

## **ADMINISTRATIVE PANEL DECISION**

### **Escrow Services Overseas Limited v. Sergey Ptushkin Case No. D2024-1053**

#### **1. The Parties**

The Complainant is Escrow Services Overseas Limited, British Virgin Islands, United Kingdom (“UK”), represented by Herzog, Fox & Neeman, Israel.

The Respondent is Sergey Ptushkin, Ukraine.

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

The disputed domain names <captaincookscasinoca.com>, <luxurycasinoslots.com>, <yukongoldcasinoca.com>, and <zodiaccasinoslots.org> are registered with NameCheap, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2024. On March 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 11, 2024, 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 (Unknown), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 13, 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 13, 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 formal response, however the Respondent sent an email communication to the Center on March 13, 2024. The Center informed the Parties that it would proceed to panel appointment on April 9, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on April 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. Further Procedural Considerations**

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.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. There is no suggestion before the Panel that notification of the Complaint did not reach the Respondent, for example, no notices of non-delivery were generated by the email notification to the Respondent's email address as confirmed by the Registrar. Moreover, the Respondent has sent an informal communication after receipt of the Complaint.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain names shall be referred to the jurisdiction of the courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, NameCheap, Inc., is in the United States of America.

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 a formal Response) that the Respondent registered and has used the disputed domain names in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademarks.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

#### **5. Factual Background**

According to information in the Complaint, the Complainant is one of the IP holding companies of a group of companies, with the parent company being Internet Traffic Solutions Limited. The Complainant's group is engaged in the online gaming industry and through its various companies holds several gambling licenses in different jurisdictions, including the UK, Denmark, Malta, and Canada. The Complainant's brands are very successful and have gained extensive reputation, with a current annual average of 5.46 million visitors and 2.55 million users in 2023.

The Complainant or its group, operates a number of online gaming websites under various brands, including the brands CAPTAIN COOKS CASINO, LUXURY CASINO, YUKON GOLD CASINO, and ZODIAC CASINO, for which the Complainant has obtained various trademark registrations including the following:

- the European Union trademark CAPTAIN COOKS CASINO no. 007328446, registered as of October 22, 2010, for services in classes 36, and 41;

- the European Union trademark LUXURY CASINO no. 011287836, registered on November 28, 2013, for services in class 41;
- the European Union trademark YUKON GOLD CASINO no. 007328974, registered on October 18, 2010, for services in classes 36, and 41;
- the European Union trademark ZODIAC CASINO no. 007329014, registered on November 11, 2010, for services in classes 36, and 41.

The disputed domain names were registered on August 18, 2023. At the date of the Decision, the website at the disputed domain name <zodiaccasinoslots.org> resolves to a warning page stating inter alia: “Sorry, you have been blocked”, with the following text at the bottom of the page: “This website is using security services to protect itself from online attacks. The action you just performed triggered the security solution [...]”. The disputed domain names <captaincookscasinoca.com>, <luxurycasinoslots.com>, and <yukongoldcasinoca.com> resolve at the date of the Decision to a “503 Service Temporarily Unavailable” page. According to evidence with the Complaint, all disputed domain names resolved at the date of the Complaint to a warning page similar to the page currently found at the disputed domain name <zodiaccasinoslots.org>. At the same time, as per evidence with the Complaint, when accessed from Canada, all disputed domain names resolved to websites with identical layouts, displaying the Complainant’s trademarks and their respective logos, while purporting to offer online gaming services.

## **6. 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 each of the disputed domain names is identical and confusingly similar to its trademarks, as each disputed domain name consists of one of the Complainant’s trademarks in its entirety with the mere addition of a non-distinctive variant (the geographical indication “ca”, or the descriptive term “slots”) and one of the following generic Top-Level Domain (“gTLD”) suffixes: “.com” or “.org”. These additions do not detract from either the identity or the confusing similarity between the disputed domain names and the Complainant’s trademarks, nor do they create a different overall impression.

With respect to the second element, the Complainant submits that the Respondent is not affiliated with any of the companies within the Complainant’s group and has never been licensed or otherwise authorized to use the Complainant’s trademarks. Also, neither the Respondent, nor any business operated by it, is or has ever been commonly known by the disputed domain names. In addition, the Complainant argues that the Respondent is making illegitimate and commercial use of the Complainant’s trademarks within the disputed domain names and the relevant websites. As such, the disputed domain names resolve to a CloudFlare page displaying the title: “Sorry, you have been blocked”, with the following text at the bottom of the page: “This website is using security services to protect itself from online attacks. The action you just performed triggered the security solution [...]”. However, at least in Canada, the disputed domain names resolve to websites with identical layouts, displaying the Complainant’s trademarks and their respective logos, while offering online gaming services competitive with those provided by the Complainant’s group. The websites at the disputed domain names also display the following text within their titles: “[The respective mark of the Complainant] – Official Site in Canada”, thereby creating the misleading impression that they are affiliated with the Complainant or its group.

As regards the third element, the Complainant argues that it has owned and used its trademarks since long before the Respondent registered the disputed domain names. The ZODIAC CASINO, CAPTAIN COOKS CASINO, and YUKON GOLD CASINO brands have been in existence for over 20 years, and the LUXURY CASINO brand has been in existence for over 10 years. Therefore, it is clear that the Respondent knew, or

at the very least should have known, about the Complainant's marks and its group's operations. As regards the use, the Complainant contends that the Respondent's registration of the four disputed domain names, each bearing a trademark of the Complainant in its entirety, constitutes a "pattern of conduct" of preventing the Complainant from reflecting its trademarks in corresponding domain names. In addition, by registering multiple domain names identical or confusingly similar to the Complainant's trademarks, the Respondent attempts to attract Internet users to the disputed domain names under the (inevitable) mistaken assumption that they are somehow related to the Complainant or its group.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. In an informal communication of March 13, 2024, the Respondent stated that: "[.] I wish to clarify that the content featured on these websites is not associated with the respective products or brands, including Captain Cooks, Luxury Casino, Zodiac Casino, and Yukon Gold Casino. Our websites do not bear any resemblance to these products in terms of design, logos, or content.

