

**Dispute Resolution Service**

**DRS10769**

**Decision of Independent Expert**

**Rational Entertainment Enterprises Limited**

and

**Mr. Walid Kai**

**1. Parties**

Complainant : Rational Entertainment Enterprises Limited  
33-37 Athol Street  
Douglas  
IM1 1LB  
Isle of Man

Respondent : Mr Walid Kai  
rue ste Lourdes  
jounieh ghadir  
00000  
Lebanon

**2. Domain Name**

pokerstarsmobile.co.uk (the "Domain Name")

### 3. Procedural Background

On 16<sup>th</sup> February 2012 the Complaint was lodged with Nominet UK Limited (“Nominet”) and on 17<sup>th</sup> February 2012 it was validated. Also on 17<sup>th</sup> February 2012 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint and giving him 15 working days within which to lodge a Response on or before 9<sup>th</sup> March 2012.

The Respondent did not reply and on 12<sup>th</sup> March 2012 Nominet sent the notification of no response to the parties. On 20<sup>th</sup> March 2012 the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 20<sup>th</sup> March 2012 Mr. Niall Lawless (“the Expert”) was selected and on 21<sup>st</sup> March 2012 was formally appointed to act as Expert in this dispute, having confirmed that he knew of no reason why he could not properly accept the appointment and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in-to question his impartiality and -/- or independence. He is required to give his Decision by 18<sup>th</sup> April 2012.

### 4. Outstanding Formal -/- Procedural Issues

There are no outstanding formal or procedural issues.

### 5. Factual background

The Complainant, Rational Entertainment Enterprises Limited and its group companies operate an online poker business under the brand name “PokerStars” (“PokerStars”). PokerStars operates on a region-specific basis via websites located at [www.pokerstars.co.uk](http://www.pokerstars.co.uk), [www.pokerstars.fr](http://www.pokerstars.fr), [www.pokerstars.ee](http://www.pokerstars.ee), [www.pokerstars.it](http://www.pokerstars.it), [www.pokerstars.be](http://www.pokerstars.be), [www.pokerstars.de](http://www.pokerstars.de) and [www.pokerstars.eu](http://www.pokerstars.eu).

The Complainant is the proprietor or the licensee of trademark registrations for the word mark “POKERSTARS” in Australia, Benelux, Bulgaria, Canada, Chile, Colombia, the European Union, the Republic of Korea, Mexico, New Zealand, Norway, Peru, Russia, Ukraine, Uruguay and the United States and logo marks incorporating the word “POKERSTARS” in Chile, Hungary, Mexico, Norway, Russia and Ukraine.

On 20<sup>th</sup> August 2007 the Respondent registered the Domain Name.

The Complainant seeks transfer of the Domain Name.

## 6. The Parties' contentions

### The Complainant

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under Nominet's Dispute Resolution Service Policy (the "Policy") because:-

- the Domain Name has been used in a way that has confused (or is likely to confuse) people into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant. The Domain Name consists of the Complainant's distinctive POKERSTARS Marks and the word "mobile", which is associated in the mind of the public with the Complainant's services. Because of that internet users would think that the services offered at the Domain Name were poker services developed by the Complainant for use in connection with mobile devices.
- the Domain Name was primarily registered to unfairly disrupt the Complainant's business and to take advantage of the Complainant's established reputation. The Respondent is using the Domain Name to provide a link to a website "pokerice.com" which competes with the Complainant by offering an online poker game; contains links to the websites of other competitors of the Complainant; provides inaccurate information about PokerStars' business and false links which purport to be PokerStars' bonus codes but which in fact redirect back on themselves to pokerice.com's competing offering; and fails to provide any links to the Complainant's own websites.
- the Domain Name is part of a conscious policy on the part of the Respondent to register, for his own commercial gain, domain names that unfairly take advantage of, and ride upon the coat tails of the goodwill in and reputation of famous marks in which he has no rights.
- the Respondent has given false contact details in respect of the Domain Name.

### The Respondent

The Respondent did not respond to the Complaint.

## 7. Discussions and Findings

### 7.1 General

The Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that:-

- i. the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or
- ii. has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

The Complainant is required to prove to the Expert that the Complainant has Rights and that the Domain Name in the hands of the Respondent is an Abusive Registration; both elements must be present.

