

ADMINISTRATIVE PANEL DECISION

Scottgames, LLC v. Tran Dai

Case No. DIO2022-0051

1. The Parties

The Complainant is Scottgames, LLC, United States of America (“United States”), represented Nissenbaum Law Group, LLC, United States.

The Respondent is Tran Dai, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name, <fivenightsatfreddys.io> (the “Domain Name”), 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 20, 2022. On October 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name 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 November 3, 2022, 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 November 8, 2022 naming the underlying registrant (Tran Dai) as the Respondent.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 November 9, 2022.

In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 8, 2022.

The Center appointed Tony Willoughby as the sole panelist in this matter on January 3, 2023. 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, Scottgames, LLC, is owned by Mr. Scott Cawthon the creator of the computer games and mobile applications titled "Five Nights at Freddy's". The "Five Nights at Freddy's" title is protected by *inter alia* the following United States trademark registrations owned by Mr Cawthon:

- United States Trademark Registration No. 4,855,473 FIVE NIGHTS AT FREDDY'S (standard character mark) registered on November 17, 2015, for a wide variety of computer game-related goods in class 9; and
- United States Trademark Registration No. 5,232,697 FIVE NIGHTS AT FREDDY'S (standard character mark) registered on June 27, 2017, for numerous goods in classes 9, 11, 14, 16, 18, 21, 24, 25, 26, and 28.

While these trademark registrations are held in the name of Mr. Cawthon, the Panel accepts the unchallenged evidence of the Complainant that it is the legal entity through which Mr. Cawthon licenses and defends his intellectual property related to the Five Nights at Freddy's Games, is authorised by Mr. Cawthon to institute this proceeding, and thus that the Complainant has rights in these trademarks sufficient to form the basis for a complaint under the Policy.

The Five Nights Games have been marketed, sold and downloaded worldwide using the FIVE NIGHTS AT FREDDY'S marks. The Five Nights Games are available for purchase and download for personal computers on Valve Corporation's Steam digital distribution platform. In addition, the Five Nights Games are available for mobile devices through Apple's App Store, Google Inc.'s Google Play Store and Amazon.com Inc's Appstore. Over 9,000,000 mobile application downloads of the Five Nights Games have been sold worldwide through Amazon.com and Apple's App Store.

The Domain Name was registered on May 17, 2021 and is connected to a website appearing to offer access to numerous online games, many of which are the Complainant's games, but some of which appear to be games of the Complainant's competitors. The website features pop-up advertisements for a wide variety of goods and services including Google Ads, Dataminr, Tylko.com, WeTransfer, and ufreegames.com. One of the webpages features prominently a screen headed "Five Nights at Freddy's" below which appears ">>New Game" and a copyright notice reading "©2014 Scott Cawthon". The Panel was unable to locate the name and contact details of the operator of the website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is identical or confusingly similar to the Complainant's FIVE NIGHTS AT FREDDY'S trade marks; further that the Respondent has no rights or legitimate interests in respect

of the Domain Name; and finally that the Domain Name has been registered in bad faith or is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The essence of the Complainant's case is that the Respondent selected the Domain Name aware of the Complainant and intending to use it to derive commercial revenue on the back of the fame of and goodwill associated with the Complainant's FIVE NIGHTS AT FREDDY'S trade mark. Versions of the Complainant's video games (asserted by the Complainant to be pirate versions of the games) are made available to visitors to the website for free download. The Complainant asserts that this unlicensed activity is an infringement of the Complainant's trade mark rights and damaging to the Complainant's business. The commercial gain is derived from the third party advertising featured on the website.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights: and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name: and
- (iii) the Domain Name has been registered or is being used in bad faith.

B. Identical or Confusingly Similar

The Domain Name comprises the Complainant's FIVE NIGHTS AT FREDDY'S trade mark (absent the spaces and the apostrophe) and the ".io" country code Top Level Domain identifier.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition¹ explains the test for identity or confusing similarity under the first element of the Policy and includes the following passage:

"While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The trade mark upon which the Complainant relies is FIVE NIGHTS AT FREDDY'S, which is readily recognisable in the Domain Name. The Panel finds that the Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

¹ Given the similarities between the .IO Policy and Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules, the Panel finds UDRP precedent to be relevant to this case.

