

ADMINISTRATIVE PANEL DECISION

Crytek IP Holding LLC v. Kassay, hoioverse
Case No. D2023-1579

1. The Parties

The Complainant is Crytek IP Holding LLC, United States of America, represented by Osborne Clarke Rechtsanwälte Steuerberater Partnerschaft mbB, Germany.

The Respondent is Kassay, hoioverse, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <crytek.pro> 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 April 11, 2023. On April 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 13, 2023, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on April 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 16, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on May 23, 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 part of the Crytek Group and is owned by the German company Crytek GmbH. The Crytek Group is specialized in developing high quality, award-winning video games (such as Crysis or Far Cry) and software (such as the CryEngine), which it distributes worldwide.

The Complainant is the owner of several trademark registrations for CRYTEK, including the following, as per copies of the trademark registrations details submitted as annex 9 to the Complaint:

- International trademark registration No. 778338 for CRYTEK (word mark), registered on September 18, 2001, in classes 09, 16, 28 and 41;
- International trademark registration No. 1196166 for CRYTEK (word mark), registered on September 19, 2013, in classes 09, 16, 28 and 41;
- European Union trademark registration No. 002241305 for CRYTEK (word mark), filed on June 02, 2001 and registered on April 30, 2022 in classes 09, 16, 28 and 41;
- German trademark registration No. 30134285 for CRYTEK (word mark), filed on June 02, 2001 and registered on September 18, 2001, in classes 09, 16, 28 and 41.

The Complainant owns and operates its main website at <crytek.com>, which was registered on January 29, 1999, and is used by the Complainant to promote its products and services under the trademark CRYTEK.

The disputed domain name <crytek.pro> was registered on February 12, 2023, and is not pointed to an active website. According to the evidence submitted by the Complainant, which has not been challenged by the Respondent, the disputed domain name has been used for the creation of email addresses used to send emails (like "management@crytek.pro"), through which the Respondent posed to be part of the Crytek Group to third parties (usually content creators) and attempted to conclude an alleged contract with such third parties. In the context of the alleged conclusion of the contract, the Respondent forwarded a hyperlink to a Google Drive folder containing a virus, which was then automatically downloaded.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name <crytek.pro> is identical to the trademark CRYTEK in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the generic Top-Level Domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that it never authorized, permitted or allowed the Respondent in any way to use its trademarks as part of the disputed domain name or for any other purpose.

The Complainant further contends that the Respondent is not commonly known by the disputed domain name and states that, considering the use the Respondent is making of the disputed domain name, there is a high risk that the public will understand it as being operated by the Crytek Group itself.

Moreover, the Complainant underlines that there is no evidence of the Respondent's use of, or 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, since the Respondent is using the disputed domain name to send emails to actively seek out content creators whilst pretending to represent a part of the Crytek Group, mostly the management and/or the Human Resources department of the Crytek GmbH. In their messages, they included a link which lead to a file containing a virus, meaning that they were attempting to scam people who believed that they are being contacted by the Crytek Group.

The Complainant also submits that the Respondent is clearly acting with the intention of misleading and diverting consumers and to tarnish the Complainant's trademark, thus not being able to demonstrate legitimate interests in the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent registered and used the disputed domain name to illegally mislead persons about the origin of the messages sent from email addresses based on the disputed domain name, thereby impersonating the same Complainant.

The Complainant explains that the Respondent is sending recipients of its messages a link ("Crytek Studio Materials.rar") that allegedly contains information on the collaboration agreement, advertising fees, and in-game pre-roll, though effectively it leads to a Google Drive folder which contains a virus.

The Complainant further explains that, upon downloading the linked RAR file, if the user were to execute the included "Media CrytekStudio for creator.pdf.exe" file, a process called vbc.exe would run in the background. The Redline Trojan is distributed through illegitimate channels such as cracked games, applications and services and is a malicious program that collects users' confidential data from browsers, systems, and installed software, in particular sensitive information from browsers and crypto wallets, among other sources. It also infects operating systems with other malware.

The Complainant emphasizes that the only conceivable purpose of the Respondent's registration and use of the disputed domain name was to abuse the Complainant's well-known trademark CRYTEK.

Lastly, the Complainant underlines that the Respondent was probably aware of the Complainant's rights and registered the disputed domain name based on the Complainant's trademark, in order to tarnish the Complainant's trademark and good reputation.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall 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 directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of ownership of trademark registrations for CRYTEK in several countries.

As highlighted in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the first element functions primarily as a standing requirement, and the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and

the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

In the case at hand, the Complainant's trademark CRYTEK is entirely reproduced in the disputed domain name, with the mere addition of the gTLD ".pro", which is commonly disregarded under the first element confusing similarity test (section 1.11 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is identical to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Panel finds that the Complainant has made a *prima facie* case and that the Respondent, by not having submitted a Response, has failed to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy for the following reasons.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademark. Moreover, there is no element from which the Panel could infer a Respondent's right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel notes that the disputed domain name is not pointed to an active website. However, based on the evidence provided by the Complainant – which has not been challenged by the Respondent – has been used for the creation of email addresses used for scamming purposes. Indeed, the Respondent purportedly contacted content creators pretending to represent a part of the Crytek Group (mostly the management and/or the Human Resources department of the Crytek GmbH), sending them an email which included a link that led to a file containing a virus.

The Panel finds that the Respondent's use of the disputed domain name clearly does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Indeed, as indicated in section 2.13.1 of the [WIPO Overview 3.0](#), "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent". Furthermore, the disputed domain name is inherently misleading (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that the Respondent's registration of the disputed domain name, identical to the Complainant's prior registered trademark CRYTEK and its domain name <crytek.com>, cannot amount to a mere coincidence. Indeed, according to the records, the disputed domain name has been used for the creation of email addresses used to send scam emails to content creators, claiming to represent the Crytek Group (mostly the management and/or the Human Resources department of the Crytek GmbH). Such emails contained malicious links that lead to a trojan virus.

In view of the above, the Panel finds that the Respondent was clearly aware of the Complainant's trademark and had such trademark in mind when it registered the disputed domain name.

The Panel notes that the disputed domain name does not currently resolve to any active website. However, the Respondent's use of the disputed domain name in connection with the sending of fraudulent email communications aimed at distributing malware, as detailed in the paragraphs above, clearly shows the Respondent's bad faith intent. As stated in Section 3.4 of the [WIPO Overview 3.0](#), "Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution".

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) 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 <crytek.pro> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: June 9, 2023