

ADMINISTRATIVE PANEL DECISION

Vizor Apps Ltd v. David Drotik
Case No. D2024-0970

1. The Parties

The Complainant is Vizor Apps Ltd, Cyprus, internally represented.

The Respondent is David Drotik, Ukraine.

2. The Disputed Domain Name and Registrar

The disputed domain name <klondikeadventures.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 5, 2024. On March 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 6, 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 7, 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 March 15, 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 March 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 8, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on April 12, 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 Cypriot interactive entertainment software (video games software) development company. The Complainant designs, develops, produces, and publishes, inter alia, video games software for mobile phones and handheld devices that are available for the ultimate users in more than 170 countries.

The Complainant owns all rights, title, and interest in KLONDIKE ADVENTURES video game software for mobile phone and handheld devices (the "Game"), including all intellectual property rights and other proprietary rights in and to the Game. The Complainant has been publishing, controlling and operating the Game on various platforms for digital distribution and has an active social media presence featuring the Game and the trademark KLONDIKE ADVENTURES.

The Complainant holds trademark registrations for KLONDIKE ADVENTURES, such as the following:

- the United States of America trademark registration number 7277738 for KLONDIKE ADVENTURES (word), filed on December 27, 2022, and registered on January 16, 2024, for goods in International class 9; and
- the European Union trademark registration number 018821067 for the KLONDIKE ADVENTURES (word), filed on January 13, 2023 and registered on May 25, 2023, for goods and services in International classes 9 and 41.

The disputed domain name <klondikeadventures.com> was registered on December 14, 2023, and, at the time of filing of the Complaint, it resolved to a website featuring copyrighted materials of the Complainant, imitating the Complainant's Game and displaying the KLONDIKE ADVENTURES trademark.

The Complainant sent a cease-and-desist letter to the Registrar of the disputed domain name but it was advised that the Registrar has limited attributions and it should direct its letter to the appropriate forums.

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 alleges that its trademark KLONDIKE ADVENTURES is well known in the industry of entertainment software and among end users; the actual use of the KLONDIKE ADVENTURES trademark by the Complainant occurs since 2018; the disputed domain name is identical to its trademark; by choosing and registering the disputed domain name, which is identical to the Complainant's trademark, the Respondent has clearly had a purpose of cybersquatting, especially taking into consideration that the Complainant is an established, well reputed, and internationally well-known video game software developer; the disputed domain name was registered and is being used in bad faith because the website available via the disputed domain name impersonates what is deemed to be an official representation of the Complainant's website for the Game under the mark KLONDIKE ADVENTURES and replicates the copyrighted materials of the Complainant without authorization or consent; the website under the disputed domain name contains several false and misleading statements since some suggest that they are related to the gambling industry, or target adult audience and these may disrupt the business of the Complainant and damage its reputation; the Respondent has engaged in a pattern of bad faith conduct since, when searching

on the Internet by using key words from the disclaimers used on the website under the disputed domain name, the Complainant found at least another five websites incorporating the identical language and other elements. The Complainant alleges that the statements posted on the website under the disputed domain name as disclaimer, are disrupting its business and damaging its reputation because they provide false and misleading information such as the target audience or the trade channels on which the Game is available.

B. Respondent

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

6. Procedural Consideration – Respondent's location

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.

The location of the Respondent disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Respondent's mailing address is reported to be in Ukraine, which is subject to a conflict that may affect delivery of the written notice by postal-mail, in terms of the paragraph 2(a)(i) of the UDRP. The Panel notes that the record shows that the written notice could not be delivered to the address disclosed by the Registrar in its verification.

However, it appears that the Notification of Complaint email communication was delivered to the Respondent's email address, as provided by the Registrar. Therefore, there is no evidence that the case notification was not successfully delivered to the disclosed Respondent's email address.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith, and with the intention of unfairly targeting the Complainant's trademark.

The Panel concludes that the Respondent allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

7. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain name is 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 the disputed domain name; and
- (iii) 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.

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 KLONDIKE ADVENTURES 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.

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.

According to the evidence provided in the Complaint, the Respondent has used the disputed domain name in connection with a website impersonating the Complainant by displaying what is seemed to be a representation of the Game and using the KLONDIKE ADVENTURES trademark. Panels have held that the use of a domain name for illegal activity (such as impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the composition of the disputed domain name, being identical to the Complainant’s mark, carries a high risk of implied affiliation. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel notes that the disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because the Complainant’s registration of the KLONDIKE ADVENTURES trademark and the use of the Game in commerce predates the registration of the disputed domain name. Further, the use of the disputed domain name further enhances such finding.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location" is evidence of registration and use in bad faith.

Given that the disputed domain name is identical to the Complainant's trademark, and the website operated under the disputed domain name displays the Complainant's trademark, Game and copyrighted materials, in this Panel's view, the Respondent has intended to attract unsuspecting Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated with or related to the Complainant, for the Respondent's commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark, which leads the Panel to a finding of registration and use in bad faith according to paragraph 4(b)(iii) of the Policy.

Further, panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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 <klondikeadventures.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: April 26, 2024