

## **ADMINISTRATIVE PANEL DECISION**

Novomatic AG v. Pop Marius

Case No. D2023-0318

### **1. The Parties**

The Complainant is Novomatic AG, Austria, represented by GEISTWERT Kletzer Messner Mosing Schnider Schultes Rechtsanwälte OG, Austria.

The Respondent is Pop Marius, Romania.

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

The disputed domain name <gaminator-slots.net> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 24, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 2023, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 26, 2023.

The Center verified that the Complaint together with 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 Respondent of the Complaint, and the proceedings commenced on January 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 20, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on February 23, 2023. 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, Novomatic AG, Austria, was founded in June, 1990. The Complainant is part of the NOVOMATIC Group, which is one of the largest high-tech gaming technology companies worldwide and Europe's market leader. The NOVOMATIC Group is one of the biggest international producers and operators of gaming technologies and employs more than 21,200 staff worldwide. The Group has locations in more than 50 countries and exports high-tech electronic gaming equipment and solutions to more than 70 countries. The Group operates around 212,000 gaming terminals and video lottery terminals ("VLTs") in its some 2,00 plus gaming operations as well as via rental concepts.

The Complainant holds registered rights to the trademark GAMINATOR, *inter alia*, the European Union trademark number 3602596 registered on June 22, 2005, for goods and services in international classes 28 and 41; and the European Union trademark number 9655441, registered on May 25, 2011 in international classes 09, 16, 38 and 42.

The disputed domain name was registered on August 26, 2022, and resolves to an active website that offers copies of the Complainant's games.

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

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

The Complainant asserts that the disputed domain name is confusingly similar to the trademark GAMINATOR, since the word "slots" is a hint to the goods and services that the Complainant's trademarks are used and registered for.

The Complainant further asserts that the Respondent has no relationship with or permission from the Complainant for the use of the trademark GAMINATOR, nor has the Respondent been commonly known by the domain name or the sign GAMINATOR or has acquired any trademark or service mark rights to the sign GAMINATOR.

The Complainant finally asserts that the disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name long after the Complainant registered its trademarks and the disputed domain name is used for an active website, the content of which may be counterfeit games of the Complainant.

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

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

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

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

#### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's registered trademark GAMINATOR, since the disputed domain name contains this mark in its entirety. The addition of the term "-slots" does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The generic Top-Level-Domain ("gTLD") ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

#### **B. Rights or Legitimate Interests**

It is obvious from the Complaint, that the Complainant has not licensed or otherwise permitted the Respondent to use the trademark GAMINATOR.

Further, given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this. Furthermore, the way the Respondent uses the confusingly similar disputed domain name for a website that clearly impersonates the Complainant, supports a finding that the Respondent lacks rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of a domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances, which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the well-known status of the Complainant's trademark GAMINATOR and the way that the disputed domain name has been and is still used, it is obvious to the Panel in the current circumstances that the Respondent registered the disputed domain name in bad faith.

The disputed domain name is used for a website, which clearly gives the Internet users the impression that the website is a website of the Complainant or a website that is somehow connected to the Complainant, which is not the case. The Panel therefore finds that there can be no doubt that the disputed domain name is used in bad faith to intentionally attempt "to attract, for commercial gain, Internet users to the Respondent's 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 the Respondent's website".

Noting that the disputed domain name incorporates the Complainant's well-known trademark GAMINATOR; that the Respondent has not replied to the Complainant's contentions; and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name; and considering all the facts and evidence of the case, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## **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 <gaminator-slots.net> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: March 14, 2023