

## **ADMINISTRATIVE PANEL DECISION**

RootzLTD v. Katerina Larina, MOBAIM TECHNOLOGY SP Z O.O /  
Viachaslau Dalhanin  
Case No. D2024-2949

### **1. The Parties**

The Complainant is RootzLTD, Malta, represented by Wilmark Oy, Finland.

The Respondents are Katerina Larina, MOBAIM TECHNOLOGY SP Z O.O, Poland (“First Respondent”), and Viachaslau Dalhanin (“Second Respondent”), Ukraine.

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

The disputed domain name <wildz-casino-at.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2024. On July 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 2024, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 24, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The First Respondent sent an email to the Center on the same day. The Complainant filed an amendment to the Complaint on July 29, 2024.

The Center verified that the Complaint together with the amendment to the 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 July 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 20, 2024. On August 1, 2024, the Center received an informal communication from a third party that had been identified by the First Respondent as the disputed domain name’s tech and billing contact on August 1, 2024. The Second Respondent sent an informal communication on August 10, 2024, but did not submit any formal response.

The Center appointed Adam Taylor as the sole panelist in this matter on August 28, 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 operates an online casino at the website “www.wildz.com” under the brand WILDZ.

The Complainant owns a number of registered trade marks for WILDZ including European Union trade mark No. 017589813, registered on April 25, 2018, in classes 9, 16, 25, 28, 35, 36, 38, 41, 42 and 45.

The disputed domain name was registered on March 24, 2023.

According to the WayBack Machine at Archive.org, as of December 5, 2023, the disputed domain name resolved to a website in German branded with a yellow “WILDS” logo plus the heading “Wildz Casino AT”. The site purported to provide information about the Complainant’s casino and included various buttons and links apparently related to the Complainant’s service including a prominent “promo code” button in the header. The site also contained links to third-party casino websites.

When reviewed by the Panel on September 9, 2024, the website contained the same “WILDS” logo as before, but the content otherwise related to a third party gambling service called “Rant Casino”.

#### **5. Parties’ Contentions**

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

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

##### **B. Respondent**

On July 24, 2024, the company identified by the Registrar as the registrant of the disputed domain name emailed the Center stating: “Company ... is frozen and do[es]n’t own or associated with any domains you shared. Please check contact details of people who are now using them:...”. The email went on to provide the contact details of an individual named “Viachaslau Dalhanin” in Ukraine and also identified a third party as the technical and billing contact.

On August 1, 2024, an email was received from the third party identified as the technical and billing contact for the disputed domain name stating that the disputed domain name was not registered with it.

On August 10, 2024, the Second Respondent emailed the Center using the same contact email address provided by the registrant. The email simply stated: “The site [at the disputed domain name] does not contain any references to the wildz brand, and therefore cannot in any way violate trade mark rights.”

#### **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

## **Identity and Location of the Respondent – Preliminary Issue**

As discussed, in section 5B above, the company named by the Registrar as the registrant of the disputed domain name identified an individual, Viachaslau Dalhanin, with a Ukraine address, as the person “now using” the disputed domain name. The Panel is not clear exactly how the company is connected with the disputed domain name, but notes that paragraph 1 of the Rules defines the Respondent as “the holder of a domain name registration against which a complaint is initiated” and further notes that said company was disclosed by the Registrar as the registrant of the disputed domain name.

The term “holder” denotes ownership or control of a domain name. See *The Royal Bank of Scotland Group plc v. Reserved Branch of Strategic Geographers / Domain ID Shield Service*, WIPO Case No. [D2012-1733](#). Given that the individual named by the company has stepped forward and provided a defence, albeit brief, of the disputed domain name, the Panel thinks it reasonable to infer that this person is indeed the ultimate controller of the disputed domain name. Accordingly, the Panel has determined that this person should be added as an additional Respondent. Unless stated otherwise, references to “the Respondent” in this decision should be treated as including both the First Respondent and the Second 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 Second Respondent, disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this decision. Since this 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.

In view of the communication from the Second Respondent of August 1, 2024, it is clear that the Second Respondent was aware of, and able to respond to, the Complaint. Further, as discussed above, and further below, the content of the website at the disputed domain name was changed following the notification of the Complaint, thereby indicating that the Second Respondent retained control over the disputed domain name.

Accordingly, the Panel considers it appropriate to continue with this administrative proceeding and to issue its decision.

### **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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name 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 (here, “casino” and “at”) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 recognised 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 the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

As to paragraph 4(c)(i) of the Policy, and as further discussed in section 6C below, the Panel considers that the Respondent has used the disputed domain name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant’s goods and/or services. As discussed under section 6C below, the disputed domain name has been used for a website that offered services relating to the Complainant while featuring a logo similar to that of the Complainant; that failed to disclose the Respondent’s lack of relationship to the Complainant; and, that included links to third-party sites competing with the Complainant. Such use of the disputed domain name could not be said to be bona fide.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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 considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trade mark in accordance with paragraph 4(b)(iv) of the Policy.

Not only does the disputed domain name comprise the Complainant’s distinctive mark followed by the terms “casino” and “at” (the country code for Austria), thereby denoting a version of the Complainant’s service direct to Austrian users, but the Respondent has used the disputed domain name for a website prominently branded “Wildz Casino AT” plus a “WILDS” logo that bore some similarity to the Complainant’s WILDZ logo including use of yellow font and a lightning device. The site also lacked a prominent disclaimer of any connection with the Complainant.

The Panel notes that, as well as links such as “promo code”, whereby the Respondent apparently sought to profit from users seeking the Complainant’s site, the Respondent’s website also included links to third-party gambling sites that likely competed with the Complainant.

Furthermore, the Respondent's one-line response failed to explain or justify its use of the disputed domain name as outlined above. The Respondent simply claimed that the website contained no reference to the Complainant's brand and could not therefore be infringing the Complainant's rights.

The Respondent's assertion, and the facts outlined in section 4 above, indicate to the Panel that the Respondent likely changed the website after the Complaint was filed as a defensive move in order to remove references to the Complainant. However, this step in fact reinforces the Respondent's bad faith. First, it constitutes an admission that the Respondent's former use was illicit. Second, the revised website constitutes a new instance of bad faith use as it has resulted in the disputed domain name, which is uniquely associated with the Complainant, being used to direct traffic to a different gambling service that is likely a competitor of the Complainant.

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 name <wildz-casino-at.com> be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: September 11, 2024