Decision for dispute CAC-UDRP-106280

Case number	CAC-UDRP-106280
Time of filing	2024-02-21 06:54:04
Domain names	jokerstar-fun.com

Case administrator

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

Complainant

Organization	Jokerstar GmbH

Complainant representative

Organization	HOTZ . UTZ RECHTSANWÄLTE Partnerschaft mbB

Respondent

Name	Olga Popova

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 a provider of online gambling services and claims rights in the JOKERSTAR service mark established by its ownership of the European Union trademark EUTM, JOKERSTAR, registration number 018321281, registered on February 15, 2021 for services in class 41.

In addition, the Complainant is the exclusive licensee of:

- German registered trademark JOKER STAR, registration number 302018100519, registered on March 7, 2018 for services in class 41;
- German registered trademark JOKERSTAR, registration number 302019107521, registered on August 19, 2019 for services in class 41;
- German registered trademark JOKER STAR (figurative), registration number 302019109436, registered on August 15, 2019 for services in class 41.

FACTUAL BACKGROUND

In addition to its rights as an exclusive licensee and registrant of the registered trademarks set out above, the Complainant also owns a large portfolio of Internet domain names which consist of, or incorporate the elements <jokerstar> Internet domain names

including <jokerstar.de>, <jokerstar.com> and <jokerstar.fun>.

Relevantly, the Complainant's domain name <jokerstar.fun> was created on January 18, 2021, and the disputed domain name <jokerstar-fun.com> was created November 3, 2023.

The disputed domain name resolves to a website on which the Respondent presents itself as "JOKERSTAR CASINO", while prominently displaying the JOKERSTAR mark in which the Complainant has rights and purports to offer gaming services that compete with those offered by the Complainant.

There is no information available about the Respondent except for that provided in the Complaint, the Registrar's WhoIs and the information provided by the Registrar in response to the request by the Center for details of the registration of the disputed domain name in the course of this proceeding.

The Registrar has verified that the Respondent is the registrant of the disputed domain name.

PARTIES CONTENTIONS

Complainant

The Complainant claims rights in the JOKERSTAR service mark as described above and that it has an established Internet presence using its abovementioned portfolio of domain names.

The Complainant avers that it has provided virtual slot machine games under license in Germany since August 2022 allowing and has operated a corresponding service on the Internet since 22 September 2022 on its website at www.jokerstar.de.

The Complainant avers that since 22 September 2022 its website has been accessed over 2,500,000 times, and in marketing its gaming service, the Complainant has placed more than 2,250 TV commercials, and around 200 corner split screen advertisements in that period.

The Complainant alleges that the disputed domain name is identical or confusingly similar to the JOKERSTAR mark in which it has rights noting that it consists of the trademark and the element "fun", which are separated by a hyphen together with the generic Top-Level Domain extension <.com>.

It is submitted that due to the clear separation of the two components, by the hyphen, the targeted public, namely Internet users interested in online gambling, will recognize the component "fun" as an independent, generic component, which is merely intended to explain the feeling the user should get when visiting the website accessible with the challenged domain name.

The Complainant submits that it has no knowledge of the Respondent, however, searches carried out by the Complainant in the retrievable databases has not revealed any possible rights of third parties, and therefore the Respondent has no rights in the disputed domain name.

Alleging that the disputed domain name was registered and is being used in bad faith, the Complainant avers that it has operated a website at www.jokerstar.de since 22 September 2022; that it has placed more than 2,250 TV commercials and approximately, 200 corner split screen advertisements for its services; and that its website at www.jokerstar.de has been accessed over 2.5 million times.

The Complainant further submits that it is the owner of the domain names <jokerstar.com> and <jokerstar.fun>, and the disputed domain name is a combination of these two domain names.

Furthermore, the design of the Respondent's website, which has been adapted to the design of the complainant's website, clearly shows that the Respondent must have been aware of the Complainant's website and also of the domain name <jokerstar.de> used by the Complainant at the time of the registration of the disputed domain name.

The Complainant argues that it follows that the Complainant's gaming services have achieved considerable awareness among the relevant public when the disputed domain name was registered by the Respondent on 3 November 2023.

Referring to a screen capture of the website to which the disputed domain name resolves which is exhibited in an annex to the Complaint, the Complainant complains that its JOKERSTAR mark is used prominently in the header area, although the Complainant has no association with the Respondent's website.

The Complainant adds that the Respondent's exhibited website even displays the certificate of the gambling authority in Malta, thus giving the impression that a corresponding permit exists there and also indicating that "gambling licenses from reputable supervisory authorities" of several countries shall exist, which shall enable "Jokerstar Casino" to "offer its services to players from different regions and at the same time comply with local gambling laws and regulations".

