

ADMINISTRATIVE PANEL DECISION

ZeniMax Media Inc. v. Jason King
Case No. D2024-2538

1. The Parties

The Complainant is ZeniMax Media Inc., United States of America (“United States”), represented by Kisch Global Limited, South Africa.

The Respondent is Jason King, China.

2. The Domain Name and Registrar

The disputed domain name <falloutplush.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2024. On June 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 24, 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 June 25, 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 June 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 17, 2024.

The Center appointed Andrea Mondini as the sole panelist in this matter on July 22, 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 worldwide publisher of interactive entertainment and is part of the Microsoft Corporation group of companies. The Complainant is best known for its action role-playing game franchises, such as “Fallout”.

The Complainant holds several domain names containing the term “fallout”, among them <fallout.bethesda.net> which hosts its main website.

The Complainant owns numerous trademark registrations in several jurisdictions, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS
FALLOUT	International Registration	905457 and 905457A	November 2, 2006	9, and 41
FALLOUT	International Registration	1488042 and 1488042A	November 2, 2018	41, and 42
FALLOUT	United States	7169894	September 19, 2023	41

Because the Respondent did not file a Response, not much is known about the Respondent.

The disputed domain name was registered on June 7, 2024.

According to the evidence submitted with the Complaint, the disputed domain name resolved to an online shop allegedly selling and offering third party products and accessories of other commercial origin that display the FALLOUT trademark and use copyright-protected photographs without authorization, presenting itself as an official licensee of the Complainant.

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 as follows:

The Complainant’s video game “Fallout” was first released in 1997 and received awards from numerous gaming sites and publications. In 2024, a television series based on “Fallout” premiered, and as a result the number of players of the “Fallout” video game series surged to 5 million players in one day. To date, the “Fallout” video game series and original merchandising articles have been almost exclusively distributed through the Complainant’s official stores and websites and selected authorized distributors and retailers.

The disputed domain name is confusingly similar to the FALLOUT trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the descriptive term “plush” is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark FALLOUT has been extensively used to identify the Complainant and its products. The Respondent has not been authorized by the Complainant to use this trademark,. The disputed domain name currently resolves to an online shop selling and offering third party products and accessories of other commercial origin under the FALLOUT trademark and that contains copyright-protected photographs without the Complainant's authorization. Accordingly, the Respondent is monetizing the disputed domain name by trading on the goodwill associated with the FALLOUT trademark to draw Internet users to the Respondent's website. On its website, the Respondent is falsely purporting to be "the Officially Licensed Fallout Stuffed Animal Store". Such use of the disputed domain name does not constitute any legitimate bona fide sale of goods or services or legitimate non-commercial or fair use.

The disputed domain name was registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well-known trademark FALLOUT at the time it registered the disputed domain name.

The Respondent is using the disputed domain name in bad faith to operate an online shop selling and offering unauthorized third-party products and accessories under the trademark FALLOUT, using the Complainant's logos and copyrighted images, and falsely purporting to be licensed by the Complainant. The impression created by this website would lead consumers to believe that the Respondent is somehow associated with the Complainant, when in fact it is not.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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 Panel finds the entirety of the mark is reproduced within the disputed domain name.

Although the addition of other term such as here "plush" may bear on assessment of the second and third elements, the Panel finds that in the present case the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The addition of the generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name is a standard registration requirement and as such may be disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [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 for a complainant to prove that 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 Complainant has shown that the Respondent posted a website under the disputed domain name using the Complainant’s trademark and copyrighted materials and purporting to offer the Complainant’s products. The Complainant alleges that the products offered by the Respondent are unauthorized third -party products. The Panel is not in a position to verify this allegation. But irrespective of whether these products are genuine or not, the Respondent’s use of these disputed domain name does not meet, in any event, the requirements of the “Oki Data Test” established in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), because the website did not disclose the lack of relationship between the Respondent and the Complainant. [WIPO Overview 3.0](#), section 2.8.

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 also notes that, currently, the disputed domain name resolves to a parked page displaying pay-per-click (“PPC”) links, which also cannot be considered as evidencing any rights or legitimate interests on behalf of the Respondent. [WIPO Overview 3.0](#), section 2.9.

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.

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

In the view of the Panel, noting that that the Complainant's trademark predates the registration of the disputed domain name, and considering that the disputed domain name resolved to a website featuring the Complainant's logo and depictions of its products, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well-known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolved to an online shop selling and offering products and accessories under the trademark FALLOUT and thereby using the Complainant's logos and copyright-protected images and falsely alleging a relationship with the Complainant. The impression given by this website would cause consumers to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds that by using the disputed domain name, the Respondent has 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 in the sense of Policy, paragraph 4(b)(iv).

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy with regard to the disputed domain name.

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 <falloutplush.com> be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: August 5, 2024