

ADMINISTRATIVE PANEL DECISION

Infiniza Limited v. Mysar Mykhailo
Case No. D2023-4299

1. The Parties

The Complainant is Infiniza Limited, Malta, represented by Ports Group AB, Sweden.

The Respondent is Mysar Mykhailo, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <unlimitcasino.top> is registered with URL Solutions, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 17, 2023. On October 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 18, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 the same date.

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 October 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2023. On October 26, 2023, the Center received an email communication from the Respondent. On November 16, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on November 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 limited company incorporated in Floriana, Malta, which operates globally within the online gaming and gambling industry under the brand UNLIMIT CASINO.

The Complainant owns various trademark registrations for the brand UNLIMIT CASINO, including the European Union Trademark Registration No. 018699373, UNLIMIT CASINO, word, registered on September 20, 2022, in classes 9, 28, 35, 38, 41, and 42; and European Union Trademark Registration No. 018699382, UNLIMIT CASINO!, figurative, registered on September 20, 2022, in classes 9, 28, 35, 38, 41, and 42. These trademark registrations will collectively be referred to as the “UNLIMIT CASINO mark”.

The Complainant further owns various domain names corresponding to the UNLIMIT CASINO mark, including <unlimitcasino.com> (registered on July 3, 2021), which resolves to its main online casino and sportsbook website.

The disputed domain name was registered on April 18, 2023, and redirects to a website in Swedish language at “www.refuelcasino.top”, which purportedly offers gaming and gambling services. This website constitutes a platform that provides access to various third parties’ online casinos and other games and gambling sites, indicating, “Refuel Online Casino uses the gaming platforms of the most famous providers, which guarantees interesting and high-quality titles on this site”. This website does not indicate the identity of its owner or that of the disputed domain name, and does not contain any reference to its relationship or lack of relationship with the Complainant and its trademarks.

According to the evidence provided by the Complainant, the disputed domain name has previously resolved to a website in Swedish language with a similar content that included the disputed domain name at its heading.

On September 21, 2023, the Complainant sent a cease-and-desist communication to the Respondent via the Registrar. The Complainant did not receive any response to this communication.

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 identical to the UNLIMIT CASINO mark, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, as the Complainant has not licensed or otherwise permitted the Respondent to use its trademark. There is no evidence that the Respondent has been commonly known by the terms “unlimit casino”, and the disputed domain name is not used in connection with a bona fide offering of goods and/or services or for any legitimate noncommercial or fair purpose.

The disputed domain name was registered and is being used in bad faith. The Respondent targeted the Complainant’s trademarks and business when registering the disputed domain name to mislead the public for a commercial gain. The Complainant’s UNLIMIT CASINO mark is being used on the online gambling market for several years before the registration of the disputed domain name, both through its marketing channels, its official site (“www.unlimitcasino.com”), and through affiliate partners. The Respondent is trying to take advantage of the Complainant’s trademark and to attract, for commercial gain, consumers to its website by creating a likelihood of confusion. The use of a privacy service provider to register the disputed domain name is a factor indicating bad faith.

B. Respondent

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

On October 26, 2023, the Center received an email communication from the Respondent indicating that the disputed domain name was not working any more.

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

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, namely the UNLIMIT CASINO mark. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the UNLIMIT CASINO mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the UNLIMIT CASINO mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Therefore, 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.

The Panel notes that the Respondent's name, according to the Registrar verification, shares no similarity with the disputed domain name. The Panel further notes that, according to the evidence provided by the Complainant, the disputed domain name initially resolved to a website that purportedly offered the same type of services provided by the Complainant under the UNLIMIT CASINO mark, and did not include any information about its owner and/or its lack of relationship with the Complainant and its trademark. The Panel finds that such use cannot be considered a bona fide offering under the Policy, as it generates a likelihood of confusion or affiliation with the Complainant and its trademarks.

The Panel has further corroborated that the disputed domain name currently redirects to a website at "www.refuelcasino.top", which purportedly offers the same type of services with a very similar content as in the initial website, and provides access to various third parties' online casinos and other games and gambling platforms. This website does not indicate its lack of relationship with the Complainant and its UNLIMIT CASINO mark, and does not indicate the identity of its owner. The Panel finds that such use of the disputed domain name to redirect to third parties' websites unrelated to the UNLIMIT CASINO mark for a commercial purpose, cannot be considered a bona fide offering and cannot confer rights or legitimate interests under the Policy.

The Panel finds that, as the disputed domain name is identical to the UNLIMIT CASINO mark, it generates an implied affiliation with this trademark and the Complainant's online business at "www.unlimitcasino.com", and the use of the disputed domain name enhances such implied affiliation and risk of confusion as the disputed domain name is used for the same type of business in which the Complainant operates.

Therefore, 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 the Respondent's reaction to the cease and desist communication and to the Complaint. Instead of providing any evidence or rights or legitimate interests in the disputed domain name or rebutting the Complainant's allegations of bad faith, the Respondent has apparently simply redirected the disputed domain name to a website or similar content ("www.refuelcasino.top"), which provides access to various competing third parties' platforms in the Complainant's business.

The Panel further notes that the Complainant's business operates online through a website ("www.unlimitcasino.com") that only defers from the disputed domain name in the generic Top-Level Domain ("gTLD").

The Panel has further corroborated that the Complainant and its trademark has a strong presence on the Internet. Any search over the Internet reveals the Complainant, its UNLIMIT CASINO mark and its online casino business.

The Panel further notes that the Respondent operates in the same online casino business, and currently provides access to various gambling and games platforms over the website to which is redirected the disputed domain name. The Panel finds that these circumstances imply a knowledge in the Respondent of the online casino and gambling business sector.

Therefore, the Panel finds that all these circumstances indicate, in a balance of probabilities, that the Respondent knew about the Complainant and its trademark when it registered the disputed domain name and targeted them in the registration and the use of the disputed domain name, in bad faith, in an attempt to generate an affiliation with the UNLIMIT CASINO mark for commercial gain, to increase the traffic to its business.

The use of privacy services for the registration of the disputed domain name and the lack of information about the Respondent's identity in the websites subsequently linked to the disputed domain name, are further circumstances that may corroborate the Respondent's bad faith.

Therefore, 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 <unlimitcasino.top> be transferred to the Complainant.

/Reyes Campello Estebaranz/

Reyes Campello Estebaranz

Sole Panelist

Date: December 12, 2023