

ADMINISTRATIVE PANEL DECISION

Novomatic AG v. Alik Volk
Case No. D2023-4897

1. The Parties

Complainant is Novomatic AG, Austria, represented by GEISTWERT Kletzer Messner Mosing Schnider Schultes Rechtsanwälte OG, Austria.

Respondent is Alik Volk, Belarus.

2. The Domain Name and Registrar

The disputed domain name <gaminatorvslot.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 November 24, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 27, 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 (Name Cheap, Inc / Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on December 4, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 4, 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 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. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 3, 2024.

The Center appointed Phillip V. Marano as the sole panelist in this matter on January 24, 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

Complainant was founded on June 11, 1990, in Austria and is currently one of the largest producers of high-tech gaming equipment and technology worldwide, including video lottery terminals, and cash management, mobile gaming, and sports betting systems. Complainant offers information about its services through its official <gaminator.com> domain name and website. Complainant owns valid and subsisting registrations for the GAMINATOR trademark in the European Union (“EU”), including the trademark for GAMINATOR (EU Trade Mark Reg. No. 3,602,596), applied for on January 8, 2004, and registered on June 22, 2005.

Respondent registered the disputed domain name on June 16, 2023. At the time this Complaint was filed, the disputed domain name resolved to a password-protected website featuring a keypad login, a blurred background depicting rows of slot machines, and a button to “Download for Android”.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant asserts ownership of the GAMINATOR trademark and has adduced evidence of both unregistered common law rights in Austria as well as trademark registrations in the European Union, with earliest priority dating back to Complainant’s January 8, 2004 application date. The disputed domain name is confusingly similar to Complainant’s GAMINATOR trademark, according to Complainant, because it is wholly contained within the disputed domain name, and the word “vslot” is nothing else but a hint to Complainant’s goods and services.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: Respondent’s use of the disputed domain name in connection with a restricted access website, which features a blurred background depicting slot machines and implicit provision of counterfeit gaming services; the lack of any relationship between Complainant and Respondent; and the lack of any evidence that Respondent is known by, or acquired any rights in, Complainant’s GAMINATOR trademark.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Complainant’s longstanding priority registration and use of the GAMINATOR trademark predating Respondent’s registration of the disputed domain name; Respondent’s duty to check trademark registries for conflicting rights prior to registration of the disputed domain name; Respondent’s use of the disputed domain name to lead the public to a website that may offer counterfeit online gaming services, and misappropriates additional Complainant trademarks, including BOOK OF RA (EU Reg. No. 12,456,828) and SIZZLING HOT (EU Reg. No. 5,179,387) with priority dating back to the application dates of December 9, 2013 and June 20, 2006, respectively; and the subterfuge used by Respondent to password protect and thereby limit access to the website that resolves through the disputed domain name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g., where a particular conclusion is prima facie obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as prima facie evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant has submitted evidence that the GAMINATOR trademark has been registered in the EU. Thus, the Panel finds that Complainant's rights in the GAMINATOR trademark have been established pursuant to the first element of the Policy, and the Panel need not address Complainant's assertions with respect to unregistered common law rights in Austria.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's GAMINATOR trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's GAMINATOR trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the entirety of the trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. [...] [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar [...]"). In regards to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are typically disregarded under the first element. [WIPO Overview 3.0](#), section 1.11. The Panel agrees with Complainant that combination with the term "vslot" does not prevent a finding of confusing similarity between Complainant's GAMINATOR trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not "prevent a finding of confusing similarity under the first element").

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1. Indeed, it is evident that Respondent, identified by Whois data and confirmed by the Registrar for the disputed domain name as “Alik Volk”, is not commonly known by the disputed domain name or Complainant’s GAMINATOR trademark. Importantly, while password protection blocks access to Respondent’s website, Respondent has failed to come forward to rebut any of Complainant’s allegations regarding the possibility that Respondent offers counterfeit versions of Complainant’s online gaming services or Respondent’s unauthorized website use of Complainant’s additional BOOK OF RA and SIZZLING HOT trademarks. Both allegations vis-à-vis password protection are addressed below in greater detail with respect to the third element of the Policy.

In view of the foregoing, the Panel concludes that there is nothing in the record to show that Respondent has a legitimate basis for registration and use of the disputed domain name, therefore, Respondent has no rights or legitimate interests in the disputed domain name, and accordingly, Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent’s documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

Here, in view of the evidentiary record available to the Panel, it is more likely than not that Respondent was aware of Complainant and purposefully targeted Complainant’s trademark rights. In particular, (i) Complainant’s GAMINATOR trademark is rather distinctive with respect to online gaming services which Respondent has targeted in the disputed domain name, and which Respondent’s website appears to target, and (ii), as discussed in greater detail below, the Panel can confirm that Respondent’s website content makes unauthorized use of at least Complainant’s SIZZLING HOT trademark.

