

## **ADMINISTRATIVE PANEL DECISION**

Flutter Entertainment plc and Rational Intellectual Holdings Limited v. Privacy Protection / Bruce, CAO

Case No. D2022-2862

### **1. The Parties**

The Complainants are Flutter Entertainment plc (“First Complainant”), Rational Intellectual Holdings Limited (“Second Complainant”), Ireland, represented by Demys Limited, United Kingdom (hereinafter collectively referred to as the “Complainants”).

The Respondent is Privacy Protection, United States of America (“United States”) / Bruce, CAO, China.

### **2. The Domain Name and Registrar**

The disputed domain name <pokerstars.xyz> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2022. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent, and contact information in the Complaint. The Center sent an email communication to the Complainants on August 8, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on August 11, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2022. The Response was filed with the Center on September 7, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on September 20, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainants are part of a multinational group that exploits the sports betting and gaming services under different brands such as PokerStars, Paddy Power, Fox Bet, Sky Betting, and Betfair. The First Complainant is listed on the London Stock Exchange as well as on Euronext Dublin.

The Complainants merged with PokerStars in October 2019, having the transaction been completed in May 2020. The First Complainant operates several official country-specific PokerStars websites to which Internet users are redirected when visiting the Complainants' <pokerstars.com> domain name.

The Second Complainant, Rational Intellectual Holdings Limited, is the intellectual property holding company incorporated in Onchan, Isle of Man that is the registered owner of the following trademark registrations (Annex 12 to the Complaint):

- United States Trademark Registration No. 3,381,727 for POKERSTARS, registered on February 12, 2008 and successively renewed, claiming first use in commerce on May 31, 2001, in International class 9;
- European Union Trademark Registration No. 004582301 for POKERSTARS, registered on December 15, 2006 and successively renewed, in international classes 9, 35, 41, and 42;
- United Kingdom Trademark Registration No. UK00904582301 for POKERSTARS, registered on December 15, 2006 and successively renewed, in international classes 9, 35, 41, and 42; and
- China Trademark Registration No. 12172289 for POKERSTARS, registered on July 28, 2014, in international class 41.

The disputed domain name was registered on June 22, 2021 and presently resolves to a parked webpage.

#### **5. Parties' Contentions**

##### **A. Complainants**

The Complainants assert that PokerStars is the largest poker site in the world offering world-wide online tournaments and interaction with professional poker players, having, since 2002, annually hosted the world championship of online poker. Furthermore, according to the Complainants, as of 2020, the Complainants unite more than 13 million active customers in over 100 countries, having the POKERSTARS trademark become well-known around the world, as its social media accounts corroborate (counting with 2,240,000 followers on Facebook and 1,260,000 subscribers to the Complainants' YouTube channel) and several media coverage (Annexes 4 and 5 to the Complaint).

In the Complainants' view, the disputed domain name incorporates their POKERSTARS trademark entirely, creating consumer confusion.

According to the Complainants, the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the disputed domain name is not being used in connection with a *bona fide* offering of goods or services, as it is being passively held;

(ii) the Complainants have found no evidence that the Respondent is commonly known by the disputed domain name or may have any rights or legitimate interests whatsoever on or into the disputed domain name;

(iii) the Respondent is not a licensee of the Complainants and has not received any permission or consent from either Complainant, collectively or singly, to use their trademarks; and

(iv) given the well-known status of the Complainants' trademark and that the disputed domain is identical to it, there is no conceivable use to which the disputed domain name could be put now, or in the future, that would not cause confusion among Internet users and confer any legitimate interest upon the Respondent.

The Complainants contend that this is a case of passive holding of a domain name as defined in section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)", given: (i) the well-known status of the Complainants' trademark; (ii) the failure of the respondent to provide any evidence of actual or contemplated good faith use of the disputed domain name; (iii) the Respondent's choice to retain a privacy service to conceal its true identity and (iv) the implausibility of any good faith use to which the domain name may be put.

## **B. Respondent**

The Respondent, identifying himself as "Cao Wei", contends that he has legitimate rights and interests in the disputed domain name given that he has been engaged in the domain name trading business composed of generic and descriptive terms for many years.

