

ADMINISTRATIVE PANEL DECISION

Push Gaming Product Limited v. Arthur Lifenow
Case No. D2024-0866

1. The Parties

The Complainant is Push Gaming Product Limited, Malta, represented by Abion AB, Sweden.

The Respondent is Arthur Lifenow, United States of America.

2. The Domain Name and Registrar

The disputed domain name <push-gaming.win> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2024. On February 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2024, 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 / PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 1, 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 amended Complaint on March 4, 2024.

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 March 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 8, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on April 15, 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

It results from the Complainant's undisputed allegations that is a game development studio that specializes in creating premium, mobile optimized HTML5 games for online and mobile casinos and has established itself as a leading provider of premium gaming content. The Complainant operates its business on the domain name <pushgaming.com>.

The Complainant is the registered owner of many trademarks for PUSH GAMING, e.g., European Union trademark registration No. 018107934 (figurative), registered on January 10, 2020, for goods and services in classes 9, 28, 35, 38, 41, and 42; and United Kingdom trademark registration No. UK00917941709, registered on December 18, 2018, for goods and services in classes 9, 28, 35, 38, 41, and 42.

The disputed domain name <push-gaming.win> was registered on February 13, 2024. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolves to a webpage displaying the Complainant's games and containing links which redirect users to third party website in the Complainant's area of activity.

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 name.

Notably, the Complainant contends that the disputed domain name is identical to the Complainant's trademark since it incorporates entirely the Complainant's registered trademark PUSH GAMING, being also its company name.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, it has not licensed or authorized the Respondent to use its trademarks. The Respondent is not affiliated to the Complainant, which did not authorize the Respondent to register or use the disputed domain name incorporating its trademarks nor have the Complainant endorsed or sponsored the Respondent or the Respondent's websites. There is no evidence that the Respondent is commonly known by the disputed domain name or owns any registered trademarks including the term "push-gaming.win". The disputed domain name contains links displaying the Complainant's games, however, these links redirect users to third-party websites. The Respondent's utilization of the disputed domain name to redirect traffic to unrelated third-party sites undermines any claim to legitimate interests or rights in the disputed domain name. Such actions not only exploit the goodwill associated with Push Gaming but also potentially mislead consumers.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent has chosen to use the distinctive trademark PUSH GAMING in the disputed domain name in its entirety. It is very likely that the Respondent registered the disputed domain name using the trademark PUSH GAMING intentionally in order to take advantage of the reputation of the trademark and the Complainant's goodwill free-riding on the Complainant's reputation. Furthermore, the redirection of users to third-party websites, which are unrelated to the Complainant and may even compete with its services, illustrates a clear intention to disrupt the Complainant's business or deceive consumers for financial gain.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “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 requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

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

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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.

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 entirety of the mark – plus a hyphen - 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.

Finally, the Top-Level Domain (“TLD”) “.win” of the disputed domain name may be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#) at section 1.11.

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 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.

Moreover, the Panel notes that the nature of the disputed domain name carries a high risk of implied affiliation, since the disputed domain name is identical to the Complainant's trademark PUSH GAMING (plus a hyphen) and that the trademark PUSH GAMING is not a combination of terms that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. Generally speaking, previous UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (see [WIPO Overview 3.0](#), at section 2.5.1). The Panel shares this view.

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.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolves to a webpage displaying the Complainant's products and containing links which redirect users to third party website in the Complainant's area of activity. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

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 this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the nature of the disputed domain name (i.e. a domain name identical to the Complainant's trademark);
- (ii) the chosen top-level domain (i.e. ".win" corresponding to the Complainant's area of business activity or natural zone of expansion)
- (iii) the content of the website to which the disputed domain name directs (i.e. a webpage displaying the Complainant's products and containing links which redirect users to third party website in the Complainant's area of activity);
- (iv) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name.

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 name <push-gaming.win> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: April 29, 2024