

## ADMINISTRATIVE PANEL DECISION

### Nexon America Inc. and Nexon Korea Corporation v. Name Redacted Case No. D2023-4279

#### 1. The Parties

The Complainants are Nexon America Inc., United States of America, and Nexon Korea Corporation, Republic of Korea (the) (together as the “Complainant”), represented by PCFB, LLC, United States of America.

The Respondent is Name Redacted<sup>1</sup>

#### 2. The Domain Name and Registrar

The disputed domain name <mapleroyals.com> is registered with GoDaddy.com, LLC (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 14, 2023. On October 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 16, 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”).

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<sup>1</sup> The Respondent appears to have used the name and contact details of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. D2009-1788.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties on November 30, 2023 that it would proceed with the panel appointment.

On November 7 and November 16, 2023, the Center received several emails from the Respondent, pointing out that he has never owned or operated the disputed domain name and that he has no affiliation with said domain name. He rather points out that his identity may have been used without his consent.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on December 12, 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

According to the Complainant's undisputed allegations, the Complainant is a pioneer in the world of interactive entertainment software, and since its founding in 1994, has introduced some of the most significant innovations in the industry. The Complainant contends to be an industry leader in its sector, with more than 80 live games operated across more than 190 countries. One of the Complainant's most popular games is MapleStory, a free-to-play game, which means that there is no charge for a user to begin playing the game. The Complainant sells in-game items to players of MapleStory, and revenue attributed to in-game purchases to date totals more than USD4 billion (over 180,000,000 players worldwide). Players of MapleStory can purchase an in-game currency called Mesos, which can be exchanged for in-game items (e.g., customizations to characters, equipment, etc.).

The Complaint is based amongst others on the following figurative trademarks consisting of the verbal element MAPLESTORY and a red coloured leaf:

- European Union  Trademark, No. 004944005, filed on March 7, 2006, and registered on May 30, 2007, for goods and services classes 1, 9, 16, 25, 28, 41, and 42; and

- United Kingdom  Trademark, No. UK00904944005 filed on March 7, 2006, and registered on May 30, 2007, for goods and services classes 1, 9, 16, 25, 28, 41, and 42.

The disputed domain name was registered on May 7, 2013.

It results from the Complainant's undisputed and documented allegations that the disputed domain name resolves to a website that purportedly offers for download a counterfeit version of the MapleStory software. The counterfeit software is modified to connect Internet users to the disputed domain name com rather than to the Complainant's. The Respondent also sells in-game items in exchange for "donations" made to the Respondent. Such "Donations" made to the Respondent are compensated with RoyalPoints, which serve substantially the same function as the Complainant's Mesos. The Respondent is directly substituting its virtual goods and in-game currency for the virtual goods and in-game currency offered by the Complainant and is purportedly using counterfeits of the Complainant's trademarks and software to do so.

## **5. Parties' Contentions**

### **A. Complainant**

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

Notably, the Complainant contends that the disputed domain name is confusingly similar to, the Complainant's registered company name and trademark. In the Complainant's view, "Maple" is the dominant portion of both the MAPLESTORY trademark and the disputed domain name.

The Complainant, secondly, submits that the Respondent has no rights or legitimate interests in the disputed domain name, since its only use of the disputed domain name is to substitute services in place of the Complainant's services using counterfeits of the Complainant's software to do so.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. In the Complainant's view, the Respondent's use of the disputed domain name to host a website advertising and distributing counterfeit software and to raise money from players of MAPLESTORY proves the Respondent was aware of the trademark significance of the disputed domain name. Use of a confusingly similar domain name for purposes of operating a website to distribute illegal versions of software produced by the Complainant is manifestly considered evidence of bad faith.

### **B. Respondent**

The Respondent did not reply to the Complainant's contentions. In his email communications on November 7 and November 16, 2023, the Respondent claimed that his personal information has been misused without his knowledge in association with the disputed domain name.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to "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".

Furthermore, paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### **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.

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.

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 Panel finds the mark's dominant feature is "Maple" which is identically included in the disputed domain name, only the additional verbal element "Story" replaced by the term "Royals" varies. Therefore, in the Panel's view the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Furthermore, in limited instances, where a panel would benefit from affirmation as to confusing similarity with the Complainant's mark, the broader case context such as website content trading off the complainant's reputation may be considered. [WIPO Overview 3.0](#), section 1.7. As explained further below, the disputed domain name impersonates the Complainant, and the composition of the disputed domain name was most likely chosen by the Respondent to take advantage of the confusing similarity with the Complainant's mark.

Based on the available record, 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.

Having reviewed the available 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 such as those enumerated in the Policy or otherwise.

It results from the Complainant's undisputed and documented allegations the disputed domain name resolves to a website that offers for download a counterfeit version of the MapleStory software. The counterfeit software is modified to connect Internet users to the disputed domain name rather than to the Complainant's MapleStory servers. The Respondent also sells in-game items in exchange for "donations" made to the Respondent. Such "Donations" made to the Respondent are compensated with RoyalPoints, which serve substantially the same function as the Complainant's Mesos. Consequently, in the Panel's view, the Respondent is directly substituting its virtual goods and in-game currency for the virtual goods and in-game currency offered by the Complainant and is purportedly using counterfeits of the Complainant's trademarks and software to do so. In addition, it appears that the Respondent used the identity of a third person to register the disputed domain name without this person's consent (potential identity theft). Panels have held that the use of a domain name for illegal activity, as applicable to this case impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

### **C. 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.

In the present case, the Panel notes that the Respondent uses the disputed domain name to resolve to a website that purportedly offers for download a counterfeit version of the MapleStory software. The counterfeit software is modified to connect Internet users to the disputed domain name rather than to the Complainant's. The Respondent also purportedly sells in-game items in exchange for "donations" made to the Respondent. Such "Donations" made to the Respondent are compensated with RoyalPoints, which serve substantially the same function as the Complainant's Mesos. In addition, it appears that the Respondent used the identity of a third person to register the disputed domain name without this person's consent (potential identity theft).

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity, as applicable to this case, impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third 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 <mapleroyals.com> be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: December 26, 2023