### 7.2 Complainant's Rights

The Complainant's PokerStars brand enjoys a substantial worldwide reputation as a market leader in the field of online and offline poker. The Complainant has provided independent listing information from PokerScout showing that PokerStars is the world's largest online poker site. PokerStars has over 45 million registered players from around 250 locations worldwide.

In addition to this the Complainant is the owner or the licensee of trademark registrations for the word mark "POKERSTARS" in many countries. Because of that I decide that the Complainant has Rights in respect of a name or mark which is identical to the Domain Name.

### 7.3 Abusive Registration

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy, but it does not state under which part of the Policy. Under Paragraph 3 - Evidence of Abusive Registration - guidance is given as to what factors may evidence that the Domain Name is an Abusive Registration.

“A non-exhaustive list of factors which may evidence that the Domain Name is an Abusive Registration is as follows :-

3(a)(i). Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily :-

3(a)(i)(A). for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

3(a)(i)(B). as a blocking registration against a name or mark in which the Complainant has Rights; or

3(a)(i)(C). for the purpose of unfairly disrupting the business of the Complainant;

3(a)(ii). Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

3(a)(iii). The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well-known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;

3(a)(iv). It is independently verified that the Respondent has given false contact details to Nominet.

#### Using Domain Name to Confuse

The Complainant says that the Domain Name has been used in a way that has confused (or is likely to confuse) people into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant. The Domain Name consists of the Complainant's distinctive POKERSTARS Marks and the word “mobile”, which is associated in the mind of the public with the Complainant's services. Because of that internet users would think that the services offered

at the Domain Name were poker services developed by the Complainant for use in connection with mobile devices.

Because of this the Domain Name is an Abusive Registration under Nominet's DRS Policy section 3(a)(ii).

The Respondent has not responded to the above and offered no evidence.

At the time of making this Decision the Domain Name is resolving to <http://pokerstarsmobile.bettingchampionsleague.co.uk> which purports to be "Poker Stars Mobile Site". This is different to the webpage that the Complainant provides at Appendix 13 of its evidence, but both webpages offer links to "Play Poker Ice on facebook".

The Domain Name is being used to offer services similar to those offered the Complainant and because of that I do not doubt that the Domain Name is being used in a way which has confused people into believing that the Domain Name is operated by or connected with the Complainant.

I decide on the balance of probabilities that even in the absence of actual confusion the Domain Name is being used in a way which has confused and will confuse people or businesses and under the test in Nominet's DRS Policy 3(a)(ii) in the control of the Respondent the Domain Name is an Abusive Registration.

#### Unfairly Disrupting the Complainant's Business

The Complainant says that the Respondent has been using the Domain Name for infringing activities such as using the Domain Name to provide a link to a website "pokerice.com" which competes with the Complainant by offering an online poker game; contains links to the websites of other competitors of the Complainant; provides inaccurate information about PokerStars business and false links which purport to be PokerStars bonus codes but which in fact redirect back on themselves to pokerice.com's competing offering; and fails to provide any links to the Complainant's own websites.

The Complainant says that the Respondent, being fully aware of the POKERSTARS marks, registered the Domain Name in order to drive traffic to his website and thereby take advantage of the substantial goodwill in and reputation of the POKERSTARS marks. In particular, the Complainant suspects that the Respondent either receives a payment each time a user clicks on the Offending Link, or receives some other commercial benefit as a result of users clicking on the Offending Link.

The Respondent has not responded to the above and offered no evidence.

The Respondent's use of the Domain Name in this way unfairly disrupts the Complainant's Business and is evidence of circumstances falling within paragraph 3(a)(i)(C) of Nominet's DRS Policy. However, the test under Nominet's DRS Policy 3(a)(i)(C) is not that the Domain Name is unfairly disrupting the Complainant's Business, but that it was acquired for that purpose.

To help me decide if the Domain Name was acquired for that purpose, I have to consider the prominence of the Complainant's brand and reputation as it would have existed on 20<sup>th</sup> August 2007, the date the Respondent registered the Domain Name.

The Complainant says and has provided evidence that at the time the Domain Name was created, the Complainant owned trademark applications and registrations for POKERSTARS, including a Community trademark for the word POKERSTAR". Furthermore, at that time PokerStars was a world-famous brand that had been in existence for 6 years and had a considerable worldwide reputation.

