

ADMINISTRATIVE PANEL DECISION

PB Web Media B.V. v. Victor Panasyuk

Case No. D2023-5276

1. The Parties

The Complainant is PB Web Media B.V., Netherlands (Kingdom of the), represented by ICTRecht Amsterdam B.V., Netherlands (Kingdom of the).

The Respondent is Victor Panasyuk, Uzbekistan.

2. The Domain Names and Registrars

The disputed domain names <apetube.stream>, <dinotube.link>, <dinotube.top>, <fuq.today>, <ixxx.win>, <lobstertube.space>, and <tubegalore.stream> are registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2023. On December 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 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 amended Complaint on December 22, 2023.

The Center verified that the Complaint together with the amended 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 January 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 25, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on February 5, 2024. 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 supplies adult content “in a dedicated and responsible manner” under various marks including APETUBE, DINOTUBE, FUQ, IXXX, LOBSTERTUBE, and TUBEGALORE.

The Complainant owns the following Benelux trade marks in classes 35 and 42:

- no. 964052 for TUBEGALORE, registered on December 31, 2014;
- no. 988759 for FUQ, registered on March 28, 2016;
- no. 988760 for IXXX, registered on March 28, 2016;
- no. 989781 for APETUBE, registered on April 15, 2016;
- no. 998299 for LOBSTERTUBE, registered on August 18, 2016; and
- no. 998298 for DINOTUBE, registered on August 18, 2016;

The disputed domain names were registered on the following dates:

<fuq.today>: May 21, 2019
<ixxx.win>: June 6, 2019
<tubegalore.stream>: June 6, 2019
<apetube.stream>: August 5, 2019
<dinotube.top>: September 5, 2019
<lobstertube.space>: September 5, 2019
<dinotube.link>: September 12, 2023.

The disputed domain names have all been used for websites containing pornographic content plus various forms of advertising.

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 names.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of trade marks or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the marks is reproduced within the respective disputed domain names. Accordingly, the disputed domain names are identical to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 recognised 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 names. 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 names such as those enumerated in the Policy or otherwise.

As to paragraph 4(c)(i) of the Policy, and as further discussed in section 6C below, the Panel considers that the Respondent has used the disputed domain names to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's services. Such use of the disputed domain names could not be said to be bona fide.

Furthermore, the disputed domain names carry a high risk of implied affiliation with the Complainant as each of them is identical to a Complainant trade mark. [WIPO Overview 3.0](#), section 2.5.1.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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 considers that the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain by creating a likelihood of confusion with the Complainant's trade marks in accordance with paragraph 4(b)(iv) of the Policy.

Not only does each of the disputed domain names comprise one of the Complainant's distinctive marks, but the Respondent has used the disputed domain names for websites that offer the same services as those of the Complainant, namely adult content. The Respondent's conduct is even more egregious in that it provides no age-related warnings.

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 names <apetube.stream>, <dinotube.link>, <dinotube.top>, <fuq.today>, <ixxx.win>, <lobstertube.space> and <tubegalore.stream> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: February 19, 2024