Decision for dispute CAC-UDRP-106219

Case number	CAC-UDRP-106219
Time of filing	2024-02-01 09:54:13
Domain names	zodiac-casino-pro.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	ESCROW SERVICES OVERSEAS LIMITED

Complainant representative

Organization	Zacco Sweden AB

Respondent

Name	Dmitro Miasnikov

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 bases its Complaint on the following trademarks:

- European Union trademark “ZODIAC CASINO”, no. 007329014, filed on 20 October, 2008, registered on 11 November, 2010, for services in classes 36 and 41;
- UK national trademark “ZODIAC CASINO”, no. UK00907329014, filed on 20 October, 2008, date of entry in register 11 November, 2010, for services in classes 36 and 41;
- Canadian national trademark “ZODIAC CASINO”, no. TMA1195581, filed on 30 June, 2021, registered on 30 August, 2023, for goods and services in classes 09 and 41;
- New Zealand national trademark “ZODIAC CASINO”, no. 1209374, filed on 4 May, 2022, registered on 8 November, 2022, for goods and services in classes 09 and 41.

FACTUAL BACKGROUND

The Complainant is an intellectual property holding company, forming part of a group of companies engaged in the online gaming industry. It is part of the Internet Traffic Solutions Limited group which is engaged in the online gaming industry and which operates online gaming websites under various brands, among others “Captain Cooks Casino”, “Casino Classic”, “Grand Mondial Casino”, “Villento Casino”, “Yukon Gold Casino”, and “Zodiac Casino”. The Group is engaged in the online gaming industry, and through its

various companies holds several gambling licenses in different jurisdictions, including the UK, Denmark, Malta, and Canada. Zodiac Casino is an online casino offered via the website www.zodiac.casino.

The Complainant is the owner of several trademarks ZODIAC CASINO, such as the European Union trademark “ZODIAC CASINO”, no. 007329014, the UK national trademark “ZODIAC CASINO”, no. UK00907329014, the Canadian national trademark “ZODIAC CASINO”, no. TMA1195581, the New Zealand national trademark “ZODIAC CASINO”, no. 1209374, (all cited above).

The Complainant also owns a number of domain names which include its trademark ZODIAC CASINO, such as the domain names <zodiaccasino.com>, <zodiac-casino.co.uk> and <zodiac.casino>.

The disputed domain name <zodiac-casino-pro.com> was registered on 6 October, 2022 and is currently used in relation to an online casino website.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's contentions are the following:

The disputed domain name <zodiac-casino-pro.com> is confusingly similar to the Complainant's trademark ZODIAC CASINO, that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons and that the disputed domain name was registered and is being used in bad faith.

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

1. Confusing Similarity

The Panel agrees that the disputed domain name <zodiac-casino-pro.com> is confusingly similar to the Complainant's earlier trademark ZODIAC CASINO. The disputed domain name <zodiac-casino-pro.com> includes in its entirety the Complainant's earlier trademark ZODIAC CASINO with a hyphen in between the two verbal parts of the trademark, followed by a hyphen and the term „pro”, which is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant’s earlier trademark and it does not change the overall impression of the designation as being connected to the trademark ZODIAC CASINO, the earlier trademark of the Complainant ZODIAC CASINO being recognizable within the disputed domain name.

Where the relevant trademark is recognizable within the disputed domain name, as this is the case, the addition of other terms

(whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), point 1.8).

Moreover, the extension ".com" is not to be taken into consideration when examining the similarity between the Complainant's trademark and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a gTLD such as ".com" is irrelevant as it is well established that the generic Top Level Domain is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L'Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

2. Lack of Respondent's rights or legitimate interests

The Complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name as such is not identified in the WHOIS database as the disputed domain name. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain name.

Based on the available evidence, the disputed domain is currently used in relation to an online casino website. While the Respondent is not using the exact same logotype and website design compared to the Complainant's website, it does make confusing references to the Complainant such as being owned and operated by "Internet Traffic Solutions Ltd" which is the Complainant's parent company. As per the assertions of the Complainant, Internet Traffic Solutions Ltd has no connection whatsoever with the disputed domain name. Furthermore, the website for which the disputed domain name is used appears to be making contradictory statements as far as who owns its casino. For example, on another part of the website there is a statement claiming that the Zodiac Casino is owned by Technology Services Trading Ltd. In addition, the website appears to be stating that the casino has been operating since 2001, however, the disputed domain name was registered in 2022. In addition, the Respondent is including images on the app which is directly using the Complainant's logotype and images, reference is to be made via filed annexes in the Complaint.. Furthermore, the website appears not to be functioning properly. For example, some of the links included on the website appear as not to be working, as when clicking on such links, the website visitor receives a message stating that the website cannot be reached. On the other hand, some links also lead to competing websites. For example, based on the available evidence, when clicking on the link for the "Zodiac Casino" app (which is displaying the Complainant's logotype and images), the website visitor is instead referred to a competing website, namely https://14icecazino.com/. Reference is to be made in this sense to annexes to the filed Complaint.

The Panel notes that the Respondent had an opportunity to comment on the Complaint's allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

3. Bad Faith

Based on the available evidence, the Complainant's trademarks ZODIAC CASINO were filed and/or registered prior to the disputed domain name. Thus, the Respondent has chosen to register the disputed domain name in order to create a confusion with such trademark. Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant's earlier trademarks and has intentionally registered one in order to create confusion with such trademarks.

In the present case, the following factors should be considered:

(i) the Complainant's trademarks predate the registration date of the disputed domain name;

(ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(iii) the Respondent registered the disputed domain name which includes in its entirety the Complainant's earlier trademark ZODIAC CASINO followed by a descriptive term „pro";

(iv) the Respondent has no business relationship with the Complainant, nor was ever authorised to use a domain name similar to the Complainant's trademark;

(vi) the disputed domain is, at the date of the decision, used in relation to an online casino website which makes confusing references as being owned and operated by "Internet Traffic Solutions Ltd" which is the Complainant's parent company, where there

is no such relationship, as per the assertions of the Complainant. In addition, among others, the Respondent is including images on the app which is directly using the Complainant's logotype and images, while some links lead to competing websites.

Considering the above, in the Panel's view, it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **zodiac-casino-pro.com**: Transferred

PANELLISTS

Name	**Delia-Mihaela Belciu**

DATE OF PANEL DECISION 2024-03-12

Publish the Decision