

ADMINISTRATIVE PANEL DECISION

Rootz LTD v. Mysar Mykhailo
Case No. D2023-4825

1. The Parties

The Complainant is Rootz LTD, Malta, represented by Wilmark Oy, Finland.

The Respondent is Mysar Mykhailo, Ukraine.

2. The Domain Names and Registrars

The disputed domain name <wildz-casino.click> is registered with Porkbun LLC.

The disputed domain name <wildz-casino.top> is registered with Alibaba.com Singapore E-Commerce Private Limited.

The disputed domain name <wildzcasino.top> is registered with URL Solutions, Inc. (collectively hereinafter referred to as the “disputed domain names” and the “Registrars” unless otherwise indicated).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2023. On November 21, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On November 21, 22, and 23, 2023, the Registrars transmitted by emails to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Not available) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 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 November 30, 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 December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 4, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on January 16, 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 Maltese gaming company which since at least 2020 has offered its online gaming services under the trademark WILDZ. The Complainant offers its services from its website at the domain name <wildz.com>, registered since May 13, 1999, and has won awards for its Malta-based online casino services.

The Complainant is the owner of several trademark registrations for WILDZ, including the following:

- European Union trademark registration No. 017589813 for WILDZ (word mark), filed on December 12, 2017, and registered on April 25, 2018, in classes 9, 16, 25, 28, 35, 36, 38, 41, 42, and 45;
- European Union trademark registration No. 018071717 for WILDZ (figurative mark), filed on May 24, 2019, and registered on October 8, 2019, in classes 9, 16, 25, 28, 35, 36, 38, 41, 42, and 45;
- International trademark registration No. 1443415 for WILDZ (word mark), registered on June 13, 2018, in class 41.

The disputed domain names <wildzcasino.top>, registered on April 25, 2023, <wildz-casino.top>, registered on June 1, 2023, and <wildz-casino.click>, registered on June 21, 2023, are currently pointed to identical online gambling websites.

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the trademark WILDZ in which the Complainant has rights as they reproduce the trademark in its entirety with the mere addition of the generic term "casino" and the generic Top-Level Domains ("gTLD") ".top" and ".click".

The Complainant submits that the generic term "casino" only serves to increase the likelihood of confusion, leading Internet users into believing that the disputed domain names are in some way connected to the Complainant.

With reference to rights or legitimate interests in respect of the disputed domain names, the Complainant states that: i) the Respondent has in no way been licensed, permitted or authorized to use the Complainant's trademarks in any way; ii) the Respondent is not commonly known by the disputed domain names and does not own corresponding trademarks; iii) the Respondent is not using the disputed domain names for a bona fide offering of goods or services and is not making a legitimate noncommercial or fair use; iv) since the Complainant's registered trademarks long predate the registration of the disputed domain names, the Respondent was well aware of the Complainant at the time of registering the disputed domain names and has been opportunistically exploiting the goodwill of the Complainant's trademarks in order to attract users to its websites, offering competing online casino services.

With reference to the circumstances evidencing bad faith, the Complainant submits that the Respondent registered all three disputed domain names using the Complainant's WILDZ mark in combination with the descriptive term "casino" with the intention of misleading potential customers whilst capitalizing on the goodwill and reputation of the Complainant's trademark.

The Complainant also states that the Respondent's use of the disputed domain names creates a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation and/or endorsement of the Respondent's websites, negatively affecting the Complainant's online presence and disrupting the Complainant's business.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Procedural Considerations

Under paragraph 10 of the Rules, the Panel needs to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case, and that the administrative proceeding takes place with due expedition.

The Panel notes that, according to the Whois records, the Respondent is based in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. Therefore, 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. According to the records, the Center sent notification of the Complaint to the Respondent at its email address as disclosed by the Registrar and no delivery failure notice was received.

The Panel also notes that the Respondent, which registered the disputed domain names only in April and June 2023, appears to be capable of controlling the disputed domain names and the related content and that, having apparently received notification of the Complaint by email, it would have been able to formulate and file a Response in the administrative proceeding in case it wished to do so.

Moreover, for reasons detailed below, the Panel has no doubts (albeit in the absence of a Response) that the Respondent registered and has used the disputed domain names in bad faith.

Lastly, the Panel also notes that the Complainant elected as the mutual jurisdiction in this proceeding the courts at the location of the principal offices of the Registrars, none of which are impacted by the above-referenced international conflict and thus, given the above findings are regards the Respondent's notice, the Panel finds that proceeding with this Decision does not preempt the Respondent from asserting its rights under paragraph 4(k) of the Policy to submit this dispute to the courts at the applicable mutual jurisdictions.

The Panel concludes that the Parties have been given a fair opportunity to present their case and, in order to ensure that the administrative proceeding takes place with due expedition, will now proceed to a Decision.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain names registered by the Respondent are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain names have been registered and are 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 test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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. Indeed, the Complainant has provided evidence of ownership of trademark registrations for WILDZ in several countries (see Annex 8 to the Complaint).

The entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of term "casino" 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 names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, 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 names.

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 names. 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 names such as those enumerated in the Policy or otherwise.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks.

Moreover, there is no element from which the Panel could infer the Respondent's rights and legitimate interests over the disputed domain names, or that the Respondent might be commonly known by the disputed domain names.

Furthermore, according to the records, there is no evidence that the Respondent used the disputed domain names, currently pointed to websites offering online gambling services in direct competition with the Complainant, in connection with a bona fide offering of goods or services of a legitimate noncommercial or fair use without intention to misleadingly divert the consumers or to tarnish the Complainant's trademark.

In addition, the disputed domain names, incorporating the Complainant's registered trademark WILDZ in combination with the descriptive term "casino", undoubtedly suggest sponsorship or endorsement by the Complainant. Even where a domain name consists of a trademark plus additional terms, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, 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.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its reputation in the trademark WILDZ at the time the Respondent registered the disputed domain names.

The composition of the disputed domain names, encompassing the Complainant's trademark WILDZ in combination with a term ("casino") directly related to gambling games, suggests that the Respondent was well aware of the Complainant's trademark when registering the disputed domain names and acted in opportunistic bad faith. Indeed, the disputed domain names are so obviously connected with the Complainant that its very selection by the Respondent, which has no connection with the Complainant, suggests the disputed domain names were registered with a deliberate intent to create an impression of an association with the Complainant.

The Panel also finds that, by pointing the disputed domain names to websites offering online gambling services in direct competition with the Complainant's services, the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain, by creating a likelihood of confusion with the trademark WILDZ as to the source, sponsorship, affiliation or endorsement of its websites and the services offered therein according to paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that 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 names <wildz-casino.click>, <wildz-casino.top>, and <wildzcasino.top> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: January 30, 2024