

ADMINISTRATIVE PANEL DECISION

Elec Games Ltd. v. David Weinstein

Case No. D2024-4065

1. The Parties

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

Respondent is David Weinstein, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <bigboost-casino.net> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 3, 2024. On October 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 3, 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 Complainant on October 4, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 7, 2024.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on October 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 31, 2024.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on November 6, 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.

On December 2, 2024, the Panel issued a Procedural Order No. 1, requesting the Parties to comment on their respective relationship with the domain name <bigboost-casino.com>, and/or <bigboost.com> along with any claimed rights in BIG BOOST for purposes of this proceeding. . Complainant provided a response to the Procedural Order on December 9, 2024. Respondent did not submit any response.

4. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated fairly and that each Party is given a fair opportunity to present its case.

In this case, Respondent appears to be based in Ukraine, a country that is currently at war. From a review of the available record, although the Center's Written Notice of the dispute could not be delivered to Respondent's physical address, and there is nothing in the record showing that the demand letter sent to the United States of America based Registrar by Complainant's representative was ever delivered or communicated to Respondent, the Panel notes that the Complaint appears to have been delivered to Respondent's email address provided by the Registrar. While it is not altogether clear whether Respondent's physical address is an actual address, based on the totality of the circumstances, the Panel accepts that notice of the proceeding was given to Respondent.

5. Factual Background

Complainant, Elec Games Ltd., is a company that develops and distributes electronic gaming experiences. Complainant owns the mark BOOST CASINO which is used for an online casino and gaming website at "www.boostcasino.com" that is operated by Complainant's sister company called Ninja Global OÜ. Complainant owns trademark registrations for its BOOST CASINO mark in the European Union (Registration No. 017754681, which issued to registration on May 18, 2018), the United Kingdom (Registration No. UK00917754681, which issued to registration on May 18, 2018), and Norway (Registration No. PS 201801536, which issued to registration on September 30, 2022).

Respondent, as already noted, appears to be based in the Ukraine. The disputed domain name was registered on September 6, 2024. It has been used, and currently is being used, with a Registrar pay-per-click page generated through Sedo Domain Parking.

Complainant, through its representative sent a demand letter to the Registrar regarding the disputed domain on September 19, 2024. There does not appear to have been a response or any follow up communications.

6. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that it is well known company that is active "within the sectors of online based games, betting and casino services", and that it provides many games under the BOOST CASINO mark through PCs, tablets, and mobile devices.

Complainant asserts that the disputed domain name is confusingly similar to its BOOST CASINO mark, as “the word element <boostcasino> is fully incorporated in the disputed domain name”.

Complainant maintains that Respondent does not have legitimate interests in the disputed domain name as Respondent: (i) is not a licensee of Complainant and has not been given any rights in the BOOST CASINO mark; (ii) is not commonly known by the disputed domain name, and; (iii) had not made any legitimate use of the disputed domain name. In that regard, Complainant contends that the website at the disputed domain name “appears to be designed to deceive visitors into believing that it is associated with or endorsed by the Complainant”.

Lastly, Complainant argues that Respondent has registered and used the disputed domain name in bad faith as the disputed domain name was registered well after Complainant registered its BOOST CASINO mark and that, as such, Respondent was likely “aware of the Complainant's trademark and business”.

Complainant further argues that because it is a well-known company in the online gaming industry it is not conceivable that Respondent chose the disputed domain name without knowledge of Complainant and its trademark. Complainant also asserts that Respondent is using the disputed domain name to draw traffic to the website at the disputed domain name for Respondent's profit. Finally, Complainant maintains that Respondent's failure to respond to Complainant's demand letter is further evidence of Respondent's bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

C. Procedural Order and Response Thereto

On December 2, 2024, the Panel issued a Procedural Order concerning the parties' relationship to another online casino gambling and gaming website using the name BIG BOOST. The Panel had taken it upon itself to visit the web page posted at the disputed domain name. In doing so, the Panel inadvertently entered the domain name <bigboost-casino.com> and found that it resolved to an online casino website operated by an entity in Curacao that appeared unrelated to Complainant, and which also offered online casino games and gambling. Notably, this website featured the name and mark BIG BOOST and promoted a website at “www.bigboost.com” which, in turn, offered casino games through websites targeted to consumers in Canada, Finland, New Zealand, Norway, and India.

Complainant provided a response to the Procedural Order in which Complainant notes that “Complainant has no association with the operations of <bigboost-casino.com> and/or <bigboost.com>”. Complainant reiterated its rights in the name and mark BOOST CASINO and argues that the addition of the word “big” at the head of the disputed domain name does not distinguish the disputed domain name. Complainant maintains that the use of “boost” and/or “boost casino” dilutes Complainant's rights in its BOOST CASINO mark and misleads consumers.

Complainant also asserts that Respondent has acted in bad faith and targeted Complainant, as Complainant was successful in another recent proceeding against Respondent in a UDRP proceeding entitled *Elec Games Ltd. v. David Weinstein*, WIPO Case No. [D2024-4076](#), involving the domain name <boostcasino-fi.com>. Complainant also makes reference to a pending UDRP proceeding initiated by Complainant involving the domain name <bigboostcasinos.net> registered by another respondent, as further evidence of targeting of Complainant and Respondent's bad faith.

7. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) 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.

Complainant has shown rights in its BOOST CASINO mark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. As the BOOST CASINO mark is recognizable in the disputed domain name, albeit with a hyphen between "bigboost" and "casino", the disputed domain name is confusingly similar for purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the term "big" at the head of the disputed domain name may bear on the 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 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.

Here, Complainant's case that Respondent lacks legitimate interests mostly rests on its ownership of trademarks in the European Union, the United Kingdom, and Norway for its BOOST CASINO mark, its claim that Complainant is well-known in the online gaming industry, a claim that the website associated with the disputed domain name "appears designed to deceive visitors believing that it is associated with or endorsed by Complainant", that the disputed domain name resolves to a page with pay per click links and that Respondent has lost a prior UDRP proceeding involving the domain name <bostcasino-fi.com>.

While the Panel recognizes that Complainant has trademark rights in BOOST CASINO in the European Union, the United Kingdom, and Norway, it is not altogether clear what the extent of those rights might be. Complainant claims that its sister company operates an online gaming and casino website at "www.boostcasino.com", but provided little details or evidence on that use, the reputation that the website might enjoy, or the claimed renown of the BOOST CASINO mark. Indeed, in the demand letter Complainant sent to the Registrar at an "abuse" email address concerning the disputed domain name, no mention of Complainant's "www.boostcasino.com" website is made and no evidence is provided to support a claim that "Complainant is a well-known company and the holder of several reputed trademarks with a substantial and widespread reputation within the online gaming industry".

Additionally, the webpages that have appeared at the disputed domain name appears to be a Registrar generated parked page using the Sedo Domain Parking service. Notably, at the time of the filing of the Complaint, none of the pay per click links on the pages submitted relate to gaming, casinos, gaming or Complainant. So while that Registrar generated page could arguably suggest that Respondent is seeking to profit from the disputed domain name, the fact that the disputed domain name was recently registered and that none of the links concern Complainant specifically or its casinos or gaming offerings does create an issues as to whether Respondent was in fact targeting Complainant, per se, as opposed to another party, namely the operators of websites offering online casino gambling and other gaming opportunities at <www.bigboost-casino.com> and <www.bigboost.com> under the name and mark BIG BOOST. Notably, Complainant admits that is has no connection with those domain names, the associated websites and the operations of these seemingly similar services using arguably similar names.

That being said, the Panel notes that Complainant has prevailed in another matter against Respondent involving the domain name <bostcasino.fi>. In that case, the Panel found that Respondent was clearly targeting Complainant.

The problem confronting the Panel here is the fact that the disputed domain name is not for BOOST CASINO alone, but consists of "BIGBOOST-CASINO", a name and mark of a competing online gambling website that appears to coexist with Complainant. However, given Respondent's complete silence in this proceeding it appears to the Panel that Respondent has more than likely registered domain names to take advantage of rights in both the BOOST CASINO and/or BIG BOOST names and marks. Complainant provides little evidence that Respondent was in fact seeking to take advantage of the BOOST CASINO mark per se. Nevertheless, as BOOST CASINO is clearly recognizable in the disputed domain name, and given Respondent's prior conduct, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name.

C. Registered and Used in Bad Faith

As noted above, given the many evidentiary gaps in Complainant's case, the existence of a rival casino gaming group using the name and mark BIG BOOST, what is before the Panel creates an open issue as to whether Respondent, in this matter, was targeting Complainant specifically with the disputed domain name as opposed to the rival online casino group using BIG BOOST. Contrary to what Complainant argues, the dominant portion of the disputed domain name is "BIGBOOST" which is at the head of the disputed domain name, and not "BOOST CASINO". BIGBOOST is separated from the word "casino" by a hyphen, thus emphasizing BIGBOOST. Thus, while the disputed domain name contains BOOST CASINO it does not on its face establish that Respondent has targeted Complainant, as opposed to the coexisting rights of another party. Had the domain name consisted of just "BOOSTCASINO", as in Complainant's prior case against Respondent, Complainant would have a strong argument that Respondent was specifically targeting Complainant. But as the dominant component of the disputed domain name is "BIGBOOST", a name and mark that appears to be owned and used by a rival online casino and gaming group, it seems to the Panel that Respondent may have targeted the rival online casino gambling group in this instance and not Complainant.

That being all said, the Panel nevertheless believes that it is more likely than not that Respondent was acting opportunistically and in bad faith when he registered and used the disputed domain name. What is lacking in the record submitted is evidence that the party being targeted is in fact Complainant and not another party who may also have an interest in the disputed domain name that incorporates the name and mark BIGBOOST, the leading element of the disputed domain name. As such, while the Panel concludes that Respondent has registered and used the disputed domain name in bad faith, the Panel is not prepared to award the disputed domain name that consists of what is both the Complainant's mark and another party's name and trademark to Complainant, and will instead order the cancellation of the disputed domain name.

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 <bigboost-casino.net> be cancelled.

/Georges Nahitchevansky/
Georges Nahitchevansky
Sole Panelist
Date: December 13, 2024