

ADMINISTRATIVE PANEL DECISION

Axlebolt Ltd. v. Kirill
Case No. D2022-1649

1. The Parties

The Complainant is Axlebolt Ltd., Cyprus, represented by Gulnara Abdulina, Cyprus.

The Respondent is Kirill, the Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <standoff2.shop> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 6, 2022. On May 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 7, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on May 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 17, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on June 27, 2022. 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

Complainant, Axlebolt Ltd., is the developer and owner of a multi-player first-person shooter (“FPS”) mobile video game known as STANDOFF that was initially released in 2017 and is currently available under the name STANDOFF 2. Complainant owns several trademark registrations for the name and mark STANDOFF in connection with its mobile video game, the most relevant of which for this proceeding is a registration for STANDOFF in the Russian Federation that issued to registration on October 1, 2019 (Registration No. 728917).

Respondent is an individual who appears to be based in the Russian Federation. Respondent registered the disputed domain name on December 1, 2019. Respondent has used the disputed domain name in connection with a Russian language website promoting the sale of downloadable content (“DLC”) and modifications (“Mods”) for the STANDOFF 2 game, such as “accounts” and “skins.”¹ Respondent’s website has included the title “STANDOFF 2 SHOP” and a disclaimer at the very bottom of the website advising that “[t]he site is not licensed by Axlebolt”. Currently, the website redirects to a web site at “so2.shop”, which appears to be similar to the website that previously appeared at the disputed domain name, with the exception of using the title “SO2 SHOP” as opposed to “STANDOFF 2 SHOP”.

5. Parties’ Contentions

A. Complainant

Complainant asserts that since the release of its STANDOFF mobile video game in 2017, the game has become quite popular with over fifty million downloads and seven million reviews on Google Play alone. Complainant maintains that its STANDOFF 2 mobile video game is well-known amongst video game players.

Complainant contends that the disputed domain name is confusingly similar with Complainant’s STANDOFF mark as it fully incorporates the STANDOFF mark with the non-distinguishing numeral “2” and generic Top-Level Domain (“gTLD”) <.shop>.

Complainant maintains that Respondent does not have a legitimate interest in the disputed domain name as Respondent (i) is using the disputed domain name for a website selling without authorization game objects and accounts for Complainant’s STANDOFF game, (ii) has never received any authorization or permission from Complainant to sell game objects and accounts using Complainant’s trademark, (iii) is not commonly known by the disputed domain name, and (iv) has used the disputed domain name to promote its sale of game objects and accounts for Respondent’s profit by using Complainant’s STANDOFF trademark to mislead and redirect consumers to Respondent’s website.

Lastly, Complainant argues that Respondent has registered and used the disputed domain name in bad faith as Respondent has targeted Complainant by using the disputed domain name to mislead and attract consumers to Respondent’s website to offer game objects and accounts related to Complainant’s STANDOFF game. Complainant also argues that Respondent was clearly aware of Complainant when Respondent registered the disputed domain name given Respondent’s purported disclaimer, the popularity of Complainant’s STANDOFF game, and the distribution and sale of copies of copyrighted game objects from Complainant’s STANDOFF game.

B. Respondent

Respondent did not reply to Complainant’s contentions.

¹ Skins are a type of item within a game that modify the visuals, such as costumes for various characters, special paint jobs for equipment being used in the game or in some cases even items that change the characters animation style.

6. 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See section 1.2.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Complainant has provided evidence that it owns and uses the STANDOFF mark in connection with its mobile video game. Complainant has also provided evidence that the STANDOFF mark has been registered in the Russian Federation, where Respondent is located, before Respondent registered the disputed domain name.

With Complainant's rights in the STANDOFF mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the gTLD such as ".shop") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and fully incorporating the identical mark in a disputed domain name is sufficient to meet the threshold.

In the instant proceeding, the disputed domain name is confusingly similar to Complainant's STANDOFF mark as it fully and clearly incorporates the STANDOFF mark at the head of the disputed name with the non-distinctive numeral "2", a combination that Respondent has also used as a name for a version of its mobile video game. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant's STANDOFF mark and in showing that the disputed domain name is identical or confusingly similar to that trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

The evidence submitted in this proceeding shows that Respondent has used the disputed domain name for a website with the title "STANDOFF 2 Shop" that purports to sell a variety of DLC and Mods for Complainant's STANDOFF 2 game (Complainant refers to these as game objects and accounts). While Complainant asserts that what Respondent is selling is illegal and unauthorized, it is not altogether clear from Complainant's submissions to what extent what Respondent is selling, namely, DLC and Mods for the STANDOFF 2 game are in fact illegal or an illegitimate activity. Indeed, many other video games, such as Minecraft, by way of example, typically have Mods and DLC that is sold or given for free by enthusiasts of the game. Put another way, Complainant's submissions simply assert a vague claim that Respondent is engaged in "illegal distribution" or "illegal exploitation", but never makes it clear whether or not third parties can create DLC or Mods for the STANDOFF 2 game, what limitations might exist, or whether there are provisions in the game's terms of use and license that prohibit such activities.

