

ADMINISTRATIVE PANEL DECISION

Elec Games Ltd. v. Nikita KOLESNIKOV

Case No. D2024-1945

1. The Parties

The Complainant is Elec Games Ltd., Malta, represented by Abion AB, Sweden.

The Respondent is Nikita KOLESNIKOV, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <boost-casino.bet> is registered with NETIM SARL (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 9, 2024. On May 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 11, 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 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 amended Complaint on May 16, 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”).

The Respondent sent an email communication to the Center on May 19, 2024. Accordingly, the proceedings were suspended on May 30, 2024, pursuant to settlement discussions between the Parties. The proceedings were reinstated on July 13, 2024.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2024. The Center commenced the panel appointment process on August 27, 2024.

The Center appointed Torsten Bettinger as the sole panelist in this matter on August 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 by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a Malta based company specialized in the development and distribution of electronic gaming experiences.

The Complainant provided evidence of ownership of numerous trademark registrations for BOOST CASINO in many jurisdictions throughout the world, including but not limited to the following:

- European Union Trademark Registration No. 017754681 BOOST CASINO, registered on May 18, 2018, Classes 9, 38, and 41;
- United Kingdom Trademark Registration No. 00917754681 BOOST CASINO registered on May 18, 2018, Classes 9, 38, and 41;
- Norway Trademark Registration No. 201801536 BOOST CASINO, registered on January 30, 2018, Class 41.

The disputed domain name was registered on February 8, 2024. At the moment of writing of this decision the disputed domain name does not resolve to an active website.

The Complainant sent a cease-and-desist letter to the Respondent on April 12, 2024. The Respondent did not reply to the Complainant's letter.

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.

With regard to the requirement of "identity or confusing similarity between the trademark and the domain name" pursuant to paragraph 4(a)(i) of the Policy, the Complainant submits that the Complainant's trademark is identical to the Complainant's registered BOOST CASINO trademark rights apart from the addition of the Top-Level Domain .bet.

With regard to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submitted that:

- the Respondent does not have any rights to the BOOST CASINAO trademarks, nor is the Respondent a licensee of the Complainant;
- the Complainant has not given the Respondent any permission to register or use the trademark as a domain name;
- there is no evidence of any legitimate use of the disputed domain name for any activity or business related to "boost casino"
- there is no evidence that the Respondent is commonly known by the disputed domain name;
- there is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name;
- there is no evidence of any actual or contemplated good-faith use of the disputed domain name.

Finally, with regard to the disputed domain name having been registered and being used in bad faith, the Complainant argues that:

- the Complainant's trademarks were registered well before the Respondent became the owner of the disputed domain name;
- the Complainant has been using the BOOST CASINO trademarks long before the disputed domain name was registered and it is therefore obvious that the Respondent was aware of the Complainant's trademarks and business when registering the disputed domain name;
- the Respondent is trying to take advantage of the trademarks to draw traffic to the website and to commercially profit from the likelihood of confusion between the trademark and the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements:

- (i) the disputed domain name is 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 name; and
- (iii) 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 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 trademark 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 essentially identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Rather, there is no evidence of the use of the disputed domain name, as it has simply resolved to a parked website from the apparent hosting provider. Such use does not represent any bona fide offering of goods and services nor does it confer rights or legitimate interests upon the Respondent, given that the disputed domain name is essentially identical with the Complainant's trademark BOOST CASINO and thus carries a high risk of implied affiliation. A respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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 finds that the Respondent was aware of the Complainant's trademark as the disputed domain name is essentially identical with the Complainant's trademark and was registered 6 years after the registration of the Complainant's trademark. Further, the Respondent appears to have engaged in a pattern of bad faith registrations of domain names targeting the Complainant's trademark. See, for example, *Elec Games Ltd. v. Nikita KOLESNIKOV*, WIPO Case No. [D2024-1994](#); *Elec Games Ltd. v. Nikita KOLESNIKOV*, WIPO Case No. [D2024-1987](#)).

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and is being 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.

The disputed domain name resolves to the a parked website provided by the hosting provider. The fact that there is no evidence that the disputed domain name has not yet been actively used does not prevent a finding of bad faith use.

Although the circumstances listed in paragraph 4(b) are all phrased in terms of affirmative actions by the Respondent, it is by now well accepted that the passive holding of a domain name, in certain circumstances, can constitute bad faith use under the Policy. (See, e.g., *Teachers Insurance and Annuity Association of America v. Wrecks Communications Group*, WIPO Case No. [D2006-0483](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also [WIPO Overview 3.0](#), section 3.3.).

While panels 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.

Based on the record in this proceeding and prior UDRP panels findings in agreement, the Panel is satisfied that the Complainant's trademark is distinctive. ("Although the trademark BOOST CASINO consists of the

adjunction of two common English words, it creates, because of the unusual combination of each of its constituent elements in relation to the goods and services covered, an impression sufficiently far removed from that produced from the mere combination meanings lent by those elements. Therefore, in the Panel's view, this trademark is endowed with distinctive character". *Elec Games Ltd. v. Nikita KOLESNIKOV*, WIPO Case No. [D2024-1994](#).)

Given that the Respondent has engaged in a pattern of bad faith registration targeting the Complainant, the Panel finds such bad faith conduct reflects the Respondent's bad faith registration and use of the disputed domain name in accordance with paragraph 4(b)(ii) of the Policy.

Furthermore, the Respondent has not replied to the Complainant's cease and desist letter nor provided any evidence of actual or contemplated good faith use of the disputed domain name.

The Panel therefore finds that the circumstances, as described above, show that the Respondent registration and passive holding of the disputed domain name equals a bad faith registration and use of the disputed domain name and therefore the Complainant 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 <boost-casino.bet> be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: September 12, 2024