

ADMINISTRATIVE PANEL DECISION

Rootz LTD v. Mysar Mykhailo

Case No. D2023-4869

1. The Parties

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

The Respondent is Mysar Mykhailo, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <chipzcasino.top> (the “Disputed Domain Name”) is registered with URL Solutions, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2023. On November 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 24, 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, Global Domain PRIVACY SERVICES INC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 amendment to the Complaint on November 28, 2023.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on December 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2024.

The Center appointed Nicholas Weston as the sole panelist in this matter on January 22, 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.

The language of the proceeding is the language of the registration agreement, English.

4. Procedural Consideration – Location of Respondent

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.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the courier was able to deliver the written notice to the Respondent's address in Ukraine and the Complaint was delivered to the Respondent's email address provided by the Registrar.

The Panel further finds that the Respondent has received appropriate notice of this proceeding and that the Center has discharged its responsibility under paragraph 2(a) of the Rules. *Prima facie* evidence of this is the courier's delivery report to the Center which indicates that the written notice was delivered to the Respondent's address provided by the Registrar.

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

5. Factual Background

The Complainant is a company registered in Malta which operates a licensed online casino business one of which is called Chipz. The Complainant won the award for Malta's Best Online Operator of the Year in 2020 and 2022 at Malta's Gaming Excellence Awards, also known as the MiGEA Awards, and also won Slots Operator of the Year at the International Gaming Awards 2023 in London, England, on February 6, 2023. The Complainant holds registrations for the trademark CHIPZ, and variations of it, in several countries, including Canada trademark registration No. 1909531 for the mark CHIPZ, registered on April 1, 2022.

The Complainant is also the owner of, inter alia, the domain name <chipz.com> which resolves to the company's CHIPZ branded casino website.

The Disputed Domain Name <chipzcasino.top> was registered on April 25, 2023. The Complainant has supplied uncontested evidence that the Disputed Domain Name also resolves to an online casino website.

6. 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 cites its trademark registrations of the trademark CHIPZ in various countries as prima facie evidence of ownership.

The Complainant contends that it is “an established igaming company” with rights in the mark CHIPZ that predate the Respondent’s registration of the Disputed Domain Name. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the CHIPZ trademark and infers that the similarity is not removed by the addition of the word “casino”, and the generic Top-Level Domain (“gTLD”) “.top”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it “does not have any trademark rights (registered or unregistered) to “chipz” or “chipzcasino”” (and submits that) “[t]here is no evidence that the Respondent is commonly known by the [D]isputed [D]omain [N]ame or owned a trademark or is making a legitimate non-commercial or fair use of the [D]isputed [D]omain [N]ame”. It contends that the website the Disputed Domain Name resolves to “includes links to a competing online casino”.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and Rules having regard to the widespread prior use of the Complainant’s trademark, given that the Disputed Domain Name was being used for the purpose of “misleading online users with the [D]isputed [D]omain [N]ame and subsequently redirecting those online users to third party websites, which are on competition with the Complainant”.

B. Respondent

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

7. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that 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 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 shown rights in respect of a trademark or service mark for the purposes of the Policy. The requirements of the first element for purposes of the Policy may be satisfied by a trademark registered in any country. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark CHIPZ in numerous countries.

Turning to whether the Disputed Domain Name is identical or confusingly similar to the CHIPZ trademark, the Panel observes that the Disputed Domain Name is comprised of: (a) an exact reproduction of the Complainant’s trademark CHIPZ; (b) followed by the word “casino”; (c) followed by the gTLD “.top”.

It is well established that the gTLD used as part of a domain name is generally disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1. The relevant comparison to be made is with the second level portion of the Disputed Domain Name, specifically: “chipzcasino”.

The Panel finds the entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the word “casino” may bear on assessment of the second and third elements, the Panel finds the addition of the word “casino” 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.

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 Disputed 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 Disputed 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.

The Panel finds that the Respondent has not used the Disputed Domain Name in connection with a bona fide offering of goods or services, since the Respondent is using the Disputed Domain Name to attract users to a website offering services that compete with those of the Complainant.

Moreover, the Panel finds that the composition of the Disputed Domain Name carries a high risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel notes that the Respondent registered and has used the Disputed 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.

On the issue of registration, given the composition of the Disputed Domain Name, the Panel is satisfied that the Respondent targeted the Complainant's trademark CHIPZ when it registered the Disputed Domain Name and the Panel is prepared to infer that the Respondent knew, or should have known, that its registration would be identical or confusingly similar to the Complainant's trademark. [WIPO Overview 3.0](#), section 3.2.2.

On the issue of use, the uncontradicted evidence of record is that the Disputed Domain Name was used to resolve to other online casino games that compete with those of the Complainant.

Panels have held that the use of a Disputed Domain Name for illegal activity here, impersonation of the Complainant and passing off, 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.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

8. 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 <chipzcasino.top> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: February 5, 2024