

## **ADMINISTRATIVE PANEL DECISION**

Gameloft S.E v. Domain Privacy, Domain Name Privacy Inc  
Case No. D2024-1211

### **1. The Parties**

The Complainant is Gameloft S.E, France, represented internally.

The Respondent is Domain Privacy, Domain Name Privacy Inc, Cyprus.

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

The disputed domain name <gameloft.online> is registered with Communigal Communications Ltd., (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 20, 2024. On March 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 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 (Unknown Registrant, DOMAIN NAME PRIVACY INC.) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 25, 2024, providing the registrant's contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant did not file an amendment to the Complaint or an amended Complaint.

The Center verified that 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 April 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 30, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on May 6, 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 an international publisher and developer of digitally distributed video games and was founded in 1999. It has released more than two hundred games, several of which have been downloaded by millions of players internationally. It owns various trade mark registrations for its GAMELOFT mark including United States of America trade mark number 2474984 registered on August 7, 2001, and European Union trade mark number 002473767 registered on March 13, 2006. It also owns various domain names that incorporate its GAMELOFT mark including <gameloft.com> which was registered in 1999 and from which it operates its main website.

The Respondent registered the disputed domain name on February 13, 2024. The disputed domain name resolves to a blank page website.

#### **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 wholly incorporates and is identical to its registered trade mark for GAMELOFT and that the Top-Level Domain ".online" does not prevent a finding of identity or confusing similarity.

The Complainant says that it has not authorised the Respondent to use its mark or the disputed domain name and that the Respondent is not making any legitimate or fair use of the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant asserts that the Virus Total public registry has tested the page to which the disputed domain name resolves and has concluded that it is connected to an IP address with a known bad reputation. The Complainant suggest that this website constitutes a potential threat to the cybersecurity of users, lured into believing that the website is related to an official Gameloft service, while it is in fact connected to a malicious IP address and that this has the potential to damage the Complainant's reputation and credibility.

As far as bad faith is concerned, the Complainant says that its mark and business and online presence and reputation pre-dates the registration of the disputed domain name and that the Respondent must have been aware of its mark at that date. It submits that its GAMELOFT mark is distinctive and is very unlikely to have been chosen coincidentally and that in registering the disputed domain name the Respondent sought to take unfair advantage of the reputation attaching to the Complainant's mark.

The Complainant says that the fact that the disputed domain name leads to an inactive/blank page is an act of passive holding, which in the circumstances amounts to use in bad faith.

##### **B. Respondent**

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

## **6. Discussion and Findings**

### **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 trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the 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.

Based on the number of games and obviously popularity of them and of the Complainant's games distributed under the GAMELOFT mark and the press coverage provided in evidence the Panel finds that the mark enjoys a considerable international reputation. The Complainant has asserted that it has not authorised the Respondent to use its mark or the disputed domain name and that the Respondent is not making any legitimate or fair use of the disputed domain name in connection with a bona fide offering of goods or services. In circumstances that there is no evidence of use other than the disputed domain name resolving to a blank page website and in default of any explanation from the Respondent, the Panel agrees with the Complainant that this does not amount to a bona fide offering of goods or services.

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.

The Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

In the present case, the Panel notes that the disputed domain name was registered in 2024, many years after the Complainant's registration of its trade mark rights. As noted under Part B above the Panel finds that the Complainant's GAMELOFT mark enjoys a considerable international reputation and appears to be a coined term. In addition and as previously noted the Complainant's online business under this mark appears

to be very established and well reputed internationally. In these circumstances the Panel finds that it is more likely than not that the Respondent was well aware of the Complainant's mark and business when it registered the disputed domain name.

Panels have found that the non-use of a domain name including a blank or "coming soon" page, 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement) and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's mark and the degree of reputation attaching to it, the failure of the Respondent to respond or to explain its registration and use, the Respondent's failure to disclose its identity upon registration of the disputed domain name and that, in the circumstances, it is implausible that the Respondent would put the disputed domain name to good use. Accordingly, the Panel finds that the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy and that the Respondent has used the disputed domain name in bad faith.

Based on this conclusion, the Panel does not need to make any finding in relation to the Complainant's allegation that the page to which the disputed domain name resolves is connected to an IP address with a known bad reputation. The Panel notes that the evidence submitted in this regard is inconclusive.

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 <gameoft.online> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: May 16, 2024