The Respondent further states that he has not used the disputed domain name in connection with any pay-per-click or other advertising purposes and that he has never used the disputed domain name to sell goods or services that competed with the Complainants, merely seeking to resell the disputed domain name in good faith.

Under the Respondent's view, the disputed domain name consists of a creative combination of two generic words ("poker" and "star"), claiming the Respondent that he did not know of the Complainants at the time the disputed domain name was registered, and that there has never been an offer to sell the disputed domain name to the Complainants or any of their competitors.

The Respondent also indicates that in China, where he is located, the Complainants' website is not accessible, as well as there is no access to Google, Facebook, Instagram, Twitter, or YouTube mentioned by the Complainants. In addition to that, the Respondent states that "in China's Baidu Encyclopedia, pokerstar is the name of a song and the singer is MC HOTDOG from Taiwan, China".

Lastly, the Respondent states that he has offered the disputed domain name and thousands of other domain names for sale as part of his legitimate business, and he has not used or registered the disputed domain name in bad faith, having thus the Complainants failed to substantiate their allegations.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainants:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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.

The Complainants must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

#### **A. Identical or Confusingly Similar**

The Complainants have established rights in the POKERSTARS trademark, duly registered in several jurisdictions, including China where the Respondent is located (Annex 12 to the Complaint).

The Panel finds that the disputed domain name reproduces the Complainants' mark in its entirety and is therefore confusingly similar under the Policy which, as recognized by past UDRP panels involves a "comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)", section 1.7).

The first element of the Policy has therefore been established.

#### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent's rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice 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, in spite of not having acquired trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial 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.

In this case, the Panel finds that the Complainants have made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy.

This finding is *inter alia* based on the following circumstances:

- (1) the Respondent is not a licensee of the Complainants and has not received any permission or consent from the Complainants to use the POKERSTARS trademark;
- (2) the Respondent does not hold any registered trademark relating to POKERSTARS and is not commonly known by the disputed domain name; and
- (3) the disputed domain name is not being used in connection with a *bona fide* offering of goods or services, as it is being passively held.

The question therefore turns to the Respondent's claim that he was not aware of the Complainants and that he registered the disputed domain name in view of the "creative combination of two generic words (poker and star)".

Given the fact that the Respondent describes himself as the owner of "thousands" of domain names and states that his intent was merely to resell the disputed domain name in good faith, the Panel finds that the Respondent, in view of his commercial intent ought to have conducted steps so as not to incur in potential violation of third party registered trademark rights.

In spite of the Respondent's claim that the Complainants' website is not accessible in China as well as social networks in which the Complainants account for millions of users, a trademark search at the Chinese Trademarks Office (freely available) would have disclosed the existence of the Complainants' trademark rights in that country which predate the registration of the disputed domain name.

Another point to be taken into consideration is that the Complainants' trademark is described by the Respondent himself as a "creative combination of two generic words", thus not even a dictionary word alone.

Section 2.10.1 of the already quoted [WIPO Overview 3.0](#) indicates that "[p]anels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights."

And the [WIPO Overview 3.0](#), further indicates that "the status and fame of the relevant mark and whether the respondent has registered and legitimately used other domain names containing dictionary words or phrases in connection with the respective dictionary meaning" are also to be taken into account so as to assess a legitimate interest in a domain name under dispute.

In view of the Complainants activities and news attention they have attracted, the Panel finds that the Complainants' trademark has achieved substantial awareness and fame what further corroborates with a finding that the Respondent lacks rights or legitimate interests in the disputed domain name. The second element of the Policy has also been met.

### **C. Registered and Used in Bad Faith**

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

- a) the Complainants are relevant players in their field of activities, having the POKERSTARS trademark been in use for over a decade in over 100 countries;
- b) the disputed domain name consists solely of the Complainants trademark;
- c) the Respondent's choice to retain a privacy protection service; and
- d) the fact that the Respondent is a professional domainer and, as such, ought to have taken minimal precautions to avoid infringing third parties' rights by conducting simple trademark searches which would have disclosed, at the time of the registration of the disputed domain name, the Complainants' rights.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <pokerstars.xyz> be transferred to the Second Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: October 5, 2022