Complainant asserts that Respondent has used the disputed domain name to lead the public to a website that may offer counterfeit online gaming services, and misappropriates additional Complainant trademarks, including BOOK OF RA (EU Reg. No. 12,456,828) and SIZZLING HOT (EU Reg. No. 5,179,387). Despite limited independent investigation into Respondent's website, the Panel found no evidence to either confirm or deny the presence of counterfeit online gaming services.¹ Nor could the Panel identify any misappropriation of Complainant's BOOK OF RA trademark in Complainant's screen capture evidence or upon visiting Respondent's website. However, the Panel was able to recognize a blurred version of Complainant's SIZZLING HOT trademark on one of the slot machines depicted on Respondent's website.² More importantly, the Panel clicked on the "Download for Android" button on Respondent's website, which was blocked by the Chrome web browser with a malware warning message that "This site isn't using a secure connection and the file may have been tampered with." UDRP panels have categorically held that registration and use of a domain name for illegal activity—including distribution of malware—is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.4. See also *Carvana, LLC v. Domain Privacy, Above.com Domain Privacy*, WIPO Case No. [D2021-0290](#) ("Using a disputed domain name to disseminate malware indicates bad faith *per se.*"); *International Business Machines Corporation v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-0633](#) ("Using the Domain Name to disseminate malware indicates bad faith and constitutes a disruption of the Complainant's business.").

In addition, where it appears that a respondent employs a proxy service, or selects a registrar that applies default proxy services, merely to avoid being contacted by a complainant, or notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. [WIPO Overview 3.0](#), section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) ("the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct"). Here, it is evident that Respondent has either intentionally employed a proxy registration service, or intentionally selected a registrar that offers default proxy registration services, to conceal its identity in conjunction with the disputed domain name which incorporates Complainant's GAMINATOR trademark in its entirety and Respondent's website which appears to specifically target Complainant's online gaming services.

It is worth noting that password protection has made it impossible for the Panel to confirm precisely how Respondent uses the disputed domain name. Nevertheless, prior panel determinations recognize that website password protection does not prevent a finding of bad faith. Rather, panels look to the totality of the circumstances and all indicia to assess bad faith in cases where website password protection has been used by a respondent. See *National Association for Stock Car Auto Racing, Inc. v. Imaging Solutions*, WIPO Case No. [D2001-0777](#) (Finding bad faith despite "the fact that the web site associated with the Domain Name is now password-protected" because password protection could not "render it innocuous or rehabilitate Respondents bad faith."); *Starbucks Corporation and Starbucks U.S. Brands Corporation v. Duncan Freeman*, WIPO Case No. [D2003-0262](#) (Finding bad faith despite "sites that are password protected and therefore apparently inaccessible to the general public" because "Respondent attempted to sell the domain names for profit."); *Pfizer Inc. v. Freda Atagamen, Michael Chucks*, WIPO Case No. [D2014-2207](#) (Finding bad faith despite "a password protected 'Webmail Login' website, which bears no real content but

¹A panel may undertake limited factual research into matters of public record where it considers such information useful to assessing the case merits and researching a decision. This includes visiting the website linked to the disputed domain name to obtain more information about the respondent or its use of the disputed domain name, consulting historical resources like the Internet Archive, reviewing dictionaries, encyclopedias, or accessing trademark registration or other governmental databases. [WIPO Overview 3.0](#), Section 4.8.

² *Id.* Complainant cited, but did not submit copies of, its BOOK OF RA (EU Reg. No. 12,456,828) and SIZZLING HOT (EU Reg. No. 5,179,387) trademark registrations, which the Panel has independently confirmed via the WIPO Global Brand Database.

merely a login section” because “apart from its use of the Disputed Domain Name for fraudulent emails, the Respondent is not using the Disputed Domain Name, which is deemed as passive holding of a domain name.”). Here, in view of all the foregoing indicia of bad faith, the Panel concurs with Complainant that the website password protection used by Respondent is more likely than not merely another layer of subterfuge and obfuscation employed by Respondent to hinder investigatory and enforcement efforts.

In view of the foregoing, the Panel concludes that 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 <gaminatorvslot.com> be transferred to the Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: February 29, 2024