

**DISPUTE RESOLUTION SERVICE**

**D00012165**

**Decision of Independent Expert**

**NetPlay TV Group Ltd**

and

**Mr Shiva Shanker**

**1. The Parties:**

Complainant:

NetPlay TV Group Ltd  
The Old Presbytery  
Alderney  
GY9 3TF  
British Channel Islands

Respondent:

Mr Shiva Shanker  
2-105 w dr  
London  
N22 7AY  
United Kingdom

**2. The Domain Name:**

<supercasino-games.co.uk> (“the Domain Name”)

### **3. Procedural History:**

19 November 2012 12:08 Dispute received  
19 November 2012 12:51 Complaint validated  
19 November 2012 13:13 Notification of complaint sent to parties  
06 December 2012 01:30 Response reminder sent  
11 December 2012 11:25 No Response Received  
11 December 2012 11:26 Notification of no response sent to parties  
17 December 2012 13:28 No Response Received  
17 December 2012 13:31 No Response Received  
17 December 2012 13:43 Notification of no response sent to parties  
18 December 2012 13:27 Expert decision payment received

### **4. Factual Background**

The Complainant is an operator of online casino services under brand names including “SuperCasino”.

The Complainant is the owner of a UK registered trade mark “SUPERCASINO.COM – feel it for real”, registered on 24 June 2011.

The Respondent registered the Domain name on 27 March 2012.

The Domain Name resolves to a website which refers to the Complainant but offers links to competing online casino providers.

### **5. Parties’ Contentions**

#### **The Complainant**

The Complainant states that is a subsidiary of NetPlay TV Plc, which is an AIM listed company. The Complainant has offered online casino services since 2005, originally from the UK, but since 2009 under licence from the Alderney Gambling Control Commission.

The Complainant operates two principal online casinos, one of which is located at [www.supercasino.com](http://www.supercasino.com). This business is supported by teleshopping and advertising on ITV and Channel 5. “SuperCasino” is broadcast on Channel 5 seven nights a week after midnight and includes a live roulette service. It is the most successful televised live roulette game in the UK.

The Complainant states that a copy of its annual accounts is exhibited to the Complaint in order to demonstrate its level of business. However, no such exhibit was included with the Complaint.

The Complainant is the proprietor of UK registered trade mark number 2543411 for the mark “SUPERCASINO.COM - feel it for real”, registered on 24 June, 2011

for services including “broadcasting services relating to gambling, gaming or entertainment provided online”.

The Complainant submits that the Domain Name is similar to the Complainant’s registered trade mark.

The Complainant also submits that the Respondent is using the Domain Name to resolve to a website, located at [www.supercasino-games.com](http://www.supercasino-games.com), in a way that is designed to confuse the public into believing that the Domain name is registered to, or being operated by, the Complainant. In particular, the website makes extensive references to the Complainant and its business, including information about its history, current offerings, products and services. However, the links included on the website are to competing casino businesses, including William Hill and 21 Nova Casino. The Complainant exhibits print-outs of the Respondent’s website as evidence of the above.

The Complainant states that the Respondent is also taking advantage of the Complainant’s mark by using it to increase the search visibility of the Respondent’s website. In addition to including content that refers to the Complainant and the “SuperCasino” name, the Respondent has also posted backlinks to the website using the name “SuperCasino” at numerous locations elsewhere on the internet. The Complainant exhibits a list of these locations.

The Complainant submits that the Respondent has been involved in setting up other, similar, websites that take advantage of the goodwill of other well-known casino operators. In particular, the Respondent has registered the domain names <newladbrokecasino.co.uk> and <8-8-8casino.co.uk>. The Complainant provides print-outs of the home pages of the websites linked to those domain names.

Furthermore, the Respondent has provided false contact details to Nominet. The Complainant states that street name given is unknown and the postcode is that of Alexandra Palace.

Finally, the Complainant states that the Respondent has failed to reply to either email or postal communications from the Complainant.

The Complainant seeks a transfer of the Domain Name.

