

ADMINISTRATIVE PANEL DECISION

Gameloft S.E. v. gombakunited FC

Case No. D2023-3551

1. The Parties

The Complainant is Gameloft S.E., France, represented by Nicolas Babelon, France.

The Respondent is gombakunited FC, United States of America ("US").

2. The Domain Name and Registrar

The disputed domain name <asphalt-streetstorm.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 August 22, 2023. On August 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 (Registration Private, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 29, 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 August 29, 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 August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 21, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on September 27, 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, which was incorporated in 1999, is an international publisher and developer of digitally distributed video games. Throughout the years, the Complainant has released more than two hundred video games, which have been downloaded by millions of players. In 2004, the Complainant has developed and published a racing video game named "Asphalt". Since then, fifteen games were released under the name "Asphalt", including "Asphalt Streetstorm" dated 2017. The Asphalt series of video games has become one of the most popular mobile racing games series.

The Complainant is the owner of numerous ASPHALT and ASPHALT STREET STORM trademark registrations, registered in various countries, including the following:

- ASPHALT, European Union ("EU") registration No. 8695603, registered on May 3, 2010, for goods and services in classes 9, 28, 38 and 41;
- ASPHALT, US registration No. 3905304, registered on January 11, 2011, for goods in class 9;
- ASPHALT STREET STORM, EU registration No. 015936438, registered on February 9, 2017, for goods and services in classes 9, 28, 38 and 41;
- ASPHALT STREET STORM, US registration No. 5292699, registered on September 19, 2017, for goods and services in class 9.

From December 14, 2016, until December 14, 2019, the Complainant owned the domain name <asphalt-streetstorm.com>, now registered in the Respondent's name.

The disputed domain name was registered on March 2, 2023 and resolves to a website promoting gambling games and displaying the Complainant's trademark ASPHALT STREETSTORM accompanied by a logo visually similar to the logo adopted by the Complainant for its trademark.

5. Parties' Contentions

A. Complainant

The Complainant maintains that the disputed domain name is confusingly similar to its earlier ASPHALT and ASPHALT STREET STORM trademarks as these trademarks are included in the disputed domain name.

The Complainant contends that the Respondent lacks any rights or legitimate interests in the disputed domain name. The Complainant did not sponsor nor has any kind of relationship with the Respondent. The Complainant has never allowed the Respondent to include its trademarks in a domain name.

The disputed domain name leads to a website giving advice on slot game portals. This website displays the Complainant's trademark ASPHALT STREET STORM and a close representation of the Complainant's logo used in connection with its trademark. This use is misleading as it is likely to confuse the Complainant's customers on the effective origin of the disputed domain name and the Respondent's website and on the products and services promoted therein. Moreover, the use of the disputed domain name in relation to gambling affects the Complainant's image. The Complainant is not active in this field and does not want to be associated with gambling activities.

Lastly, the Complainant maintains that the disputed domain name was registered and has been used in bad faith. The Respondent must have been aware of the Complainant's trademarks when it registered the disputed domain name as these trademarks predate the disputed domain name by many years and the ASPHALT trademark is well-known. Therefore, the registration of the disputed domain name cannot be

coincidental. Moreover, the Complainant was the former owner of the disputed domain name and this circumstance also supports the Respondent's bad faith.

Finally, the Respondent's use of the disputed domain name is clear evidence of the fact that the Respondent intends to take undue advantage from the Complainant's trademarks.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's earlier mark ASPHALT. As this trademark is the first part of the disputed domain name, Internet users will immediately recognize it within the disputed domain name. According to section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". See also section 1.7 of the [WIPO Overview 3.0](#). Moreover, the Panel finds that the disputed domain name is identical to the Complainant's mark ASPHALT STREET STORM as the addition of a hyphen between the words "asphalt" and "streetstorm" is a minimal difference, which is likely to remain unnoticed. As such, it cannot affect a finding of identity of the disputed domain name with the Complainant's mark.

In light of the above, the Panel is satisfied that the first condition under the Policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge 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 shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Panel notes that the Complainant has no relation with the Respondent and that the Complainant did not authorize the Respondent to incorporate its ASPHALT and ASPHALT STREET STORM trademarks in the disputed domain name. The Respondent is not a licensee of the Complainant and does not appear to be commonly known by the disputed domain name.

The disputed domain name resolves to a website depicting the Complainant's trademark along with a logo, which is similar to the logo usually adopted by the Complainant in conjunction with its ASPHALT STREET STORM mark. Noting the general powers of a panel, articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, the Panel has conducted some limited searches to investigate the use of the disputed domain name (see section 4.8 of the [WIPO Overview 3.0](#)). The Respondent's website contains information in Vietnamese on the best slot game portals and video slot games. Moreover, in a specific section of the website, the following statement appears (automatic translation from Vietnamese to English):

"This website was formerly the brand of the Japanese game Asphalt Street Storm.
Video introducing the game Asphalt Street Storm: [embed]<https://youtu.be/uE8of3cTOoM>[/embed]"
After a period of unsuccessful business, we decided to change the development direction of this website into an "explosive" site and focus on the Vietnamese market".

The video appears to be a video from an amateur of the Complainant's "Asphalt Street Storm" videogame providing tips and tricks in relation to that game. The statement that the website "was formerly the brand of the Japanese game Asphalt Street Storm" and the link to a video illustrating some tips on the official ASPHALT STREET STORM game demonstrate that the Respondent is suggesting a connection with the Complainant to the visitors of the Respondent's website.

In consideration of the foregoing, the Panel observes that through the disputed domain name and the corresponding website, the Respondent is impersonating the Complainant, and suggesting sponsorship or endorsement by the Complainant of the Respondent's website and promoted slot games. Such use of the disputed domain name does not amount to a legitimate fair use, nor to a *bona fide* offering of goods and services as the Respondent's aim, clearly is that of taking illegitimate advantage from the Complainant's trademark to its own benefit.

C. Registered and Used in Bad Faith

The Complainant argues that the Respondent was aware of the Complainant's trademark when it registered the disputed domain name. The Panel concurs with the Complainant. The trademark ASPHALT STREET STORM is identically reproduced in the disputed domain name and this cannot be the result of a mere coincidence. Moreover, the contents of the website associated with the disputed domain name show a knowledge of the Complaint and of its trademark. The logo depicted on the website is similar to the logo that the Complainant uses in connection with its ASPHALT STREET STORM trademark. The statement that the website was formerly the brand of the Japanese game Asphalt Street Storm, and the link posted on the website to a video of the Complainant's video game are further demonstration of the awareness of the Respondent.

The registration of a domain name identical to a third party's trademark, being aware of such trademark, and without rights or legitimate interests are evidence of registration in bad faith.

As far as use in bad faith is concerned, the disputed domain name is used to provide advice on slot game portals and video slot games. The website depicts the Complainant's trademark prominently, accompanied by a logo, which resembles the Complainant's official logo used in connection with the ASPHALT STREET STORM video game. The Respondent even makes an explicit reference to the Complainant's video game and misleads the consumers by stating that it has decided to change the development of its website (formerly dedicated to the Complainant's game) into an explosive website focused on the Vietnamese market. Hence, the Respondent is taking a free ride on the Complainant's goodwill and distinctive character of the Complainant's trademark. Accordingly, the Panel finds that the Respondent is using the disputed domain name to intentionally attempt to attract, for its own personal advantage, Internet users to its website, 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.

In light of the above, the Panel is satisfied that also the third and last condition under the Policy is met.

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 <asphalt-streetstorm.com> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: October 11, 2023