

ADMINISTRATIVE PANEL DECISION

Push Gaming Product Limited v. Yaroslav Perelygin
Case No. D2024-0489

1. The Parties

The Complainant is Push Gaming Product Limited, Malta, represented by Abion AB, Sweden.

The Respondent is Yaroslav Perelygin, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <therazorreturns.com> (the “Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2024. On February 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 5, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 2024, 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 February 9, 2024.

On February 7, 2024, the Center informed the parties in Russian and English, that the language of the registration agreement for the Disputed Domain Name is Russian. In the amended Complaint dated February 9, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not comment on the language of the proceeding, but sent an email communication in English to the Center on February 13, 2024, asking for an explanation of the case background.

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 in both English and Russian, and the proceedings commenced on February 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2024. The Respondent did not submit any formal Response, but sent informal email communications to the Center on February 13, 15 and 18, 2024. On February 16 and 20, 2024, the Center asked the Complainant if both parties reach a settlement, or if the Complainant would like to initiate the settlement of the proceeding. On February 20, 2024, the Complainant sent an email to the Center confirming to continue the proceeding. Accordingly, the Center notified the Commencement of Panel Appointment Process on March 12, 2024.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on March 18, 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 is a game development studio that specializes in creating premium, mobile-optimized HTML5 games for online and mobile casinos. One of its online slot games is Razor Returns, a sequel to the highly volatile title Razor Shark released in 2019.

The Complainant owns some RAZOR RETURNS trademark registrations, including, but not limited to the followings:

- European Union ("EU") Trademark Registration No. 018263037 for RAZOR RETURNS in Classes 9, 41, and 42, registered on October 20, 2020;
- EU Trademark Registration No. 018856321 for RAZOR RETURNS in Classes 9, 41, and 42, registered on August 3, 2023;
- United Kingdom ("UK") Trademark Registration No. UK00918263037 for RAZOR RETURNS in Classes 9, 41, and 42, registered on October 20, 2020;
- UK Trademark Registration No. UK00003896733 for RAZOR RETURNS in Classes 9, 41, and 42, registered on July 21, 2023.

The Disputed Domain Name was registered on August 15, 2023. As of the date of this Decision, the Disputed Domain Name does not resolve to an active website. However, as shown on the Complainant's evidence, the Disputed Domain Name used to resolve to a website displaying the Complainant's RAZOR RETURNS trademark and logo, in which there were some links to third parties' slot games such as 7K Casino, Riobet, Daddy, and Kent.

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, as follows:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights.

The Complainant contends that it owns numerous trademark registrations for RAZOR RETURNS in numerous jurisdictions. The Disputed Domain Name incorporates entirely the Complainant's RAZOR RETURNS trademark.

Further, the Complainant argues that the addition of the article “the” and the generic Top-Level (“gTLD”) “.com” is not sufficient to avoid the likelihood of confusion.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant asserts that the Disputed Domain Name was registered by the Respondent well after the registration of the Complainant’s trademarks. The Complainant has not licensed or authorized the Respondent to use its trademarks.

Second, the Complainant contends that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or owns any registered trademarks including the term “therazorreturns.com”.

Furthermore, at the time of filing this Complaint, the Disputed Domain Name used to resolve to a website that reproduces the trademark present in the Complainant’s official website, creating a likelihood of confusion with the Complainant’s activity and bearing the Complainant’s trademarks without any authorization from the Complainant.

Fourth, the Complainant argues that the Respondent is merely seeking, and has sought, to exploit the Complainant’s trademark in which the Complainant has rights and create a commercial gain for itself on the Internet.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant submits that the Respondent registered the Disputed Domain Name in bad faith. The Complainant’s trademark registration predates the creation date of the Disputed Domain Name. By conducting an online search regarding the terms “razor returns”, the Respondent would have inevitably learned about the Complainant, its trademark and business. Thus, it is very likely that the Respondent registered the Disputed Domain Name using the RAZOR RETURNS trademark intentionally to take advantage of the reputation of the trademark and the Complainant’s goodwill free-riding on the Complainant’s reputation.

Second, the Complainant asserts that the Respondent also uses the Disputed Domain Name in bad faith. In details, the Complainant submits that the Disputed Domain Name clearly incorporates in its entirety the Complainant’s RAZOR RETURNS trademark without displaying a disclaimer of affiliation with the Complainant’s official website. Thus, it may mislead the consumers by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, and making the public believe that the paid services advertised on the website are actually official and authorized by the Complainant.

Further, the Disputed Domain Name used to resolve to a website containing links to other slot sites such as 7k Casino, Riobet, Daddy, and Kent, so it is evident that it was used for commercial purposes. Last, the Respondent’s failure to respond to a cease-and-desist letter from the Complainant may properly be considered a factor in finding bad faith registration and use of the Disputed Domain Name.

B. Respondent

The Respondent has not furnished a formal reply or submitted a Response to the Complainant’s contentions. However, the Respondent sent the informal communications to the Center on February 13, 15, and 18, 2024. In his first informal email, dated on February 13, 2024, the Respondent asked in English for an explanation of the case background. In his second informal email, dated on February 15, 2024, the Respondent transmitted an email in English stating that the Respondent could not create a website about the Complainant’s game. Thus, the Respondent deleted the website associated with the Disputed Domain Name. In his third informal email, dated on February 18, 2024, the Respondent mentioned: “ok, thank you”.

