

Remedies sought

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name: 2020.com (domain name is fictional)

Complaints: Sprengers Jef and Krištofík Andrej;

Defendant: Soukupová Marie; Odstrčilová Marie; Valent, Matúš

Respondent:

Star Travel LLC. Berkshire House, 252-256 Kings Road, Reading RG1 (fictional company)

Owner of the company: Sergei Popov, UK national (abstracted from WHOIS)

Travel agent, specializing in “event tourism”

Cooperates with foreign travel agents to organize trips to sports and cultural events in Sochi, Moscow, Petersburg, especially concerts and event tourism games.

- The Star travel company has purchased a domain name 2020.com in March 2015
- Currently uses subdomains tokyo.2020.com, japan.2020, sog.2020 among other subdomains such as olympicgames.2020.com, travel.2020.com and hotels.2020.com,
- He has previously registered 2012.com domain to offer event tourism at London SOG and domains 2014.com where he used subdomains sochi.2014.com, among other subdomains such as wog.2014.com
- On the website it offers tourist information about Tokyo and locations for sporting events
- The agency has invested 20.000 USD for web-design and contracts with sports journalists to create a website providing extensive coverage of the championship. The preparations of this project have started but the website has not been finished yet.
- The website under the domain name contains basic tourist information about Japan, together with on-line applications that enable visitors to book hotels near the places of matches, links to taxi and car-rental companies and plenty of advertisement.
- The defendant offers some space for contextual advertising, as a result, some users are displayed contextual advertisements for escort and sexual services.
- The website contains also several amusing video-commercials with sports themes sponsored by Pepsi Ltd.

Complainant:

International Olympic Committee, Basel, Switzerland

- the committee is furious with the activities of the defendant and is under strong pressure of main commercial partner Coca Cola to do something about the use of a domain name.
- The complainant wants to have the domain 2020.com transferred as soon as possible to pursue its own commercial activities
- The complainant feels, that the significant amount of internet users is attracted by the website of the defendant. The IOC website traffic is 30 percent below the expectation and they believe that this is caused by the activities of the defendant

We hereby request that the rights to the disputed domain and its subdomains are to be transferred wholly and fully to the Complainant. Should the panelists not decide in such fashion we hereby request that the domain is stricken out of the registry such that the Respondent can't continue his malicious practice.

Factual and Legal Grounds

The International Olympic Games Committee, or more importantly Olympic games in themselves, is well established cultural and sporting event, very well known around the globe with a rich history. Every 4 years an event organized by the Committee transcends any political and cultural differences between nations and brings them all together for the celebration of human greatness and potential for peace. This event quite naturally attracts great many visitors and therefore great many sponsors, who are not only providing funds that are essential for this tradition to continue but very often must align themselves with the values that are representing the Olympic spirit and for this they are awarded with the license to be connected with the Olympic games and use its symbols and name in their advertisement.

The Respondent, in this case, chose a different path. By registering domain name with the year of the Games, he secured himself a possibility to attract audience of the Games, which is his modus operandi, as this has been done by the Respondent even in previous years (such as registering and using for advertisement website sochi.2016.com and woc.2016.com).

Without any contribution to the Olympic Games, the Respondent is seeking to feed himself off of the name established over a centuries and gain financial profit from the audience seeking to attend the Games. Hence we believe that the typosquatting in which the respondent is engaging, is being done in a bad faith, not to mention the harm he is causing by advertising sexual services in connection with the Games as well as by advertising biggest competitor of our main sponsor, as we will showcase further below. We believe that the rights to this domain should be transferred to us as to stop any further damage that might be caused.

Legal Grounds

I. Domain name is confusingly similar to the protected mark

In addition to that, the respondent is prominently displaying advertisement for sexual services as well as advertising biggest competitor of our main sponsor - which is in violation do our sponsorship deal and could harm us in any further sponsorship agreement we might and will be seeking for following years.

The domain name of which transfer we are seeking is strongly relying on typo squatting, adding only dot character as a difference in the name, i.e. tokyo.2020 as opposed to tokyo2020. Furthermore, the Respondent is seeking to provide services to visitors of upcoming Olympic games, such as accommodation and transport services, hence it is safe to conclude that this is intentional abuse of our registered domain, where the respondent is looking to draw profit from goodwill, name and advertisement built and paid for by the complainant, damaging complainants good name in the process as indirect outcome.

II. The Respondent does not have any rights or legitimate interest in the domain name(s)

In addition to that, the respondent is prominently displaying advertisement for sexual services as well as advertising biggest competitor of our main sponsor - which is in violation do our sponsorship deal and could harm us in any further sponsorship agreement we might and will be seeking for following years.

The respondent is not in any way associated with the domain name, as opposed to the complainant, besides his previous usage, which was done in bad faith as well for the purpose of ambush marketing. IOC holds the trademark on any and all associations with the Olympic Games, and the combination of year+city has been recognized by WIPO. Any association with the Olympic Games is tied to a sponsorship deal, which is the main income of the

Olympic Games, as well as promise to keep with the values represented with the Olympic Games. The Respondent has never sought any association with the Olympic Games, nor any of its trademarks, that he is currently abusing, nor it would be allowed for him to use it since the respondent chose to use IOC's trademarks in a way that is not compatible, such as soliciting sexual services and promoting competitors of main sponsor, therefore there are no legal titles for the respondent to hold this domain and his interest as big as it might be, is in no way legitimate.

