

ADMINISTRATIVE PANEL DECISION

Supercell Oy v. Sourav Budhia, Supercell
Case No. D2023-4420

1. The Parties

The Complainant is Supercell Oy, Finland, represented by Fondia Oyj, Finland.

The Respondent is Sourav Budhia, Supercell, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <supercell.chat> is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 26, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 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 November 15, 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 November 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2023. On November 10, 2023 and November 16, 2023, the Center received informal email communications from a third party. The Respondent did not submit any formal response. On December 20, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Alfred Meijboom, as the sole panelist in this matter on January 4, 2024. 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 Finnish mobile game development company.

The Complainant is owner of different SUPERCELL trademarks, including:

- United States trademark SUPERCELL, with registration number 4824684 and registered on October 6, 2015; and
- European Union trademark SUPERCELL, with registration number 009704446 and registered on October 29, 2013.

The Complainant has been operating the domain name <supercell.com> since 1999, which resolves to the primary webpage for its business.

The Respondent registered the disputed domain name on January 8, 2022. The disputed domain name is passively held.

The Complainant submitted evidence showing that the Respondent used the disputed domain name via a connected email address to contact users of the Complainant's services, pretending to be part of the Complainant's support staff in order to gain access to accounts of the said users. It is undisputed that said actions have affected a few hundred users and their accounts, causing both monetary damages for the users of the Complainant's services as well as brand damage to the Complainant.

After the Complainant became aware of the Respondent's activities, its counsel sent a cease-and-desist email to the Respondent on October 12 and 13, 2023, demanding the immediate transfer of the disputed domain name to the Complainant. The Respondent replied on October 13, 2023 and asked "If I delete this domain, would that solve the situation?", and "how do I transfer it to your client?". According to the Complainant the Respondent initially agreed to transfer the disputed domain name to the Complainant but eventually failed to do this.

On November 10, 2023, the Center received an email from the email address, "[...]@supercell.chat" (the "sender") asking for clarification of an element of the present proceedings. The Center replied on November 16, 2023 and informed the sender that it would forward the communication to the Panel (once appointed) for its consideration. The Center also asked the sender "to identify herself or himself, clarifying her/his relationship (if any) to the Respondent "Sourav Budhia", and provide information sufficient to establish the legitimacy of her/his request/submission in the context of the current proceedings". The same day the sender replied "All I'm asking is what is the solution? If this domain is deleted, will it dissolve the case? If yes, I will delete it." And, after the Center asked the sender to identify itself on November 17, 2023, the sender replied "She's owner. Will deleting this domain solve the issue?". On November 22, 2023, the Center asked the sender again to identify itself and clarify its possible relationship to the Respondent, which communication remained without response.

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.

Notably, the Complainant contends that the disputed domain name is both visually and aurally identical to the Complainant's SUPERCELL trademarks, causing immediate and obvious likelihood of confusion.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name because the Respondent did not use the disputed domain name in connection with a *bona fide* offering of goods or services.

According to the Complainant the disputed domain name was registered in bad faith, because by choosing and registering the disputed domain name which is identical to the Complainant's SUPERCELL trademarks and the Complainant's principal domain name, the Respondent has clearly had a purpose of disrupting the business of the Complainant, especially taking into consideration that the Complainant is an established, well reputed, and internationally well-known video game developer. Furthermore, the Complainant considers it evident that the Respondent has been using the disputed domain name with the intention to mislead and create confusion among the users of the Complainant's services by posing as support staff of the Complainant, thus gaining access to personal accounts of users of the Complainant's services, and accordingly used the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions and did not file a formal Response. In absence of another explanation, which the Respondent has not provided, the Panel infers from the fact that the sender of the emails from the email address, "[...]@supercell.chat" as referred to in paragraph 4 above must have used such email address as or on behalf of the Respondent, that such emails reflect the Respondent's will to "delete" the disputed domain name "to dissolve the case".

6. Discussion and Findings

The Respondent did not file a Response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view of UDRP panels is that the respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in this proceeding. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove that:

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

A. 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 SUPERCELL trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's SUPERCELL trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the Complainant's SUPERCELL trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 such as those enumerated in the Policy or otherwise.

Furthermore, panels have held that the use of a domain name for illegal activity – in the present case impersonation to gain illegal access to the Complainant's users accounts – can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant's SUPERCELL trademark, as the Respondent has used the disputed domain name to target the Complainant's users by impersonating the Complainant's support staff, which constitutes registration of the disputed domain name in bad faith.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been

considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Panels have also held that the use of a domain name for illegal activity – here impersonation in order to gain access to the Complainant's users' accounts – constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy, and the Complainant has established the third element of the Policy.

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 <supercell.chat> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Sole Panelist

Date: January 18, 2024