

ADMINISTRATIVE PANEL DECISION

Rootz Ltd. v. Dmitro Miasnikov
Case No. D2024-1074

1. The Parties

The Complainant is Rootz Ltd., Malta, represented by Wilmark Oy, Finland.

The Respondent is Dmitro Miasnikov, Poland.

2. The Domain Name and Registrar

The disputed domain name <wheelz-casino.com> (“Disputed Domain Name”) is registered with Marcaria International LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2024. On March 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 13, 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 (GDRP Marked) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 15, 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 20, 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 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2024. The Respondent sent an email communication to the Center on April 9, 2024. The Center informed the Parties that it would proceed to panel appointment on April 29, 2024.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on May 3, 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 well-established online betting company licensed and regulated by the Malta Gaming Authority. The Complainant operates several online casinos offering games of chance, including its award-winning international casino brand WHEELZ, and owns various word and figurative trademarks for or containing the term “wheelz” (“Complainant’s Trademark”).

The relevant trademark registrations include, inter alia, European Union Trademark (“EUTM”) Registration No. 018489899 for WHEELZCASINO registered on October 1, 2021, in Class 41; EUTM Registration No. 18304590 for WHEELZ registered on January 9, 2021, in Class 41; EUTM Registration No. 18313089

for  “ registered on January 23, 2021, in Class 41; International Trademark Registration No. 1580922 for WHEELZ registered on January 5, 2021, in Class 41 designating, inter alia, Switzerland, the United Kingdom, the United States of America, China and Japan; and International Trademark Registration

No. 1581057 for  “ registered on December 11, 2020 in Class 41 designating, inter alia, Switzerland, the United Kingdom, the United States, China and Japan.

The Complainant’s Trademark is fully incorporated in the Complainant’s domain name <wheelz.com> registered on October 1, 1997, and resolves to the Complainant’s website.

The Disputed Domain Name was registered by the Respondent on September 29, 2022. The Complainant alleges that at the time of the Complaint, the Disputed Domain Name resolved to a website that displayed online casino-related content (“Respondent’s Website”), although the Complainant did not exhibit a screenshot or printout of such content. At the time of the Decision, the Disputed Domain Name no longer resolved to any website as a server IP address could not be located.

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:

(a) The Disputed Domain Name is confusingly similar to the Complainant’s Trademark. The Disputed Domain Name reproduces the Complainant’s Trademark in its entirety. The only differences between the Disputed Domain Name and the Complainant’s Trademark are the descriptive term “casino”, which increases the likelihood of confusion given the Complainant’s operating industry; and the generic Top-Level Domain (“gTLD”) “.com”, which may be disregarded. Furthermore, the Disputed Domain Name is an identical reproduction of the Complainant’s WHEELZCASINO trademark.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. There is no evidence that the Respondent is commonly known by the Disputed Domain Name, has relevant trademark rights or is making legitimate noncommercial or fair use of the Disputed Domain name. Moreover, the Complainant has not given permission, licensed or authorised the Respondent to use the Complainant’s Trademarks. Additionally, the Respondent is opportunistically using the Complainant’s Trademarks to divert Internet traffic to the Respondent’s Website. As the Complainant’s Trademark was registered prior to registration of the Disputed Domain Name, there is no question that the Respondent was aware of the Complainant’s Trademark at the time of registration of the Disputed Domain Name.

(c) The Respondent has registered the Disputed Domain Name and is using it in bad faith. The Respondent has registered the Disputed Domain Name, incorporating the Complainant’s Trademark, with an intent to create a likelihood of confusion with the Complainant’s Trademark as to the source, sponsorship,

affiliation or endorsement of the Respondent's Website and capitalize on the goodwill of the Complainant's brand. The online casino-related content on the Respondent's Website constitutes a clear attempt by the Respondent to generate commercial gain, in particular by misleading Internet users with the Disputed Domain Name and subsequently redirecting those confused users to third party websites. Moreover, the Respondent's use of the Disputed Domain Name negatively affects the Complainant's online presence and disrupts the Complainant's business.

B. Respondent

In the Respondent's email of April 9, 2024, the Respondent acknowledged the Complaint and stated that it had deleted the Respondent's Website. However, the Respondent did not address, nor did he reply to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 by the Respondent 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 the Complainant's Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's Trademark WHEELZCASINO is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical to the mark WHEELZCASINO for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Disputed Domain Name is confusingly similar to the Complainant's Trademark WHEELZ. Although the addition of other terms, in this case "casino", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark WHEELZ for the purposes of the Policy, as the trademark remains recognizable within the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.8. Furthermore, it is well established that the gTLD, ".com" in this case, may be disregarded. [WIPO Overview 3.0](#), section 1.11.1.

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.

Drawing from the Respondent’s failure to reply to the Complainant’s contentions, the Panel considers that the Respondent’s email dated April 9, 2024, does not satisfactorily address the Complainant’s arguments under this element of the Policy.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name. There is no evidence to suggest that the Respondent’s use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or be regarded as legitimate noncommercial or fair use.

The Respondent would likely not have adopted the Complainant’s Trademark if not for the purpose of creating an impression that the Disputed Domain Name is associated with, or originates from, the Complainant.

Moreover, the Disputed Domain Name, is an identical reproduction of the Complainant’s WHEELZCASINO trademark. Thus, the Disputed Domain Name carries a high risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#). This risk is further increased given the Complainant’s established brand in the casino gaming industry.

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 it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated the Complainant’s Trademark in its entirety. Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainant’s contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

The Disputed Domain Name resolves to an inactive website. However, panels have nonetheless found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the

failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's Trademark, as well as the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

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 <wheelz-casino.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: May 17, 2024