III. The domain name(s) has been registered and is being used in bad faith

The Respondent engages in profiteering and ambush marketing via typo squatting. Given the fact that the services he is marketing via disputed website are directly connected to Olympic games, there is no doubt as to the fact that it was registered for the purpose of profiteering and feeding of the audience seeking official website of OG. Given the fact that this has been the Respondent's business model for several years now, there is also no doubt as to the fact that he is well aware of the connection between the city and year, that is recognized IP of the IOC. The registration has been done solely for the purpose of unauthorised association with the good name of OG.

IV. Legal Basis

The domain name of the Olympic Games is a part of the identity of the non-governmental organisation IOC. Each Olympic Games has been identified by a name combining the host city and even-numbered year. In this case, Respondent registered in 2015 2020.com, a domain name that refers to a relevant year in which the Olympic Games are held in Tokyo. Currently the organisation uses some subdomains which include a place and a year.

According to Rule 7 of the Olympic Charter the IOC owns all rights to the Olympic Games, the Olympic symbol, the Olympic flag, motto and anthem, the word Olympic, and other marks associated with the Olympic Games.

The protection of the words and the symbol is necessary for our organisation because the average consumer (under European law) associates them with the Olympic Games in general.

Especially the IOC, the ambassador of the 'Olympism', have registered trademarks for the Olympic symbol and the words "Olympic" and "Olympic Games" (UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION Case No. 4:15cv3277). It has also been granted protection in relation to identifiers related to a specific edition of the Olympic Games: the official emblem and the City+Year word mark shall be regarded as a distinctive character that is required for trademark protection.

Our internal rules (see Olympic charter) are also very clear. We can deduce from this that trademarks, logos, and any other product or service names or slogans with regard to the Olympic Games are trademarks of the IOC, and may not be copied, imitated or used, in whole or in part, without the prior written permission of the IOC.

The IOC and host city Tokyo for the Olympic Games of 2024 use the Olympic City/Year names in connection with TV broadcasts, advertisements, sponsors, licensees, ticket sales, sales of goods (WIPO Case No. D2010-0415)...

Respondent has sought to exploit for commercial gain the goodwill the the IOC have developed in the Olympic Games by speculatively registering and stockpiling hundreds of domain names consisting of Olympic City/Year names, such as tokyo.2020.com, japan.2020, sog.2020, olympicgames.2020.com, travel.2020.com and hotels.2020.com, many years in advance of the Olympic Games, and cybersquatting upon them in the hope that they will match valuable Olympic bid or host cities (WIPO Case No. D2001-0843, WIPO Case No. D2017-1679).

The domain names of the IOC are well known to the meadow public because of their constant registration and use as trademarks and by investing extensively in the development of the goodwill associated with the Olympic Games.

In particular, the goodwill built up by the IOC in relation to the Olympic names related to place and year is a valuable asset to commercial partners and other relevant target groups.

They ensure the long-term survival of this organisation because it is a not-for-profit independent international organisation made up of volunteers without government funding.

For the organisation of the Olympic Games, the the IOC derives its revenues mainly (more than 90%) from licensing and sponsorship programmes related to the use and marketing of domain names that include the place and year of the Olympic event. These global marketing programs (Olympic Partner TOP Programme) involve sponsorship agreements with large multinationals such as Coca-Cola that contribute millions of dollars to the organization to support the global development of sport.

The IOC must be able to offer the necessary exclusivity to its marketing partners and must have the means to prevent third parties such as Star Company LLC. from registering domain names associated with the Olympic Games in its broad context without authorisation from the IOC. We like to refer to the relevant UK legislation: Olympic Symbol etc. (Protection) Act 1995 (general commercial rights related to the Olympic Movement), London Olympic Games and Paralympic Games Act 2006 (sections 19 to 24 regarding advertising and section 33) and our internal rules: The Olympic Charter and the Olympic Marketing Ambush Prevention & Clean Venues Guidelines.

In this case, reference is made to the disputed website 2020.com. Its website displays sports ads sponsored by another major multinational Pepsi Ltd. The fact that Pepsi and Coca Cola enter the same market and approach the same target group, the IOC can state that this significantly distorts competition and makes it impossible to carry out this project ('The Olympic Games') in a normal way, given the great importance of funds from sponsors.

The IOC has at all times taken preventive measures to protect the names of the Olympic city and year by, for example, registering trademarks for numerous names of the city and the year concerned for previous Olympic Games.

A. Identical or Confusingly Similar

- Our Committee has trade mark rights for the Olympic Games trade mark.
- The Respondent's usage of subdomain name like `tokyo.2020`, `japan.2020`, `sog.2020` or `olympicgames.2020` can confuse internet users looking for relevant information about the Olympic Games from the original source.
- The domain name in conjunction with aforementioned subdomain names is confusingly similar with what IOC used in the past and wants to use in the future.

