

## **ADMINISTRATIVE PANEL DECISION**

Rootz Ltd v. Beverly Shevchenko  
Case No. D2024-2596

### **1. The Parties**

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

The Respondent is Beverly Shevchenko, Canada.

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

The disputed domain name <caxino-casino-nz.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 25, 2024. On June 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 26, 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, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 filed an amendment to the Complaint on July 10, 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 July 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on August 9, 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 company operating online casinos in countries around the world, including New Zealand, under the CAXINO brand. It is the proprietor of several trademark registrations, including the following:

- European Union Trade Mark No. 018017682 for CAXINO (word mark), registered on October 7, 2020, for services in class 41;
- European Union Trade Mark No. 018211738 for CAXINO (device mark), registered on July 7, 2020, for services in class 41;
- International Trademark No. 1552795 for CAXINO (word mark), registered on February 19, 2020, for services in class 41.

The Complainant operates its primary business website at the domain name <caxino.com>. Its service for customers in New Zealand is available at the web address “www.caxino.com/nz”.

The disputed domain name was registered on May 17, 2024. At the time of this Decision, it did not resolve to an active 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 states that it is an established casino operator that operates several top casino titles. It has been recognized as a leading casino operator in Malta. The Complainant contends that the disputed domain name comprises the Complainant's CAXINO mark followed by descriptive terms that refer to New Zealand, where the Complainant operates an online casino. The Respondent has no rights in the CAXINO mark and is not authorized by the Complainant to use it. The disputed domain name is being used to divert Internet traffic to the Respondent's website.

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

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (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 Respondent has registered and is using the disputed domain name in bad faith.

Under 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”.

### **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 CAXINO mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “casino” preceded and followed by a hyphen, and the geographical designation for New Zealand “nz”) may bear on assessment of the second and third elements, the Panel finds 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 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.

The Panel notes there is no evidence that the Respondent has used the disputed domain name in connection with a bona fide offering of goods or services, nor that the Respondent has been commonly known by the disputed domain name. There is no evidence that the Respondent has made a legitimate noncommercial or fair use of the disputed domain name. Moreover, the composition of the disputed domain name, which reflects the Complainant’s CAXINO trademark together with terms referring to the Complainant’s services in New Zealand, carries a risk of implied affiliation to the Complainant that cannot constitute fair use. [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.

The disputed domain name was registered several years after the Complainant registered its CAXINO trademark. It reflects the Complainant's mark in its entirety plus terms referring to the Complainant's business, therefore implying a connection to the Complainant. Under these circumstances, the Panel finds that the disputed domain name was registered in bad faith. [WIPO Overview 3.0](#), section 3.1.

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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the 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 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 <caxino-casino-nz.com> be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: August 23, 2024