

ADMINISTRATIVE PANEL DECISION

Ninja Global Ltd. v. Mysar Mykhailo
Case No. D2024-0577

1. The Parties

The Complainant is Ninja Global Ltd., Malta, represented by Abion AB, Sweden.

The Respondent is Mysar Mykhailo, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <ninja-casino.top> (the “Domain Name”) is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 8, 2024. On February 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 2024, 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 February 9, 2024.

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 February 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2024.

The Center appointed Nicholas Smith as the sole panelist in this matter on March 13, 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.

On March 14, 2024, shortly after the Panel's appointment the Center received a communication from the Respondent indicating that it had ceased use of the Domain Name and that Respondent "neither contest nor object to the proceedings related to the domain in question". As this communication is not an express consent to transfer the Domain Name the Panel considers it appropriate to proceed to a substantive decision on the merits.

4. Factual Background

The Complainant is a gaming and casino company based in Malta which offers these services under the trademark NINJACASINO (the "NINJACASINO Mark"). The Complainant has held a trademark registration for the NINJACASINO Mark in the European Union since 2016 for goods and services in classes 9 and 41 (Registration No. 015743685 registered November 28, 2016). It also holds a registration for the NINJACASINO Mark in the United Kingdom (Registration No. UK00915743685 registered also on November 28, 2016).

The Domain Name was registered on April 25, 2023. At the time of the filing of the Complaint, the Domain Name resolved to a website (the "Respondent's Website") that prominently reproduced the NINJACASINO Mark and purported to offer gaming and casino services in direct competition with the Complainant.

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 Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the NINJACASINO Mark, having registered the NINJACASINO Mark in the European Union. The Domain Name is identical or confusingly similar to the NINJACASINO Mark as it reproduces the NINJACASINO Mark in its entirety.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the NINJACASINO Mark. The Respondent is not commonly known by the NINJACASINO Mark, nor does it use the Domain Name for a bona fide purpose or legitimate noncommercial purpose. Rather the Respondent is using the Domain Name to pass off as the Complainant for commercial gain by purporting to offer gaming services in direct competition with the Complainant under the Complainant's NINJACASINO Mark. Such use is not a legitimate use of the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent's Website for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. The Panel notes that on March 14, 2023, the Respondent sent an email communication stating that "we no longer utilize or have any association with the mentioned domain <ninja-casino.top>. It is not part of our current operations, and we have ceased to use it for any purposes."

The Panel finds that the email communication from the Respondent does not address the Complainant's contentions in any way.

6. Discussion and Findings

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 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. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Name (albeit with the two word elements separated by a hyphen). Accordingly, the Domain Name is confusingly similar to the mark 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 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 Domain Name such as those enumerated in the Policy or otherwise.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Respondent's use of the Domain Name to resolve to a webpage reproducing the Complainant's NINJACASINO Mark and purporting to offer gaming and casino services in direct competition with the Complainant does not amount to use for a bona fide offering of goods and services. Rather, it appears that the purpose behind the Respondent's Website is to encourage Internet users, under the impression that they are dealing with the Complainant, to utilize the gaming services purportedly offered by the Respondent, such conduct not being bona fide.

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.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the NINJACASINO Mark at the time the Respondent registered the Domain Name. The Respondent has provided no explanation, and neither it is immediately obvious, why an entity would register a domain name essentially identical to the NINJACASINO Mark and redirect it to a website purportedly offering gaming services under that mark unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its NINJACASINO Mark.

The Respondent's Website purports to offer gaming services in direct competition with the Complainant. Noting the fact that the Respondent passes off as the Complainant on the Respondent's Website and in the absence of any explanation for the registration, the Panel considers that the most likely explanation is that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the NINJACASINO Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

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

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 Domain Name <ninja-casino.top> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: March 22, 2024