

ADMINISTRATIVE PANEL DECISION

MIXI, Inc. v. Serhii Bulhakov

Case No. D2023-1323

1. The Parties

The Complainant is MIXI, Inc., Japan, represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, (“U.S.”).

The Respondent is Serhii Bulhakov, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <monster-strike-yokinatsu2019.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 March 28, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on March 28, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on March 30, 2023 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 April 2, 2023.

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 April 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 24, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on April 28, 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 is a Japanese public company listed on the Tokyo Stock Exchange. Complainant was founded in 1999, has 1,452 full-time employees, and paid-in capital of 9,698 million yen.

The Complainant has registered rights over the mark MONSTER STRIKE, including Japanese Trademark Registration 5,673,517, registered on May 30, 2014.

The Complainant's MONSTER STRIKE mark is used to identify a multiplayer action roleplaying videogame. The game's key feature is its multiplayer co-op system which allows up to four friends in the same area to play together. Monster Strike was first released in October 2013 in Japan. It is currently also available in Taiwan, Hong Kong, and Macao. The app surpassed 58 million users in August 2022, and has obtained cumulative net sales of more than 1 trillion yen. It was developed by the Complainant for the iOS and Android platforms.

The Complainant previously used the disputed domain name in connection with a website that promoted its "Monster Strike Summer Campaign" during the year 2019. Therefore the Complainant was the original owner of the disputed domain name before it lapsed and was registered by the Respondent on February 7, 2022. The Respondent previously used the disputed domain name in connection with a website for a casino service called "Wazamba". The disputed domain name is currently not in use.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its MONSTER STRIKE trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant is also convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

(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 and is being used in bad faith.

A. Procedural Consideration – Respondent’s location

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.

The location of the Respondent disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Respondent’s mailing address is reported to be in Ukraine, which is subject to a conflict that may affect delivery of the written notice by postal-mail, in terms of the paragraph 2(a)(i) of the UDRP. The Panel notes that the record shows that the written notice could not be delivered to the address disclosed by the Registrar in its verification.

However, it appears that the Notification of Complaint’s emails were delivered to the Respondent’s email address, as provided by the Registrar. Therefore, there is no evidence that the case notification to the disclosed Respondent’s email address was not successfully delivered.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar of the disputed domain name, NameCheap Inc, is in the United States of America.

The Panel concludes that the Party allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

B. 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.

Based on the available record, the Panel finds 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 Panel finds the entirety of the mark MONSTER STRIKE is recognizable within the disputed domain name <monster-strike-yokinatsu2019.com>. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms “yokinatsu” and “2019” 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 names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

C. 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.

While 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 often impossible 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. 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 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.

The Panel considers that the record of this case reflects that:

Before any notice to the Respondent of the dispute, the Respondent did not use, nor made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. It is unlikely that the Respondent would have any rights or legitimate interests in the use of the disputed domain name that is confusingly similar to the MONSTER STRIKE mark, in connection with the offering of gambling games under the name “Wazamba”. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

The record shows that the Respondent has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

In fact, until when the disputed domain name was actively used by the Complainant. However, the disputed domain name lapsed and was subsequently registered by the Respondent.

Based on the available record, the Panel finds the second element of the Policy has been established.

D. 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 Panel considers that the record of this case reflects that:

- The disputed domain name is formed by three words including the mark MONSTER STRIKE and the term “yokinasu” (yokinatsu means summer in Japanese language), and the year 2019.
- The disputed domain name was registered on February 7, 2022 – almost eight years after the Complainant’s registration and use of the MONSTER STRIKE mark.
- The Respondent obtained the disputed domain name after it lapsed following previous use by Complainant.

- The Respondent is not currently using the disputed domain name in connection with an active website.
- The Respondent previously used the disputed domain name in connection with a website for a casino service under the name "Wazamba".

Previous UDRP panels have held that registering a domain name whose prior registration lapsed indicates bad faith on the part of the respondent, in view of the length of time that the Complainant had previously registered and used the disputed domain name. See *Bayer HealthCare LLC v. Isaac Goldstein*, WIPO Case No. [D2011-0581](#); *Accenture Global Solutions Limited v. Michael Roper*, WIPO Case No. [D2022-4201](#).

The disputed domain name was previously registered by the Complainant who used it to operate and promote its "Monster Strike Summer Campaign" until the disputed domain name lapsed. The record shows that the disputed domain name was used for some time, and there is no plausible reason why the Respondent would register such a specific domain name other than to attract Internet users to its website, by creating a likelihood of confusion with the Complainant's MONSTER STRIKE mark. Therefore the Panel is of the view that the Respondent was more likely than not aware of the Complainant's trademark when it registered the disputed domain name in 2022. See, *Eleanor MacFarlane v. Tao Tao Peng / Peng Tao Tao*, WIPO Case No. [D2021-0075](#).

On the whole, the Respondent registered the disputed domain name following the lapsing of the previous registration and use of that domain name by the Complainant to promote its "Monster Strike Summer Campaign". Therefore, the Respondent's selection of a domain name identical to a domain name that was previously used by the Complainant simply seems too extraordinary to be a mere coincidence, as it has been decided on similar cases. See *Kampachi Worldwide Holdings, LP v. Registration Private, Domains by Proxy, LLC / Robin Coonen, Blue Ocean Mariculture, LLC*, WIPO Case No. [D2021-0371](#).

Therefore, in these circumstances, and in the absence of any explanation from the Respondent, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <monster-strike-yokinatsu2019.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: May 12, 2023