### **The Respondent**

No Response was filed by the Respondent in this matter. Nor did the Respondent respond to the Notification of Complaint or Response Reminder Notice sent to him by Nominet. However, in response to Nominet’s notification to the parties of the Expert appointment, the Respondent replied:

*“Yes i am the owner of the site, is there any issue with this site? what can i do for you” [sic]*

In response to Nominet then explaining the stage that had been reached in the proceedings, the Respondent replied:

*“Sorry i cant transfer my domain to the complainant, as i owned the site long back and i am working very hard on this site, go get good traffic, and can do some bugs from this site” [sic]*

## **6. Discussions and Findings**

This matter falls to be determined under the Nominet Dispute Resolution Service Policy (“the Policy”) and the Nominet Dispute Resolution Service Procedure (“the Procedure”). Under paragraph 2 of the Policy:

- “(a) A Respondent must submit to proceedings under the Dispute Resolution Service if a Complainant asserts to [Nominet], according to the Procedure, 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.*
- (b) The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.”*

Under paragraph 1 of the Policy the term “Rights”:

*“means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.”*

Also under paragraph 1 of the Policy, the term “Abusive Registration” means a domain name which either:

- “i. was registered or otherwise acquired in a manner which, 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.”*

Paragraph 3 of the Policy sets out a non-exhaustive list of factors that may be evidence that a domain name is an Abusive Registration. Paragraph 4 sets out a non-exhaustive list of factors that may be evidence that it is not. However, all these factors are merely indicative of, and subject to, the overriding test of an Abusive Registration as set out above.

### **Rights**

The Complainant relies on trade mark rights in the name “SuperCasino”. This name is generic and descriptive, in that the term “Casino” describes the service being offered and the term “Super” is an adjective, the dictionary definition of which is “outstanding or exceptionally fine”.

Looking first at the Complainant’s registered trade mark, the mark is “SUPERCASINO.COM - feel it for real”. Clearly this mark is considerably more extensive than just the name “SuperCasino”, and I do not consider that the registered trade mark is sufficient of itself to give the Complainant Rights in that name. Accordingly, in order to establish Rights for the purposes of the Policy, the Complainant will need to demonstrate that, despite its generic and descriptive nature, the name “SuperCasino” has acquired a “secondary meaning”, i.e. a meaning that is distinctive of the Complainant.

In this regard, the Complainant relies on its extensive exposure under the name “SuperCasino” on Channel 5 television and asserts that it operates the UK’s most successful live televised roulette game under this name. The Respondent has not challenged the Complainant’s submissions in this regard. While I would have preferred to have some additional evidence of the extent of public recognition of the “SuperCasino” brand, I accept the Complainant’s submissions as sufficient evidence that the term “SuperCasino” has gained some level of secondary meaning so far as the public is concerned and, therefore, that the Complainant has Rights in that name for the purposes of the Policy.

The next question, therefore, is whether the name “SuperCasino” is identical or similar to the Domain Name, i.e. <supercasino-games.co.uk>. Plainly it is not identical. However, the Domain Name consists of the term “supercasino” with the addition of the term “-games” and the formal suffix “.co.uk”. Since the term “games” is both descriptive and commonly associated with casino services, it does not in my view sufficiently distinguish the Domain Name from the Complainant’s name to prevent those names from being similar for the purposes of the Policy.

Accordingly, I find that the Complainant has Rights in respect of a name or mark which is similar to the Domain Name.

### **Abusive Registration**

Under paragraph 3.a.ii. of the Policy a registration may be abusive if there are:

*“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.”*

In this regard, having reviewed the material exhibited by the Complainant, I accept the Complainant’s submissions concerning the Respondent’s website to which the Domain Name resolves. It is apparent that the Respondent is using the Domain Name, which is similar to the Complainant’s mark “SuperCasino”, for the purposes of a website which makes extensive references to the Complainant and its business, including information about its history, current offerings, products and

services. I find that these circumstances are highly likely to give rise to confusion as contemplated by paragraph 3.a.ii. of the Policy, above.

It also appears from the Complainant's submissions and the evidence which it has exhibited that the Respondent has used the website linked to the Domain Name for the purposes of links to competitors of the Complainant. In the light of the likely confusion caused by the Respondent's use of the Domain Name, this amounts to use of the Domain Name in a manner which takes unfair advantage of, or is unfairly detrimental to, the Complainant's Rights.

I further accept the Complainant's submission that the Respondent has provided false contact details to Nominet, which is an additional ground for a finding of Abusive Registration, under paragraph 3.a.iv. of the Policy. Communications sent by Nominet to the Respondent at the address in question were returned by the Royal Mail marked "no such address".

While no Response has been filed in this matter, I have considered the two emails submitted to Nominet by the Respondent and do not consider that either of them contains any material that provides a substantive answer to the matters raised in the Complaint or otherwise suggests that the registration is not abusive.

In the light of the above matters, I find that the Domain Name in the hands of the Respondent is an Abusive Registration.

## **7. Decision**

The Complainant has established on the balance of probabilities that it has Rights in a name or mark that is identical or similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Complaint therefore succeeds and I direct that the Domain Name <supercasino-games.co.uk> be transferred to the Complainant.

Signed \_\_\_\_\_  
STEVEN A. MAIER

Dated: 16 January 2013