

## **ADMINISTRATIVE PANEL DECISION**

Elec Games Ltd. v. Mysar Mykhailo  
Case No. D2023-5150

### **1. The Parties**

The Complainant is Elec Games Ltd., Malta, represented by Abion AB, Sweden.

The Respondent is Mysar Mykhailo, United States of America (“U.S.”).

### **2. The Domain Names and Registrar**

The disputed domain names <boostcasino.top> and <boostkasiino.top> are registered with URL Solutions, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 11, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, 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 December 15, 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 December 18, 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 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 15, 2024.

The Center appointed Zoltán Takács as the sole panelist in this matter on January 17, 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 company active in the sectors of online based games, betting and casino services.

The Complainant is among others owner of the European Union Trade Mark Registration No. 017754681 for the word mark BOOST CASINO registered since May 18, 2018 for variety of goods and services related to online gaming and gambling.

Through its sister company Ninja Global OÜ the Complainant is operating one of its online casino and gaming websites under the domain name <boostcasino.com>, which was registered on March 16, 2015.

The disputed domain names were registered on April 25, 2023 and used for competing online casino and gaming websites. Currently the disputed domain names do not resolve to active 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 name <boostcasino.top> is identical to its trademark, while the disputed domain name <boostkasiino.top>, which second element "kasiino" means "casino" in the Estonian language is confusingly similar to its BOOST CASINO trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names;
- given the Complainant's reputation within the online gaming industry, it is not conceivable the Respondent chose to register the disputed domain names without knowledge of the Complainant's activities and trademark, and without intent of attracting Internet traffic for competing businesses.

The Complainant requests that the disputed domain names be transferred from the Respondent to the Complainant.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **6.1. Procedural Matter - Multiple Domain Names**

The amended Complaint was filed in relation to two domain names.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

The disputed domain names were registered by the same Respondent and the Panel finds that this requirement is fulfilled.

## **6.2. Substantive Matters – Three Elements**

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the domain names are 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 domain names; and
- (iii) the 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 (or threshold) 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.

In case of the disputed domain name <boostcasino.top> 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.

In case of the disputed domain name <boostkasiino.top> the Panel finds that the mark is recognizable within the disputed domain name, which consist of the "boost" element of the Complainant's trademark and the word "kasiino", which means "casino" in the Estonian language. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 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 Respondent has not only failed to respond and disclose its relationship (or lack of thereof) with the Complainant, but has actively impersonated the Complainant.

As shown by the Complainant, the Respondent used the disputed domain names to confuse Internet users presumably looking for the Complainant through redirecting them to its own online gaming and gambling websites which displayed the Complainant's trademark (in the registered variant and Estonian translation of it) and had many design type similarities with the Complainant's website at "www.boostcasino.com".

Panels have held that the use of a domain name for illegal activity – here impersonation / passing off - can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

In the present case, the Panel notes that the Respondent reproduced the Complainant's trademark and the Estonian language variant of it in the disputed domain names and, had used them to redirect Internet users to its websites competing with the Complainant's activities at its primary web presence as mentioned above.

Thus, in view of the Panel the Respondent obviously had full knowledge of the Complainant's business and trademark at the time of registration of the disputed domain names and had registered them in order to target the Complainant and its trademark through impersonation or false association, which is evidence of bad faith. [WIPO Overview 3.0](#), section 3.4.

In addition the Panel finds that the contact details (e.g. the postal code listed for the city of Uzhhorod is false, since the city of Uzhhorod is obviously not in the U.S.) the Respondent provided at registration of the disputed domain names are blatantly false and further evidence of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

As mentioned above, currently the disputed domain names do not resolve to active websites.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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 notes the distinctiveness of the Complainant's trademark; the composition of the disputed domain names as mentioned above; the Respondent's failure to respond to the Complaint and provide any good faith explanation as to its registration of the disputed domain names and the Respondent's use of false contact details at registration of the disputed domain names.

Accordingly, the Panel finds that in the circumstances of this case, the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

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 <boostcasino.top> and <boostkasiino.top> be transferred to the Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: January 29, 2024