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the Disputed Domain Name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- (i) The Disputed Domain Name itself comprises three words in English, i.e. “the”, “razor”, and “returns”; and the Disputed Domain Name resolves to a website displaying content in English language; thus, it is safe to assume that the Respondent understands English;
- (ii) The use of Russian in this case would entail significant additional costs for the Complainant and delay in the proceedings;
- (iii) Conducting the proceedings in English would promote efficiency and timely resolution due to its widespread usage in international business and communication; and
- (iv) The English language, being commonly used internationally, would be considered neutral for both Parties in the present case. It would be fair to both parties that the language of proceeding be English.

The Respondent did not make any specific submissions with respect to the language of the proceeding. The Respondent also sent several informal emails in English to the Center.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

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 3.0](#), section 1.7.

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 that the Complainant has evidenced that it has rights in and to the RAZOR RETURNS trademark, which was registered in several countries before the registration of the Disputed Domain Name.

The entirety of the mark is reproduced 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.

Although the addition of another term “the” may bear on assessment of the second and third elements, the Panel finds the addition of such addition does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

In addition, the Panel finds, similarly to other UDRP panels, that the addition of the gTLD “.com” to the Disputed Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#); *Telecom Personal, S.A., v. NAMEZERO.COM, Inc.*, WIPO Case No. [D2001-0015](#); *F. Hoffmann La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); and *Alstom v. Cong ty Co phan Xuat nhap khau Duoc Mat troi*, WIPO Case No. [D2023-2507](#))

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.

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

- “(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 noncommercial 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.”

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant’s asserted facts, that no license, permission or authorization in any kind to use the Complainant’s RAZOR RETURNS trademark has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction related to “RAZOR RETURNS”. Thus, the Panel finds that the Respondent has no rights in the RAZOR RETURNS trademark.

Furthermore, the Panel finds that the Disputed Domain Name used to resolve to a website where the Complainant’s RAZOR RETURNS trademark was displayed, while no statement or disclaimer disclosing accurately the (lack of) relationship between the Complainant and the Respondent was placed. This unauthorized use of the RAZOR RETURNS trademark may mislead Internet visitors into believing in a connection or association between the Respondent and the Complainant, where such connection or

association does not exist. In addition, as evidenced by the Complainant, the associated website used to provide some links to third parties' slot games such as 7K Casino, Riobet, Daddy, and Kent. Therefore, the Panel finds that by using the Disputed Domain Name in such a manner, the Respondent is attempting to ride on the reputation of the RAZOR RETURNS trademark, and thus, such use does not constitute a bona fide use within paragraph 4(c)(i) of the Policy.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds that there is no evidence that would suggest that the Respondent, as an individual, business, or other organization, has been commonly known by the Disputed Domain Name, or that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, as it appears following the Complainant's assertions and evidence with regard to the Respondent's registration of the Disputed Domain Name, the Respondent had full knowledge of the RAZOR RETURNS trademark and had an intention to gain profit by riding on the goodwill and reputation of the Complainant.

Based on the foregoing findings, 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, including:

- "(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

In the present case, the Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not formally reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The Panel has considered the Complainant's assertions and evidence with regard to the Respondent's bad faith registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant's RAZOR RETURNS trademark has been registered in many jurisdictions around the world. In addition, the RAZOR RETURNS trademark has been put in use and gained certain reputation in the sector of online gaming and gambling services. The Complainant's registration of the RAZOR RETURNS trademark predates the registration of the Disputed Domain Name.

The Disputed Domain Name comprises the Complainant's RAZOR RETURNS trademark in its entirety, adding only the article "the" at the beginning. Given the extensive use of the RAZOR RETURNS trademark for online gaming and gambling services by the Complainant, which occurs in many countries, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity. Also, in consideration of the use of the Disputed Domain Name, the Panel is of the view that the Respondent obviously knew of the

Complainant and its RAZOR RETURNS trademark when it registered the Disputed Domain Name. The Panel considers the registration of the Disputed Domain Name is an attempt by the Respondent as to take unfair advantage of the Complainant's goodwill and the reputation of the RAZOR RETURNS trademark.

On the date of this Decision, the Panel accesses the Disputed Domain Name and finds that it resolves to an inactive website. However, it is well proven and evidenced by the Complainant that the website under the Disputed Domain Name used to display and refer to online gaming and gambling services bearing the Complainant's RAZOR RETURNS trademark. In addition to the adoption of the Complainant's RAZOR RETURNS trademark as a uniquely distinctive part of the Disputed Domain Name, the Respondent used the Complainant's trademark on the website, which falsely represented itself as the Complainant or the Complainant's associated entity.

The Panel takes the view that any Internet users seeking the Complainant's RAZOR RETURNS services would very likely mistakenly believe that the Respondent is either the Complainant or associated with the Complainant, while no such connection exists in fact. The Panel, therefore, finds that by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website on its website, which is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Based on the foregoing findings, 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 <therazorreturns.com> be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: April 1, 2024