

## **ADMINISTRATIVE PANEL DECISION**

Yggdrasil Malta Limited v. Evgenii Bogatov  
Case No. D2022-3227

### **1. The Parties**

The Complainant is Yggdrasil Malta Limited, Malta, represented by Aera A/S, Denmark.

The Respondent is Evgenii Bogatov, Russian Federation.

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

The Disputed Domain Name <casinosyggdrasil.com> (the “Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 1, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On September 6, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on September 9, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that 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 Respondent in both English and Russian of the Complaint, and the proceedings commenced on September 15, 2022.

In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2022.

The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 7, 2022.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on October 28, 2022. 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 a provider of online gaming solutions for Internet gaming operators, originally incorporated in 2013 with offices in Poland, Sweden, Malta, and Gibraltar, United Kingdom. The Complainant provides three product verticals, including casino slots, table games, and bingo, in addition to the business verticals consisting of Yggdrasil White Label Studios, YGS Masters, and Yggdrasil Dragons.

The Complainant holds registered trademarks that consist of or contain the word “YGGDRASIL” (the “YGGDRASIL trademark”) for gambling-related goods and services in many jurisdictions worldwide, including, but not limited to European Union Registration No. 015691959, registered on November 4, 2016; European Union Registration No. 017763699, registered on June 30, 2018; and International Registration No. 1538272, registered on May 4, 2020.

In addition, the Complainant is the owner of numerous domain names featuring the YGGDRASIL trademark, including, but not limited to <yggdrasil.com> registered on July 21, 1992; <yggdrasilcasino.com> registered on April 14, 2014; and <yggdrasil.casino> registered on June 3, 2015.

The Disputed Domain Name was registered on March 29, 2022. As of the date of this Decision, the Disputed Domain Name resolves to an active website in French offering online casino gambling under the brand YGGDRASIL.

#### **5. Parties' Contentions**

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

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights.

First, the Complainant contends that it has rights in and to the YGGDRASIL trademark.

Second, the Complainant argues that the Disputed Domain Name is confusingly similar to the YGGDRASIL trademark owned by the Complainant because the Disputed Domain Name incorporates the Complainant's YGGDRASIL trademark in its entirety. In addition, the mere addition of the word “casinos”, which is a generic term would not eliminate confusing similarity with the YGGDRASIL trademark.

Finally, the Complainant submits that the generic Top-Level Domain (“gTLD”) “.com” is disregarded under the first element confusing similarity test as it is viewed as a standard registration requirement.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant contends that it has never granted the Respondent any license or otherwise authorization to use the YGGDRASIL trademark in connection with a website providing casino business, email communication, or for any other purpose.

Second, the Complainant argues that there is no evidence that the Respondent has used the Disputed Domain Name in connection with a *bona fide* offering of goods or services, nor has ever been generally known by the Disputed Domain Name. Moreover, the Respondent has never acquired any trademark or service mark rights in the Disputed Domain Name.

Finally, the Complainant contends that the Respondent is not making a legitimate noncommercial use of the Disputed Domain Name. On the contrary, the Respondent is intentionally diverting consumers for commercial gain by unauthorized using the Complainant's trademarks and copyright for the same kind of business on the website under the Disputed Domain Name.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant argues that the Respondent should have been aware of the Complainant's YGGDRASIL trademark at the time of registration of the Disputed Domain Name, and it intended to create a likelihood of confusion with the Complainant's trademarks to attract Internet users for commercial gain to the website under the Disputed Domain Name, by creating a likelihood of confusion with the YGGDRASIL trademark. In addition, the Complainant submits that the Disputed Domain Name is intentionally registered and used to trade off the goodwill and reputation of the Complainant's trademark and create a false association, sponsorship, or endorsement with the Complainant, which suggests opportunistic bad faith.

Second, the Complainant states that the Respondent has registered the Disputed Domain Name primarily for purpose of disrupting the Complainant's business in the online casino gambling field.

With the said arguments, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Procedural Issues**

(I) Language of the Proceeding

The Complaint was filed in English. However, the Registrar confirmed that the language of the Registration Agreement is Russian.

As the Complaint was filed in English, the Center, in its email of the language of proceeding dated September 6, 2022, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Russian, or (iii) a substantiated request for English to be the language of the proceeding by September 9, 2022.