The term "Casino" is used on the Respondent's website. By placing the trademark "Jokerstar" in front of this term, the impression is even created that the Complainant uses the term "Jokerstar Casino".

In the FAQs of this website linked to the website which is accessible through the disputed domain name, the term "Jokerstar GmbH

Casino" is also used at one point, thus creating a direct reference to the Complainant and giving the impression that the corresponding website is operated by the Complainant:

This impression is also reinforced by the fact that this website refers to an allegedly existing "Jokerstar" app. However, neither the Complainant nor the Respondent operate any app under the name "JOKERSTAR", which is why such an app is not available or retrievable in the specified app stores.

In addition, referring to screen captures of the Complainant's own website and the website to which the disputed domain name resolves, the Complainant submits that the Respondent's website also uses a homepage design that imitates the content of the Complainant's website. The graphic displayed at the top of the homepage contains figures that are also present on the Complainant's website either in a quasi-identical manner (a man with beard, brown jacket and white shirt, probably based on the film character "Indiana Jones") or in the corresponding design (Egyptian Pharaoh characters).

Respondent

No administratively compliant response has been filed.

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

Confusing Similarity

The first named Complainant has provided uncontested evidence that it has rights in the JOKERSTAR mark established by its ownership of the EUTM registration and its exclusive license of the abovementioned German service mark registrations for JOKER STAR and JOKERSTAR, and the extensive goodwill established carrying on its gaming business in the Federal Republic of Germany since January 2021.

The disputed domain name < jokerstar-fun.com> consists of the JOKERSTAR mark, a hyphen, the word “fun” and the gTLD extension <.com>.

Neither the hyphen nor the word “fun” and any distinguishing character to the disputed domain name and neither serve to prevent a finding that the disputed domain name is confusingly similar to Complainant’s mark.

Additionally, the gTLD extension <.com> would be considered by Internet users as a necessary technical requirement for an Internet domain name and therefore does not prevent a finding of confusing similarity between the disputed domain name and Complainants’ mark.

This Panel finds therefore that the disputed domain name is confusingly similar to the JOKERSTAR mark in which Complainant has rights and Complainant has therefore succeeded in the first element of the test in Policy 4(a)(i).

Rights or Legitimate Interests

In its Complaint, the Complainant has made out a prima facie case that the Respondent has no rights legitimate interests in the disputed domain names as set out in the Complainant's detailed submissions above.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore succeeded in the second element of the test in Policy 4(a)(ii).

Bad Faith

The Complainant is the exclusive licensee of the German registered trademarks JOKER STAR and JOKERSTAR marks which were registered on March 7, 2018 and August 19, 2019 respectively.

The uncontested evidence is that the Complainant has held a license permitting it to operate virtual slot machine games in Germany since August 2022 allowing and operated a corresponding service on the Internet since 22 September 2022 on its website at www.jokerstar.de.

The Complainant avers that since 22 September 2022 its website has been accessed over 2,500,000 times, moreover the uncontested evidence is that the Complainant has placed more than 2,250 TV commercials, and around 200 corner split screen advertisements for its services.

The evidence shows therefore that the Complainant has a substantial goodwill and reputation established when the disputed domain name was registered by the Respondent on November 3, 2023.

Because the initial and dominant element of the disputed domain name is the Complainant's JOKERSTAR mark, and the hyphen, the word "fun", and the generic Top-Level Domain extension <.com> are merely descriptive and functional, it is improbable that the Respondent was unaware of the Complainant's gaming business when it registered the disputed domain name.

On the balance of probabilities therefore, the disputed domain name was chosen and registered by the Respondent in bad faith to take predatory advantage of the Complainants' reputation and goodwill in the JOKERSTAR mark, to create the impression of an association with the Complainant's gaming business.

The uncontested evidence is that the disputed domain name resolves to website on which the Respondent presents itself as "JOKERSTAR CASINO", that prominently displays the JOKERSTAR mark and offers gaming services that compete with the Complainant.

This Panel finds on the balance of probabilities that the Respondent's use of disputed domain name is intended to attract, intercept, and divert Internet traffic seeking the Complainant's gaming website, and to deceive and mislead Internet users into the false belief that the services offered by the Respondent are those of the Complainant or that the Complainant has some association with the Complainant.

This Panel finds therefore that by using the disputed domain name in this manner, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to her web site 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 and the services that the Respondent purports to offer on her website. Such use of the disputed domain name constitutes use in bad faith for the purposes of the Policy.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, Complainant has therefore succeeded in the third element of the test in Policy 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **jokerstar-fun.com**: Transferred

PANELLISTS

Name	James Bridgeman

DATE OF PANEL DECISION 2024-03-24

Publish the Decision