C. Rights or Legitimate Interests

The Complainant recites the circumstances set out in paragraph 4(c) of the Policy, any of which if found by the Panel to be present shall demonstrate rights or legitimate interests for the purposes of this element of the Policy, and contends that none of them is applicable.

The unchallenged contentions of the Complainant are that:

- (1) The Complainant has no association with the Respondent and has given the Respondent no permission to use the FIVE NIGHTS AT FREDDY'S trade mark;
- (2) The website to which the Domain Name is connected is a commercial website offering access to unauthorised and/or pirated versions of computer games of the Complainant (and others);
- (3) The website features commercial advertising from which the Respondent will be deriving revenue;
- (4) Such a usage of the Domain Name is not a *bona fide* offering of goods or services for the purposes of paragraph 4(c)(i) of the Policy of the Domain Name;
- (5) The Respondent's name bears no relation to the Domain Name and there is nothing to show that the Respondent is commonly known by a name having any association with the Domain Name; (paragraph 4(c)(ii) of the Policy); and
- (6) The Respondent is not making a legitimate noncommercial or fair use of the Domain Name (paragraph 4(c)(iii) of the Policy).

The Panel has visited the Respondent's website, which features prominent third party advertising from which the Respondent will be receiving advertising income. It also features a large number of links to computer games, many (but not all) of them appearing to be the Complainant's FIVE NIGHTS AT FREDDY'S computer games. It also features a copyright notice reading "©2014 Scott Cawthon", Scott Cawthon being the owner of the Complainant and the trade mark registrations upon which the Complaint is based (see section 4 above). The Panel was unable to locate the name and contact details of the operator of the website.

Whether or not the versions of the Complainant's games on offer at the Respondent's website are pirated the Panel is unable to assess. However, the Panel has no difficulty in accepting that the Complainant has not authorised the Respondent's use of the Complainant's FIVE NIGHTS AT FREDDY'S trade mark (whether as part of the Domain Name or in the website) and that the use of the Domain Name is likely to be damaging to the Complainant's business.

The Panel finds that the Complainant has made out a *prima facie* case under this element of the Policy; in other words a case calling for an answer from the Respondent. The Respondent has not answered the Complainant's contentions and the Panel is unable to conceive of any basis upon which the Respondent could be said to have rights or legitimate interests in respect of the Domain Name.

In the view of the Panel, the Domain Name of itself constitutes an impersonation of the Complainant, featuring as it does the Complainant's FIVE NIGHTS AT FREDDY'S trade mark without any distinguishing factor.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

D. Registered or Used in Bad Faith

The Complainant contends that the Respondent selected the Domain Name fully aware of the Complainant and intending to use the Domain Name to derive commercial revenue on the back of the fame and goodwill of the Complainant's FIVE NIGHTS AT FREDDY'S trade mark. Versions of the Complainant's video games (asserted by the Complainant to be pirate versions of the games) are made available to visitors to the website for free download. The Complainant asserts that the commercial gain is to be derived from the third party advertising featured on the website.

The Complainant contends that the Respondent registered and has been using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Paragraph 4(b)(iv) of the Policy provides that registration of a domain name for the purpose of using it to attract Internet users to the registrant's website for commercial gain by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the registrant's website constitutes bad faith registration or use for the purposes of paragraph 4(a)(iii) of the Policy.

The Panel finds on the balance of probabilities that the Complainant's contentions are well-founded. Consistent with the findings under section 6.C above, the Panel finds that the Domain Name has been both registered in bad faith and is being used in bad faith within the meaning of paragraph 4(b)(iv) 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 Domain Name, <fivenightsatfreddys.io>, be transferred to the Complainant.

/Tony Willoughby/

Tony Willoughby

Sole Panelist

Date: January 13, 2023