The information presented on our websites has been created by our editors or sourced from open and publicly available materials. Moreover, our websites do not contain any links, screenshots, or images that could be construed as relating to the aforementioned products.

It is important to note that the domains in question are not included in the licensing agreements of the respective gambling operations. Our websites serve an informational purpose only and do not facilitate real-money gaming activities.

Thank you for your attention to this matter. Please feel free to contact me if you need more information or clarification.

Moreover, all the mentioned websites have been permanently deleted from my server!"

## **7. Discussion and Findings**

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed 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 disputed domain names, and (iii) the disputed 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 name. [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 Complainant's trademarks CAPTAIN COOKS CASINO, LUXURY CASINO, YUKON GOLD CASINO and ZODIAC CASINO is reproduced within the disputed domain names. Accordingly, the

disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “ca” in the disputed domain names <captaincookscasinoca.com>, and <yukongoldcasinoca.com>, or “slots” in the disputed domain names <luxurycasinoslots.com>, and <zodiaccasinoslots.org>) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the respective marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

There is no evidence in the record that the Respondent is currently using the disputed domain names in connection with a bona fide offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. The Complainant has provided evidence on the fact that the websites associated with the disputed domain names show a safety warning notice indicating that the access has been blocked for protection from online attacks. Therefore, there is no indication of bona fide offering of goods or services. Moreover, according to the unrebutted evidence with the Complaint, when accessed from Canada the disputed domain names resolve to websites displaying the Complainant’s trademarks and logos, claiming to be an official website in Canada, and purporting to offer gambling services, creating the impression that the services were somehow sponsored by or affiliated with the Complainant. This cannot amount in the Panel’s view to a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

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

The Respondent has not proved otherwise, since he did not file a substantive formal Response. Rather, in the informal communication of March 13, 2024, the Respondent indicated that all the websites have been permanently deleted from his server. In the circumstances of the case this statement might be viewed as an admission of lack of legitimate interests on the part of the Respondent. Noting the composition of disputed domain names and the content on the websites, it is clear that the Respondent is targeting the Complainant and therefore the Panel is not convinced by the Respondent’s arguments stated in his informal email communication.

The Respondent is an individual named “Sergey Ptushkin”, as was disclosed by the Registrar, and there is no evidence that the Respondent is commonly known by the disputed domain names within the meaning of paragraph 4(c)(ii) of the Policy.

Furthermore, the nature of the disputed domain names, that include the Complainant’s respective trademarks in its entirety, together in majority of cases with a term or terms related to a geographical location or the Complainant’s business, carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

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.

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.

According to the unrebutted assertions of the Complainant, its trademarks were widely used in commerce well before the registration of the disputed domain names. The disputed domain names are confusingly similar with the Complainant’s trademark. Given also the content of the websites at the disputed domain names as accessed from Canada (which display the Complainant’s trademark and logos and claim to be an official website in Canada for the respective trademark of the Complainant), it is most likely that the Respondent was aware of the Complainant’s trademarks at the registration date of the disputed domain names. The Respondent provided no explanations for why he registered the disputed domain names and has not denied knowledge of the Complainant’s trademarks in his informal communication to the Center.

As regards the use, the Complainant has provided evidence that the disputed domain names resolve to a website with potential security risks, according to the browser’s safety warning notice. According to the [WIPO Overview 3.0](#), section 3.4, “the use of a domain name for purposes other than to host a website may constitute bad faith”. Such purposes include sending email, phishing, identity theft, or malware distribution. Also, “the fact that the webpages were blocked by independent third parties demonstrates that they represented a risk to consumers and Internet users”. See *Carrefour SA v. dreux denis / denis cloud*, WIPO Case No. [D2021-0276](#).

Also, the Panel concludes on this record that the Respondent is in bad faith within the meaning of paragraph 4(b)(iv) of the Policy, by directing the disputed domain names to websites purporting to offer gambling services, which create the false impression that the services are somehow affiliated with or sponsored by the Complainant.

Furthermore, in the Panel’s view, there is sufficient evidence to make a determination based upon paragraph 4(b)(ii) of the Policy, which provides that bad faith registration and use will be found where the Respondent has “registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent has] ... engaged in a pattern of such conduct.” A “pattern of conduct” as required in paragraph 4(b)(ii) of the Policy typically involves multiple domain names directed against multiple complainants, but may also involve multiple domain names directed against a single complainant. See [WIPO Overview 3.0](#), section 3.3. In the Panel’s view, the latter applies. The fact of registering four domain names that incorporate several of the Complainant’s trademarks represents, in the Panel’s assessment, a pattern of conduct directed against the Complainant, stopping it from reflecting its trademark in the disputed domain names. The Panel concludes that paragraph 4(b)(ii) of the Policy is made out.

Moreover, the Respondent has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <captaincookscasinoca.com>, <luxurycasinoslots.com>, <yukongoldcasinoca.com>, and <zodiaccasinoslots.org> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: April 29, 2024