On September 9, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not give any comment on this issue.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, *e.g.*, *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

(i) the fact that the Complainant, a Maltese entity, does not appear to be able to communicate in Russian, and therefore if the Complainant was required to have the documents translated into Russian, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;

(ii) the Disputed Domain Name itself contains the English word "casinos"; and the website thereunder also contains some English contents (*e.g.*, "Copyrights © 2022 All rights reserved by casinosyggdrasil.com", "gaming", "contact", "top"); these suggest that the Respondent has knowledge of the English language and would be able to communicate in English; and

(iii) the Respondent did not object to English being the language of the proceeding and did not submit a Response in either English or Russian.

Therefore, for easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel's decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the Panel shall ensure that the administrative proceeding takes place with due expedition", the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

## (II) The Respondent's Failure to Respond

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, *e.g.*, *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

## **B. Identical or Confusingly Similar**

The Complainant is required to establish the two following elements: (i) that it has trademark rights, and, if so, (ii) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel is convinced that the Complainant has rights in the YGGDRASIL trademark, which predate the registration of the Disputed Domain Name.

Second, the Panel finds the Disputed Domain Name is confusingly similar to the Complainant's trademark as it reproduces the YGGDRASIL trademark in its entirety with the mere insertion of the prefix "casinos".

The addition of this term in the Disputed Domain Name does not impact the overall impression of the YGGDRASIL trademark's dominant and distinctive element which is still clearly recognizable in the Disputed Domain Name. It is well established that the addition of a term to a trademark does not prevent confusing similarity, thus, in the Panel's view, the addition of the said prefix does nothing to prevent a finding of confusing similarity between the Disputed Domain Name and the YGGDRASIL trademark, as it was found in previous UDRP decisions (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Third, the Panel finds, similarly to other UDRP panels, that the gTLD, in this case, “.com”, does not affect the Disputed Domain Name to determine whether it is identical or confusingly similar (see section 1.11 of the [WIPO Overview 3.0](#)).

Based on the foregoing findings, the Panel finds that the Disputed Domain Name is confusingly similar to the YGGDRASIL trademark, and paragraph 4(a)(i) of the Policy is established.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists circumstances, in particular, but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complainant’s contentions and, therefore, did not refute them.

The consensus of previous UDRP decisions is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating its rights or legitimate interests in the Disputed Domain Name (see section 2.1 of the [WIPO Overview 3.0](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted with evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, on the evidence provided by the Complainant, that no license, permission, or authorization of any kind to register or use the Complainant’s trademark or the Disputed Domain Name has been granted to the Respondent. In addition, there is no indication before the Panel that the Respondent holds any registered or unregistered trademark rights in any jurisdiction related to either the YGGDRASIL trademark or the Disputed Domain Name. Furthermore, the Panel finds that the Disputed Domain Name comprises the YGGDRASIL trademark in its entirety, and the website under this Disputed Domain Name displays the sign “YGGDRASIL”, which is confusingly similar to the Complainant’s trademarks, while no statement or disclaimer disclosing accurately the relationship between the Complainant and the Respondent is placed. In addition, since the website under the Disputed Domain Name provides gambling services under titles containing the YGGDRASIL trademarks of the Complainant, such a website directly competes with the Complainant’s services. The Panel also finds that the Disputed Domain Name, which is composed of the Complainant’s trademark with a term (casinos) related to the Complainant’s services, is inherently misleading (see section 2.5.1 of the [WIPO Overview 3.0](#)). Therefore, the Panel finds that by using the Disputed Domain Name in such a manner, the Respondent is attempting to ride on the reputation of the YGGDRASIL trademark, and thus, such use does not constitute a *bona fide* use within paragraph 4(c)(i) of the Policy.

Regarding paragraph 4(c)(ii) of the Policy, the Panel finds that there is no evidence showing that the Respondent has been commonly known by the Disputed Domain Name. Further, there is also no evidence showing that the Respondent operates any *bona fide* business or organization under the Disputed Domain Name. Therefore, it is not evidenced that the Respondent is identified by “casinosyggdrasil” or that the

Respondent has any right to it.

Regarding paragraph 4(c)(iii) of the Policy, the Panel finds that there is no evidence that the Respondent is making any noncommercial or fair use of the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests regarding the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy, is established.

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

Paragraph 4(b) of the Policy identifies, in particular, but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The above four circumstances are not exhaustive, and the Panel may find bad faith alternatively.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant’s contentions and, therefore, did not refute the Complainant’s contentions.