The domain name `<tokyo.2020>` is confusingly similar (within the meaning of 4(a)(i) of the Policy) to the trademark that the IOC has in the City+Year word mark namely the official domain name of the Olympic Games of 2020: `<tokyo2020.org>`. We like to mention that the present domain names `<tokyo.2020>` and `<olympicgames.2020>` include the City+Year word mark or the word "Olympic Games" and refer to the official event of the Olympic Games in 2020 in Tokyo, but enjoy from a trademark protection.

It is difficult to disprove that this confuses the average Internet user at the start of the process, namely when they type one of the registered domain names into an internet browser, because they will think they will end up on the official organisation's website of IOC/ Olympic Games. They have a legitimate expectation that the website will have some connection with our party. Despite this, their expectations are not fulfilled. It was the purpose of the Respondent to use trademarks of the Olympic Games in their domain names to create a high likelihood of consumer confusion, so that consumers are directed to the commercial website of the Respondent.

There is confusion, because in determining this we only look at the domain name itself, and not at the content of the website (United States Court of Appeals, Ninth Circuit, Case No. 97-55467, WIPO Case No. D2010-2011,). When the Respondent's domain name wholly incorporate a trademarks of ours, the first element of "Confusingly Similar" is met (WIPO Case No. D2000-0662, WIPO Case No. D2000-1525, WIPO Case No. D2001-0903, WIPO Case No. D2009-0227). We make a comparison between our trademark(s) and the registered domain names themselves to determine likelihood of Internet user confusion (WIPO Case

No. D2004-0230). We base our explanation on the test we have to go through, which has led to the fulfillment of the first element. This test involves that it is recognizable that our trademark(s) are used in one of the registered domain names of the Respondent with the addition of common, dictionary, descriptive, or negative terms (WIPO Case No. D2008-1752, WIPO Case No. D2018-1973)... A visual or aural comparison of our trademark(s) with the alphanumeric string in the domain name will confirm our reasoning.

In the disputed domain name of Respondent <tokyo.2020> is just an addition of a point between Tokyo and 2020. For this reason there is no substantial difference between the domain name of Star Travel LLC. and ours. The average Internet user who would like to consult our website can easily make a a typing error and instead enter the registered domain name from the counterparty. It is this similarity between <tokyo.2020> and <tokyo2020> which makes the typo squatting of our domain name attractive (WIPO Case No. D2000-0455, NATIONAL ARBITRATION COURT, FA0006000095047, WIPO Case No. D2002-0423). We can conclude that there is a high likelihood of confusion between our trademark with regard to the Olympic Games and the disputed domain name (WIPO Case No. D2010-0776).

B. Rights or Legitimate Interests

- The Respondent has no rights or legitimate interests in respect of the domain name.

- The Respondent is not commonly known by the domain name because:
 - ° The domain name is not used for bona fide offering of goods and services.

 - ° The Respondent is not making a legitimate non-commercial or fair use of the domain name.

 - ° Given the global nature of our trademark the Respondent has no conceivable legitimate interest in the domain name.

In this regard we would like to refer to the WIPO Case No. D2011-1714, that states that if one of the Parties came to be heavily associated with certain word combination via advertisement and history, simply adding other words or using such words in any combination without proper authorisation, even if the Respondent's business is different, cannot constitute a legitimate interest (nor a fair use). In this regard we would also like to point out to the shifting of burden of proof as established by the Case No. D2015-1149. Lastly we would also like to include the WIPO Case No. D2012-0486 where it has been established that fair use in connection to trademarks can be only where there is "no intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.", and since the Respondent has full intention of profiteering of our trademark and damage it via use competitors advertisement and offerings of sexual services, there is no way one can look and this intention and claim a fair use.

C. Registered and Used in Bad Faith

- The Respondent acquired the domain name purely for the purpose of profit and is not licenced by IOC to provide any kind of Olympic Games related services (profiteering).
- The Respondent has an intention to attract internet users through confusion between the Olympic Game trademarks and the disputed domain name.

In the WIPO Case No. D2009-0331 it has been established that providing services connected to a sporting event without a proper authorisation by the trademark holder is considered a registration and use in a bad faith, even more so, if the registrant purchased several domains with these purposes (such as tokyo.2020.com and sog.2020.com). Even more so, that this case does not require a use of proper full trademark but any variation of the trademark that through its use came to be associated with the respective trademark, such as city+year combination in our case. Furthermore, the WIPO Case No. D2013-0585 has established that prolonged engagement in PPC (Pay-Per-Click) advertisement on a site that may contain unauthorised trademarks in itself constitutes use in a bad faith and since the Respondent registered the website with the intention to engage in such action (as he did for many years before) this should constitute registration in a bad faith as well. Should the Panel not

consider our argumentation on this point, we would like to refer to the WIPO Case No. D2016-1814, where it has been established that it is not necessary to fulfil this point.