly similar to the Complainants' mark. The Respondent has used this disputed domain name to promote software to facilitate violation of the Complainants' rights. This use is not bona fide, has created any rights or legitimate interests, and is evidence of registration and use in bad faith

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **playstationportal.com**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2024-01-25

Publish the Decision