

ADMINISTRATIVE PANEL DECISION

Gameloft S.E. v. Domain Privacy, Domain Name Privacy Inc
Case No. D2024-1729

1. The Parties

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

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

2. The Domain Name and Registrar

The disputed domain name <gameloft.club> 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 April 24, 2024. On April 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 29, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 2024, providing the registrant and 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 nor amended the 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 May 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 5, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on June 14, 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 founded in 1999. Throughout the years, the Complainant has released more than two hundred games, and several have been downloaded by millions of players.

The Complainant has provided evidence of ownership of several trademark registrations for the word mark GAMELOFT, including the following (Annexes 6 through 12 to the Complaint):

- European Union trademark registration No. 2473767, registered on March 13, 2006, in classes 9, 16, 28, 35, 38, 41 and 42;
- International trademark registration No. 907208, registered on October 31, 2006, in classes 9, 28, 38 and 41;
- United States trademark registration No. 2474984, registered on August 7, 2001, in international class 38;
- United States trademark registration No. 2635895, registered on October 15, 2002, in international class 9;
- United States trademark registration No. 2609489, registered on August 20, 2002, in international class 35;
- United States trademark registration No. 3364698, registered on January 8, 2008, in international class 38;
- United States trademark registration No. 4564254, registered on July 8, 2014, in international class 9.

The Complainant is also the owner several domain names encompassing GAMELOFT, including <gameloft.com>, registered on April 8, 1999, and used by the Complainant to promote its products and services under the trademark GAMELOFT.

The disputed domain name <gameloft.club> was registered on April 10, 2024, and, according to the Complainant, has not been pointed to an active website. At the time of the drafting of this Decision, the disputed domain name resolves to a parking page with sponsored links also related to games and to third-party software developers.

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 <gameloft.club> is identical to the trademark GAMELOFT in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the generic Top Level Domain ("gTLD") ".club", which is insufficient to prevent a finding of confusing similarity.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is in no way sponsored or related with the Complainant and has never been allowed by the Complainant to use its marks in any way including for the registration of the disputed domain name.

The Complainant further contends that considering the disputed domain name does not resolve to an active website, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name or a bona fide offering of goods or services and submits that, on the contrary, it appears that the Respondent has registered the disputed domain name with the intent of attracting Internet users to its website, causing a likelihood of confusion as to the affiliation with the Complainant and its services.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent could not ignore the Complainant and its GAMELOFT mark at the time of registration considering the Complainant's prior trademark registrations, which long predate the registration of the disputed domain name, the Complainant's prior use of domain names identical to GAMELOFT, the reputation of the Complainant and its position in the gaming market. The Complainant also notes that the Respondent's unauthorized registration of the disputed domain name identical to the Complainant's trademark demonstrates the Respondent's intent to take undue advantage of the GAMELOFT mark.

The Complainant further asserts that the Respondent's passive holding of the disputed domain name amounts to bad faith use, resulting in a serious disruption of the Complainant's commercial, marketing and public relations activities.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary procedural issue

The Panel notes that the Complaint was filed against REDACTED FOR PRIVACY and that the Complainant indicated in the Complaint, section II.B.6, that the Respondent's identity was unknown due to the fact that a privacy service provider was used during the registration of the disputed domain name.

After completing the Registrar Verification, the Center sent the Notice of Registrant information to the Parties indicating that, according to the Registrar-provided registrant information, the disputed domain name is registered by Domain Name Privacy Inc. and inviting the Complainant to submit an amended Complaint to reflect such information. The Complainant, however, did not submit an amended Complaint or an amendment to the Complaint. In this regard, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.4.1 states as follows:

"Noting the definition of 'respondent' in the UDRP Rules, where underlying registrant information is disclosed/provided to the complainant, the complainant chooses not to amend its complaint, and instead to retain the WhoIs-listed registrant as the named respondent, the WIPO Center would not normally treat this as a complaint deficiency. Complainants do however tend to amend their complaints in such scenarios to reflect any disclosed underlying registrant information, in particular to avoid raising possible decision enforcement questions by the registrar."

Considering the Registrar-provided registrant information corresponds to the contact information of a WhoIs privacy service provider, and since the Complainant elected as mutual jurisdiction the courts at the location of the concerned registrar, the Panel will now proceed to examine the merits of the case.

6.2. Substantive issues

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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 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. Indeed, the Complainant has provided evidence of ownership of valid trademark registrations for GAMELOFT in several jurisdictions.

The entirety of the mark is reproduced within the disputed domain name without variations. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Moreover, the gTLD ".club" can be disregarded under the first element confusing similarity test, being a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.

Therefore, 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 on record, there is no relationship between the Complainant and the Respondent, and the Complainant has not authorized the Respondent to register or use its trademark or the disputed domain name.

Moreover, there is no element from which the Panel could infer that the Respondent - identified as a Whois privacy service provider according to the information provided by the concerned Registrar to the Center after the filing of the Complaint - may have rights over the disputed domain name or be commonly known by the disputed domain name.

According to the Complainant, the disputed domain name is resolving to an inactive website. However, the Panel notes that, at the time of the drafting of the Decision, the disputed domain name resolves to a webpage displaying several sponsored links related to games and software development services, which then redirect users to websites of the Complainant's competitors. The Panel finds that such use of the disputed domain name does not amount to a bona fide offering of goods or services or a legitimate noncommercial or fair use.

Prior panels have found that the use of a domain name to host a parked page comprising pay-per-click links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

In addition to the above, the Panel finds that the disputed domain name, being identical to the Complainant's prior registered trademark, which is distinctive and has gained reputation in its sector, is inherently misleading. UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, 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, in light of: i) the prior registration and use of the Complainant's trademark GAMELOFT in connection with the Complainant's gaming services; ii) the distinctiveness of the GAMELOFT mark and its reputation in its sector; and iii) the identity of the disputed domain name with the Complainant's trademark; the Respondent was more likely than not aware of the Complainant's trademark at the time of registration. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

At the time of filing the Complaint, the disputed domain name did not resolve to an active website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes [the distinctiveness or reputation of the Complainant's trademark, and 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.

The Panel also notes that the current use of the disputed domain name in connection with a pay-per-click page with sponsored links related to the Complainant's sector supports the conclusion that the Respondent was indeed aware of the Complainant's trademark and intended to target the Complainant and its GAMELOFT mark. [WIPO Overview 3.0](#), section 3.2.2.

The Panel further finds that, by pointing the disputed domain name to a webpage providing links referring to the Complainant's field of activity but redirecting users to websites promoting services of the Complainant's competitors, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website and the websites linked thereto, according to paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has also 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 <gameloft.club> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: June 30, 2024