Complainant's primary contention seems to be that Respondent is selling game objects and accounts without authorization from Complainant that make use of and are based on Complainant's copyright and other intellectual property rights. However, as Complainant has only provided some general screen shots from Respondent's website at the disputed domain name without providing any evidence of what Respondent is in fact copying from Complainant or infringing, one is left to speculate about Complainant's claim of infringement. To the Panel it seems that the sale of DLC (even by third parties) and Mods is a practice that has existed in the gaming community for some time and thus may not be illegitimate under certain circumstances. Based on what is before the Panel, determining whether there, in fact, has been a copyright violation and/or infringement or illicit actions in creating and selling DLC or Mods, such as game objects, skins or accounts, for Complainant's STANDOFF game is beyond the scope of this UDRP proceeding and is best left to a court of competent jurisdiction.

But putting aside the legitimacy of Respondent's activities in creating and selling DLC and Mods for the STANDOFF 2 game, the question before the Panel is whether Respondent can do so by using a disputed domain name that fully and only consists of Complainant's STANDOFF mark and STANDOFF 2 game name version. The disputed domain name and associated website to sell DLC or Mods for the STANDOFF 2 game raises an issue of possible nominative fair use and thus a possible legitimate interest under the "Oki Data test" adopted by numerous UDRP Panels. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); see also WIPO overview 3.0 at section 2.8.

Here, Respondent has registered a disputed domain name that on its face suggests a connection to Complainant, or which likely will be seen as a domain name related to Complainant and its STANDOFF 2 game. This is particularly so given that the disputed domain name solely consists of the STANDOFF 2 name with the gTLD extension ".shop", which in combination suggests that the disputed domain name is a shop related to Complainant's STANDOFF 2 game. The fact that Respondent has included a disclaimer at the very bottom of its website does not on its face dispel the possible confusion as it is vague, likely not seen by most web users and does not make clear that what Respondent is selling is not authorized, endorsed, or approved of by Complainant and/or that the DLC or Mods are not an official product for the STANDOFF 2 game. Indeed, Respondent's website at the disputed domain name originally used the title "STANDOFF 2 SHOP" that on its face suggested a sort of official connection to Complainant's STANDOFF 2 game.

As Respondent has chosen not to appear in this proceeding to explain its actions, it seems more likely than not that Respondent is *not* just using the disputed domain name to merely identify the DLC and Mods it is offering for sale, but instead is using Complainant's STANDOFF mark (and STANDOFF 2 game name) to attract web traffic to its website, and now Respondent's <so2.shop> website, to promote the sale of Respondent's DLC and Mods for the STANDOFF 2 game for Respondent's profit. Such actions by Respondent run counter to what could conceivably be legitimate under the "Oki Data Test" as nominative fair use. WIPO Overview at sections 2.5.1 and 2.8.1.

Given that Complainant has established with sufficient evidence that it owns rights in the STANDOFF mark, and given Respondent's above noted actions and failure to respond, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

C. Registered and Used in Bad Faith

In view of the fact that Respondent has (i) registered the disputed domain name that fully incorporates Complainant's STANDOFF mark in connection with a gTLD that on its face suggests that the disputed domain name is a "shop" related to Complainant's STANDOFF 2 game and (ii) used the disputed domain name to attract and redirect consumers to Respondent's website selling DLC and Mods, such as game objects, skins and accounts, for Complainant's STANDOFF 2 game, it is easy to infer that Respondent was well aware of Complainant's STANDOFF mark when Respondent registered the disputed domain name.

Given the apparent popularity of Complainant's STANDOFF multi-player mobile video game, particularly in the action/combat sector, the disputed domain name is likely to be viewed by consumers as linked to Complainant and/or to a website that is authorized, endorsed or approved by Complainant to sell DLC and Mods for Complainant's STANDOFF game. Simply put, Respondent's actions make it more likely than not that Respondent opportunistically registered and used the disputed domain name, which is based on Complainant's STANDOFF mark, and refers to Complainant's STANDOFF 2 version of the game, to intentionally and misleadingly attract Internet users to Respondent's website for Respondent's own profit. See [WIPO Overview 3.0](#), section 3.1.4 (and cases cited therein).

Accordingly, the Panel finds that Complainant succeeds under this 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 <standoff2.shop> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: July 13, 2022