

ADMINISTRATIVE PANEL DECISION

Gaijin Games Kft. v. VALENTIN LAPTEV
Case No. D2024-1057

1. The Parties

The Complainant is Gaijin Games Kft., Hungary, internally represented.

The Respondent is VALENTIN LAPTEV, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <wartander.net> (the “Domain Name”) is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2024. On March 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 14, 2024, 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 (Domain Manager (Whois protection)), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 19, 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 22, 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 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 23, 2024.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on April 29, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant operates a free-to-play cross-platform MMO military game dedicated to aviation, armored vehicles, and naval vessels from the early 20th century to modern combat units. The official website of the Complainant's game is "www.warthunder.com". The game has won several awards. It has been played all over the world for more than 10 years. The number of players of the War Thunder video game has been rising since its launch. For instance, on one of the major game platforms, the number of users playing simultaneously reaches more than 121.000 players.

The Complainant owns several trademark registrations around the world such as international trademark No. 1164387, WAR THUNDER (registered on March 18, 2013), In International Classes 9, and 41.

The Domain Name was registered on November 16, 2022. At the time of the Complaint, and at the time of the Decision, the Domain Name resolved to a Russian-language website featuring the Complainant's advertisement fliers and logo, as well as offering buy in-game items and features for games that are offered by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant argues the registration agreement for the Domain Name and the Registrar's website are available in English. It gives reason to presume that the Respondent speaks English and may participate in an English language domain dispute proceedings.

Despite the Respondent is listed as located in Ukraine, as disclosed by the Registrar, the Complainant argues that notification by email shall comply with Paragraph 10 of the Rules. It is reasonable to consider that the Respondent has access to the Internet and is able to receive email communications, as the Domain Name was created after the start of the armed conflict, and the website at the Domain Name is operational. Moreover, multiple means of communication with the Respondent are known. In any event, the Respondent registered and is using the Domain Names in bad faith.

The Complainant provides evidence of trademark registrations and argues that the Domain Name is confusingly similar to the Complainant's prior trademarks. The Domain Name includes the whole trademark except for the letter "h" missing and the letter "u" changed to the letter "a". It is intentionally misspelled in the Domain Name to copycat the Complainant's website. The minor difference in spelling does not change the appearance, pronunciation, or connotation of the Complainant's trademark.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent is not authorized, licensed, or permitted to register or use a domain name incorporating the Complainant's trademark. The Respondent's use of the Domain Name is not bona fide commercial or legitimate noncommercial use. The Respondent's website promotes and distributes fraudulent and illegal products and services. Such use cannot confer rights or legitimate interests.

The Complainant argues that the Respondent has registered and is using the Domain Name in bad faith with actual knowledge of the Complainant's rights, based on the use of the Domain Name and the fact that it is registered after the Complainant had registered its trademarks. The Complainant further asserts that the Domain Name has been used to trade upon Complainant's notoriety and goodwill, to deceive, mislead, and divert a large number of consumers seeking the Complainant's goods and services. Furthermore, the Respondent's use of a privacy service supports an inference of bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural Considerations

As the Registration Agreement is in English, and none of the parties have requested another language of proceedings, the Panel decides the language of the procedure is English.

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. As the Respondent's mailing address is stated to be in Ukraine, subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes even if it is unclear whether the courier was able to deliver the written notice to the address which the Respondent had provided in Ukraine, the notice has been delivered to the Respondent's email address provided by the Registrar. The Respondent has not opposed to the continuation of the proceedings. The Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer the Domain Name shall be referred to the jurisdiction of the courts of the location of the concerned registrar, which is the Czech Republic. Moreover, as described below, the Panel has no doubt that the Respondent registered and has used the Domain Name in bad faith to target the Complainant and mislead consumers.

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.

6.2 Substantial Issues

A. Identical or Confusingly Similar

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has established that it has rights in the trademark WAR THUNDER. The Domain Name differs from the trademark in that the letter "h" is missing and the letter "u" is changed to the letter "a". It appears to be an intentional misspelling. The differences do not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8. For the purpose of assessing the confusing similarity under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD") as it is viewed as a standard requirement for the registration of domain names; see [WIPO Overview 3.0](#), section 1.11.1.

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. While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the 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. Based on the record, the Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services. The Respondent's use of the Domain Name is rather evidence of bad faith, see below.

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.

Based on the composition and use of the Domain Name, the typosquatting of the Complainant's trademark in the Domain Name, it is clear that the Respondent was aware of the Complainant and its prior rights when the Respondent registered the Domain Name. Based on the same use, it is evident that the Respondent is intentionally attempting to create a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement. Prior UDRP panels have held that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy.

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 the Domain Name, <wartander.net>, transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: May 9 , 2024