

## **ADMINISTRATIVE PANEL DECISION**

Nitro Games Oyj v. Domain Sales - (Expired domain caught by auction winner)

Case No. D2023-1829

### **1. The Parties**

Complainant is Nitro Games Oyj, Finland, represented by Roschier Brands, Attorneys Ltd., Finland.

Respondent is Domain Sales - (Expired domain caught by auction winner), United States of America.

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

The disputed domain name <autogunheroes.com> (the "Domain Name") is registered with Dynadot, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 25, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

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 Respondent of the Complaint, and the proceedings commenced on May 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on May 24, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on June 1, 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**

Per Complaint, Complainant is a Finnish free-to-play mobile game developer and publisher, specialized in the category of shooter games. Complainant has developed several successful projects to leading mobile gaming companies. One of the most notable games of Complainant is AUTOGUN HEROES. Complainant has two studios in Finland and its shares are listed on Nasdaq First North Growth Market.

Complainant owns the European Union trademark No. 018800628 AUTOGUN HEROES (word) filed on November 23, 2022 and registered on March 17, 2023, for goods and services in international classes 9, 28, and 41.

The Domain Name was registered on November 23, 2022, and is being offered for sale at a price of USD 4,995 at “www.dan.com”. Complainant’s counsel has contacted Respondent on several occasions and offered the amount of USD 100 for reasonable out-of-pocket expenses. This offer was each time rejected by Respondent and countered with the amount of USD 4,995.

#### **5. Parties’ Contentions**

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

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

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

Respondent did not reply to Complainant’s contentions.

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

Paragraph 4(a) of the Policy lists three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

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

The Domain Name consists of the AUTOGUN HEROES trademark in its entirety.

The generic Top-Level Domain (“gTLD”) “.com” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

The Panel finds that the Domain Name is identical with the AUTOGUN HEROES trademark of Complainant.

Complainant has established Policy, paragraph 4(a)(i).

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

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent's 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) Respondent (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) Respondent is 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 concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant has demonstrated, the Domain Name resolves to a parking page on which the Domain Name is being offered for sale. While prior panels have accepted that aggregating and holding domain names consisting of acronyms, dictionary words, or common phrases (for resale) can be *bona fide*, the Domain Name consists of the uncommon combination of the dictionary words "autogun" and "heroes", which appear to have no meaning when combined except for Complainant's identical trademarked game.

Furthermore, the Domain Name consists entirely of Complainant's trademark AUTOGUN HEROES and thus carries a high risk of confusion.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

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

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Names in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Domain Names registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Names; or
- (ii) that Respondent has registered the Domain Names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Names, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Names primarily for the purpose of disrupting the business of a competitor; or

- (iv) that by using the Domain Names, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Because the Domain Name was registered on the same day as the AUTOGUN HEROES mark of Complainant, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Name.

Moreover, the identity of the Domain Name with the above-mentioned trademark of Complainant reinforces the notion that Respondent was aware of and intentionally targeted Complainant.

As regards bad faith use, the Domain Name is being offered for sale for an amount that likely exceeds the acquisition price paid by Respondent.

Under these circumstances and on this record, the Panel finds that Respondent has registered and is using the Domain Name in bad faith.

Complainant has established Policy paragraph 4(a)(iii).

## **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, <autogunheroes.com>, be transferred to Complainant.

*/Marina Perraki/*

**Marina Perraki**

Sole Panelist

Date: June 15, 2023