Advertisement for POKERSTARS had been placed on-line, in printed media and on television networks such as Canal Fox, ESPN, FX, NBC, FSN, DSF, RTL, REN TV, Muz TV, PRO Poker, Sport 1, TF1, Canal +, BFM TV, 13 Rue, Discovery, AB Moteurs, Direct 8, CNBC, RTL9, Paris Premier, NT, Eurosport, Comedie, TF6, L'Equipe, NRJ 12Five, ITV, ESPN, Sky, E4, C4, Viasat, SBS, MTV, TV3, TV6, TV8, Kanal 5, Kanal 9, Discovery, Sport 2, TV2, Viasat3, Sport TV, BTV, MTG, TV Europa, Prima TV, CT4, CT24 and Nova Sport.

Because of this I accept that the Respondent was aware of the POKERSTARS brand when it registered the Domain Name, and consciously chose a domain name incorporating the POKERSTARS marks.

When that is linked with the Respondent's subsequent use of the Domain Name resolving to a competing online poker game, I decide on the balance of probabilities that the Domain Name was acquired to unfairly disrupt the Complainant's business and under the test in Nominet's DRS Policy 3(a)(i)(C) in the control of the Respondent the Domain Name is an Abusive Registration.

#### Pattern of Registrations

The Complainant says that the Respondent is engaged in a pattern of registering domain names corresponding to well-known names or trademarks in which he has no apparent rights and pokerstarsmobile.co.uk is part of that pattern. The Complainant submits that the Domain Name is part of a conscious policy on the part of the Respondent to register, for his own commercial gain, domain names that unfairly take advantage of, and ride upon the coat tails of the goodwill in and reputation of famous marks in which he has no rights.

The Respondent has not responded to the above and offered no evidence.

Under Paragraph 3(a)(iii) of the Policy if the Complainant can demonstrate that the Respondent is engaged in a pattern of registrations which correspond to well-known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern, that would be a factor to consider as evidence of an Abusive Registration.

The Complainant says that when on 27<sup>th</sup> September 2011 it undertook a search using Nominet's Public Register Search Service on the name "Walid Kai" it revealed that the Respondent has some 29 domain name registrations containing famous marks in which the Respondent has no apparent rights, for example bollingerchampagne.co.uk, taitinger.co.uk, emirates-bank.co.uk.

Having a portfolio of domain names is not wrong and it is an accepted principle of Nominet that secondary trading in domain names is not in itself abusive.



However, pattern is a common English word and in the Combined Chambers Dictionary Thesaurus is cited as meaning a “coherent series of occurrences”. I accept on the evidence that the Respondent’s registrations of domain names containing famous marks in which the Respondent has no apparent rights is further evidence that the Domain Name is an Abusive Registration.

Inaccurate Registration Information

Nominet’s WHOIS is a system which provides public information about domain names. Consumers are allowed to opt out but all other types of registrant using a domain name commercially such as “pay per click” are required to display an address in WHOIS.

The Domain Name registration information must be correct and Nominet’s Terms and Conditions of Domain Name Registration provide that *“the information must be good enough to allow us to contact you quickly at any reasonable time without having to get information from anywhere else, must not be deceptive, and (if possible for that type of information) must clearly identify you. For your name this also means that the information must be detailed enough that we can tell exactly who you are (in legal terms, exactly which legal entity we have this contract with)”*.

The Respondent Walid Kai who is the current registrant has not opted out; he has given his address as “rue ste Lourdes, jounieh ghadir, 00000, Lebanon”.

Under Paragraph 3(a)(iv) of the Policy one of the factors that may be evidence that the Domain Name is an Abusive Registration is that it is independently verified that the Respondent has given false contact details to Nominet.

The Complainant says that that the Respondent has given false contact details in respect of the Domain Name. Believing that the Respondent’s address in Lebanon was deliberately incomplete, the Complainant sought advice from the Lebanese branch of law firm Cedar White Bradley.

Cedar White Bradley is an intellectual property consultancy firm in the Middle East and North Africa and on 9<sup>th</sup> February 2012 it e-mailed the Complainant that the Respondent’s address is not complete or valid, as the street number and building name are not mentioned and the post code is not correct.

The Respondent has not responded to the above and offered no evidence.

Because of this independent evidence I accept the Complainant's assertion that the Respondent's use of a false address is further evidence that the Domain Name is an Abusive Registration.

#### 7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and that the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

### **8. Decision**

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.

**Niall Lawless, Nominet Expert**

**10<sup>th</sup> April 2012**