

ADMINISTRATIVE PANEL DECISION

Michael Salcedo v. Karyna Kandyba

Case No. D2023-2173

1. The Parties

The Complainant is Michael Salcedo, United States of America (“United States”), represented by The Ingber Law Firm, United States.

The Respondent is Karyna Kandyba, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <alphabetloregames.com> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2023. On May 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 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 May 23, 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 Respondent of the Complaint, and the proceedings commenced on May 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 16, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on June 22, 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

Since February 1, 2022, the Complainant has provided alphabet-related animated videos and/or games under the mark ALPHABET LORE, which have garnered over 150 million views on YouTube.

The Complainant holds two pending applications under United States Trademark Registration Number 97726365 filed on December 21, 2022 and United States Trademark Registration Number 97898424 filed on April 20, 2023.

The disputed domain name was registered on November 9, 2022.

When reviewed by the Panel on July 5, 2023, the disputed domain name resolved to a website branded "ALPHABET", which included:

- purported links to, and content related to, the Complainant's ALPHABET LORE product including reproductions of the Complainant's alphabet characters;
- under "New Releases", a purported link to a video/game called "Number Lore", another of the Complainant's brands;
- purported links to a range of other children's videos and/or games; and
- a range of advertising.

The Complainant made extensive efforts to persuade the Respondent's web hosts to remove the website at the disputed domain name, but the Respondent evaded such takedown requests by continually switching to new providers.

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

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

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.

A. Further Procedural Considerations

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.

While the Respondent's mailing address is stated to be in Ukraine (though this is impossible to verify), which is subject to an international conflict at the date of this decision, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel is of the view that it should. While the courier was not able to deliver the written notice to the Respondent, the Panel notes that the Complaint and Amended Complaint were delivered properly to the Respondent's email address.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain names shall be referred to the jurisdiction of the courts at the location of the principal office of the concerned registrar, being in the United States.

The Panel further notes that, for reasons set out below, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith.

The Panel concludes that the Parties have been given a fair opportunity to present their case. In order that the administrative proceeding takes place with due expedition, the Panel will proceed to a decision accordingly.

B. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has established unregistered trade mark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

[The Panel finds 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.

While the addition of other terms (here, "games"), 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 name 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.

Complainant 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.

While 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 often impossible 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. 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 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.

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

D. 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.

The Panel considers that the record of this case reflects that:

The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor. Paragraph 4(b)(iii) of the Policy, and [WIPO Overview 3.0](#), section 3.1.3.

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been 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 names, <alphabetloregames.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: July 6, 2023