

## **ADMINISTRATIVE PANEL DECISION**

Rootz LTD v. Mysar Mykhailo, Maksim Konovalov, Jack Russell  
Case No. D2023-4882

### **1. The Parties**

The Complainant is Rootz LTD, Malta, represented by Wilmark Oy, Finland.

The Respondents are Mysar Mykhailo, Ukraine, Maksim Konovalov, and Jack Russell, all located in Ukraine.

### **2. The Domain Names and Registrars**

The disputed domain name <wheelzcasino.click> is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji.

The disputed domain name <wheelz-casino.top> is registered with URL Solutions, Inc.

The disputed domain name <wheelzcasino.top> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrars").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 23, 2023. On November 23, 2023, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On November 24, 2023, the Registrars transmitted by email to the Center their verification responses, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 24, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on November 29, 2023.

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 Respondents of the Complaint, and the proceedings commenced on November 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on December 21, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on January 2, 2024. 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 Complainant is an i-gaming company based in Malta. It operates several online casinos including the “Wheelz” casino and won best casino operator of the year in 2020, 2021, and 2022 at “Malta’s Gaming Excellence Awards”. The Complainant owns various trademark registrations for its WHEELZ trademark including European trade mark registration 18304590, registered on January 9, 2021, and European trade mark registration 18489899 for WHEELZCASINO, registered on October 1, 2021. It also owns the domain name “www.wheelz.com” from which it operates a successful on-line casino which it has won various awards.

According to the information obtained from the Registrars, the Respondents, underlying registrants for each of the disputed domain names, are all based in Ukraine. The disputed domain name <wheelzcasino.click> was registered on August 10, 2023. The disputed domain name <wheelz-casino.top> was registered on July 11, 2023, and the disputed domain name <wheelzcasino.top> was registered on June 20, 2023. Each of the disputed domain names resolves to an on-line casino website.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant requests that the Complaint against each of the three disputed domain names in these proceedings should be consolidated. It submits that the disputed domain names <wheelzcasino.top>, <wheelz-casino.top> and <wheelzcasino.click> are all under common control. It says firstly that each of the disputed domain names link to a competing casino site being <slotamba.com> and the linking or affiliate ids of all three disputed domain names are identical. Secondly, it says that the contact telephone numbers given for the Respondents for the disputed domain names <wheelzcasino.top> and <wheelzcasino.click> are the same. Thirdly, the Complainant says that the websites to which the disputed domain names <wheelz-casino.top> and <wheelzcasino.click> resolve are practically identical.

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that each of the disputed domain names incorporates the Complainant’s WHEELZ trade mark and each of them is therefore confusingly similar to the Complainant’s registered trade marks. It says that neither the inclusion of the term “casino” in each of the disputed domain names nor the top level domain names “.top” and “.click” prevent a finding of confusing similarity.

The Complainant asserts that it has not given permission to the Respondent to use its WHEELZ or WHEELZCASINO trade marks and that the Respondents do not own these trade marks and there is no evidence that the Respondents are commonly known by any of the disputed domain names nor that they are making a legitimate, non-commercial or fair use of any of the disputed domain names and neither are they

using them in relation to a *bona fide* offering of goods or services as each of the disputed domain names resolves to a website containing links to a competing on-line casino. For these reasons the Complainant submits that the Respondent has no rights or legitimate interests in any of the disputed domain names.

As far as good faith is concerned, the Complainant submits that the Respondent registered each of the disputed domain names after the Complainant's registration of its WHEELZ and WHEELZCASINO trade marks and that the Respondent must have been aware of the Complainant's trade marks and websites from which it operated on-line casinos when the Respondent registered each of the disputed domain names.

The Complainant submits that the Respondent has intentionally used its WHEELZ or WHEELZCASINO trade marks in each of the disputed domain names in order to attempt to attract for commercial gain Internet users to the websites at each of the disputed domain names by creating a likelihood of confusion with the WHEELZ trade mark as to the source, sponsorship, affiliation or endorsement of the Respondent's websites. It says that the use of links at each of those websites to re-direct Internet users to competing casino websites is obviously for the Respondent's commercial gain and that this amounts to conduct in terms of paragraph 4(b)(iv) of the Policy and is evidence of registration and use of each of the disputed domain names in bad faith. It also says that this conduct negatively affects the Complainant's online presence and disrupts its business.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Procedural Consideration: Consolidation of Multiple Respondents**

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

The Panel notes that at the website to which each of the disputed domain names resolve each is noted as being operated by the Complainant when this is not the case. These factors point to common control of each of the disputed domain names. In addition, the websites to which the disputed domain names <wheelz-casino.top> and <wheelzcasino.click> resolve are extremely similar and the website to which the disputed domain name <wheelzcasino.top> resolves has numerous similarities to them. As a result, the Panel finds it, more likely than not, that the disputed domain names are all under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

## 6.2. Further Procedural Considerations – Location of the Respondent

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

The location of the Respondent disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. It is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel notes that the case file shows that the written notice could not be delivered to the address disclosed by the Registrar in its verification. However, it appears that the Notification of Complaint's emails were delivered to the Respondent's email addresses, as provided by the Registrars.

Therefore, there is no evidence that the case notification was not successfully delivered to the disclosed Respondent's email addresses. The Panel concludes that the Respondent has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

## 6.3. Substantive Issues

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the WHEELZ trademark is reproduced within the disputed domain names. Accordingly, each of the disputed domain names is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, such as "casino" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in each of the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Complainant has asserted that it has not given permission to the Respondent to use its WHEELZ trade marks and that the Respondent does not own this trade mark and there is no evidence that the Respondent is commonly known by any of the disputed domain names nor that it is making a legitimate, noncommercial or fair use of any of the disputed domain names or that they are using them in relation to a *bona fide* offering of goods or services. The fact that each of the disputed domain names resolves to a website containing links to a competing on-line casino or implying a relationship with the Complainant is not consistent with the Respondent having rights or legitimate interests in each of the disputed domain names.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent registered each of the disputed domain names after the Complainant's registration of its WHEELZ trade mark. The Complainant's WHEELZ trademark is distinctive in relation to the sector of on-line casino and the Complainant has won various awards and therefore enjoys some degree of industry recognition for these websites. The Panel therefore finds that it is, more likely than not, that the Respondent was well aware of the Complainant's WHEELZ trade mark and online website business when it registered each of the disputed domain names.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where the Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

In this case, the Respondent has used each of the disputed domain names to intentionally attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's WHEELZ mark and diverting them in each case to a website which contains links to what appears to be competing on-line casino sites or websites pretending to be the Complainant's and which is obviously for commercial gain. This amounts to conduct that satisfies the requirements of paragraph 4(b)(iv) of the Policy and is evidence of registration and use of each of the disputed domain names in bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

## **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 names, <wheelzcasino.click>, <wheelz-casino.top> and <wheelzcasino.top>, be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: January 15, 2024