#### **Registration in bad faith**

The Panel has considered the Complainant’s assertions and evidence concerning the Respondent’s bad faith registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant’s YGGDRASIL trademark has been registered in a variety of jurisdictions worldwide, significantly predating the registration of the Disputed Domain Name. Besides, the Complainant’s YGGDRASIL trademark has been used for several years and has gained a certain reputation in the gaming industry in numerous countries. In addition to this, YGGDRASIL is being used in the Complainant’s YGGDRASIL trademark, trade name, and domain names <yggdrasil.com>, <yggdrasilcasino.com>, <yggdrasil.casino>, which all well predate the registration of the Disputed Domain Name.

Also, the Disputed Domain Name comprises the YGGDRASIL trademark in its entirety, adding only the word “casinos”, which creates a composition that effectively impersonates the Complainant. Further, the Panel finds that given the fact that the Complainant’s YGGDRASIL trademark, which is a coined word, without any dictionary meaning, is not descriptive of anything and devoid of meaning other than its association with the Complainant, it is very unlikely that the Respondent would have registered the Disputed Domain Name incorporating the trademark without knowledge of the trademark (see in the same way *Hoffmann-La Roche*

*Inc. v. Hightech Industries, Andrew Browne*, WIPO Case No. [D2010-0240](#); *Volkswagen AG v. Swiss Recruitment*, WIPO Case No. [D2013-0534](#)) and that it defies common sense to believe that the Respondent coincidentally selected this precise domain name without any knowledge of the Complainant and its trademark, particularly noting the Respondent's use of the Disputed Domain Name (see in the same way *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#); *Volkswagen AG v. Swiss Recruitment, supra*).

Given the above mentioned circumstances of this case, the Panel is satisfied that the Respondent did not register the Disputed Domain Name in a fortuity. It is therefore more likely than not that the Respondent obviously knew of the Complainant and its YGGDRASIL trademark before the registration of the Disputed Domain Name.

#### Use in bad faith

In Section 6.C. above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In the Panel's view, the use of a domain name, to which one has no rights or legitimate interests, is very often a clear indication of use in bad faith.

Furthermore, the Panel finds that in addition to the unauthorized adoption of the Complainant's trademark as a uniquely distinctive part of the Disputed Domain Name, the Respondent used, without permission, the Complainant's trademark, as well as names and images of several online games of the Complainant (e.g., Joker Millions, Hyper Burst) on the website under the Disputed Domain Name, and placed misleading information and statement (e.g., "TOP Casino en ligne Yggdrasil Gaming" in French, and means "TOP Yggdrasil Gaming Online Casino" in English; "Yggdrasil Gaming au casino en ligne/ Une liste de casinos en ligne autorisés utilisant le logiciel Yggdrasil Gaming pour les joueurs de France" in French, and means "Yggdrasil Gaming at Online Casino/ A list of authorized online casinos using Yggdrasil Gaming software for players from France" in English) that may create confusion or a false impression to the side of consumers that it has a relationship with the Complainant when it does not. In the Panel's view, this creates a likelihood of confusion as to sponsorship, affiliation with, and endorsement by the Complainant of the site to which the Disputed Domain Name resolves. Therefore, the Panel finds that the likelihood of confusion as said is an indication of bad faith use of the Disputed Domain Name (see, e.g., *Philip Morris Incorporated v. Alex Tsytkin*, WIPO Case No. [D2002-0946](#); *The Procter & Gamble Company, Tambrands Inc. v. Reserved for Customers, MustNeed.com*, WIPO Case No. [D2009-0944](#); *Aktiebolaget Electrolux v. Jose Manuel*, WIPO Case No. [D2010-2031](#)).

With the said facts, the Panel finds the Respondent intentionally registered and is using the Disputed Domain Name for commercial gain and that the Respondent's use of the Disputed Domain Name is likely to mislead consumers and confuse them by making them believe that the website is associated, fostered or recommended by the Complainant. Such misleading behavior is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Taking into account all of the above and the available record, the Panel finds that the Disputed Domain Name was registered and is being used by the Respondent in bad faith, and the third element under paragraph 4(a)(iii) of the Policy is established.

## 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 <casinosyggdrasil.com> be transferred to the Complainant.

*/Pham Nghiem Xuan Bac/*

**Pham Nghiem Xuan Bac**

Sole Panelist

Date: November 11, 2022