

ADMINISTRATIVE PANEL DECISION

Rootz LTD v. Viktor Temnyy Viktor Temnyy
Case No. D2024-3634

1. The Parties

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

The Respondent is Viktor Temnyy Viktor Temnyy, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <spinz-casino.com> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 8, 2024. On September 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 10, 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 (Whois Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 11, 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 September 15, 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 September 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 7, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on October 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. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel has reached this conclusion in part because the Panel recognizes that the Center employed all reasonably available means calculated to achieve actual notice to the Respondent.

In particular, the Center successfully sent the Notification of the Complaint to the email address disclosed for the Respondent by the Registrar in its Registrar Verification Response under the disputed domain name. There is no indication that the email notification has not been successfully delivered.

Furthermore, the Panel notes that, as specified by the Rules at paragraph 2 (a) "Communications", the Center sent the Written Notice of the Complaint to the Respondent's address in Ukraine, as per the information disclosed by the Registrar. Postal notification is reported to have been registered for collection on October 7, 2024.

Finally, the Panel notes that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith.

The Panel therefore concludes that the Respondent has been given a fair opportunity to present his case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant is the registered owner of many trademarks for SPINZ worldwide, e.g. European Union trademark registration no. 018401262 SPINZ (word) registered on June 12, 2021 for services in class 41.

It results from the Complainant's undisputed allegations that it is an igaming company based in Malta. It is licensed and regulated by the Malta Gaming Authority and operates several online casinos offering various online games of chance, one of the Complainant's casinos is Spinz.

The Complainant uses the domain name <spinz.com> to resolve to a website in which it operates the online casino "Spinz". In addition, it uses SPINZ brand in connection with online casino services.

The disputed domain name <spinz-casino.com> was registered on November 1, 2023 and currently resolves to webpage purportedly showing a "Spinz Casino Review 2024", describing "Pros & Cons of Spinz Casino" (prominently displaying the Complainant's SPINZ trademark and logo) and containing links which redirect to a competing online casino, in direct competition with Complainant's services.

6. 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 is confusingly similar to the Complainant's trademark since it reproduces its trademark SPINZ in its entirety with the fully descriptive term "casino".

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent has received no permission or authorization to use the Complainant's trademark SPINZ. The Respondent is opportunistically using the Complainant's trademark in order to attract Internet users to its website and has been using the disputed domain name to divert Internet traffic to its website. The links on the website to which the disputed domain name resolves direct to a competing online casino.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent has registered the disputed domain name, with an intent to capitalize on the goodwill of the Complainant. Considering the complete reproduction of the trademark SPINZ in connection with the term "casino" in the disputed domain name, it is likely to intend to confuse potential customers; therefore, it can be inferred that the disputed domain name was selected to mislead Internet users. The Respondent is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to their website by creating a likelihood of confusion with the SPINZ mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The use of links by the Respondent on the website related to the disputed domain name, constitutes a clear attempt to generate a commercial gain particularly by misleading online users with the disputed domain name and subsequently redirecting those online users to third party websites, which are in competition with the Complainant.

B. Respondent

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

7. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "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 requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (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 disputed domain name has been registered or is being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 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" (and a hyphen), may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 that the disputed domain name is clearly constituted by the Complainant's registered trademark SPINZ and the term "casino", which clearly refer to the Complainant's field of activity, tending to suggest sponsorship or endorsement by the Complainant.

The website to which the disputed domain name currently resolves is described as showing a review of the Complainant's online casino: "Spinz Casino Review 2024", describing "Pros & Cons of Spinz Casino" (prominently displaying the Complainant's SPINZ trademark and logo). On this regard, the Panel notes that to support fair use under UDRP paragraph 4(c)(iii), the respondent's criticism must be genuine and noncommercial (see [WIPO Overview 3.0](#), section 2.6.1) and likewise a respondent's fan site must be active, genuinely noncommercial, and clearly distinct from any official complainant site, [WIPO Overview 3.0](#), section 2.7.1.

This is not the case in the case at hand. The Panel rather holds that it is primarily a pretext for commercial activity/cybersquatting, since the links contained in the webpage redirect to a competing online casino in direct competition with the Complainant's services.

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 the disputed domain name resolves to a website displaying the Complainant's trademark and logo, and purportedly showing a review of the Complainant's online casino "SpinZ", describing its "Pros & Cons". For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

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 this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the nature of the disputed domain name (incorporating the Complainant's mark plus the addition of a descriptive term relevant to the Complainant's field of activity);
- (ii) the content of the website to which the disputed domain name directs, displaying the Complainant's trademark and logo, and containing links which redirect to a competing online casino, in direct competition with the Complainant's services, while purportedly showing a review of the Complainant's online casino "SpinZ", describing its "Pros & Cons".
- (iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name.
- (iv) the Respondent's use of a privacy service to conceal its identity.

The Panel finds that the Complainant has established the third element of the Policy.

8. 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 <spinz-casino.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: October 28, 2024