

ADMINISTRATIVE PANEL DECISION

DinoTech Limited v. Irina Zenenkova

Case No. D2024-0971

1. The Parties

Complainant is DinoTech Limited, Malta, represented by Abion AB, Sweden.

Respondent is Irina Zenenkova, Kazakhstan.

2. The Domain Name and Registrar

The disputed domain name <madrush.casino> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 5, 2024. On March 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 6, 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 named Respondent (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on March 8, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 11, 2024.

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 Respondent of the Complaint, and the proceedings commenced on March 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 1, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 2, 2024.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on April 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

Complainant is a Maltese based software company that has developed a platform within the I-Gaming industry.

Complainant operates a domain name including the mark MAD RUSH (<madrush.com>) in which Complainant promotes and offers its services.

Some examples of Complainant's trademark registrations for MAD RUSH can be found below:

Registration No.	Trademark	Jurisdictions	International Class	Application Date	Registration Date
018872907	MAD RUSH	European Union ("EU")	9, 35, 38, 41, 42	May 10, 2023	September 20, 2023
018873003	MAD RUSH	EU	41	May 10, 2023	August 22, 2023

The disputed domain name was registered on January 8, 2024. According to the evidence provided in the Complaint, it has been used to resolve to a copycat version of Complainant's official website at "www.madrush.com".

5. Parties' Contentions

A. Complainant

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

Notably, Complainant contends that the disputed domain name is confusingly similar to the registered trademark MAD RUSH, since it fully incorporates Complainant's trademark MAD RUSH. Complainant states that the term "casino" does prevent confusing similarity and may enhance the confusion as it describes the activity of Complainant.

Therefore, according to Complainant, the disputed domain name is confusingly similar with Complainant's trademark MAD RUSH, fulfilling paragraph 4(a)(i) of the Policy.

Moreover, Complainant states that Respondent is using the disputed domain name to create confusion among Internet users falsely suggesting that Respondent is affiliated with or endorsed by Complainant. This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy has been fulfilled.

Finally, Complainant states that Respondent intentionally attempts to attract for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of a product or service on Respondent's website.

Thus, according to Complainant, the requirements for the identification of a bad faith registration and use of the disputed domain name have been fulfilled, pursuant to paragraph 4(a)(iii) of the Policy.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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 burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

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 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 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 entirety of the trademark MAD RUSH is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Moreover, the disputed domain name consists also of the generic Top-Level Domain ("gTLD") ".casino", which directly refers to the Complainant's services and will be further analyzed below under the third element, but can be disregarded for purposes of the confusing similarity analysis under the first element. [WIPO Overview 3.0](#), sections 1.11.1 and 1.11.2.

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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on 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 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 respondent fails to come forward with such relevant evidence, complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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 Complainant argues that Respondent is using the disputed domain name to create confusion among Internet users and create the impression that the Respondent's website is affiliated with or endorsed by the Complainant. The Panel finds that Complainant sufficiently proves that Respondent's intent on diverting Internet users to the website fraudulently using trademark and overall visual perception of Complainant's official website, offering similar services such as online gaming and gambling, as supported by Annex 5 to the Complaint. Moreover, the construction of the disputed domain name by itself carries a risk of implied affiliation to the Complainant, exacerbated by the impersonating content mentioned above, and as such, cannot constitute fair use.

Panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or other types of fraud) 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 Respondent has registered the disputed domain name that is confusingly similar to Complainant's trademark MAD RUSH - as explained above in Section 6.A - and that the applicable gTLD ".casino", increases the risk of confusion with Complainant's services as an online casino.

The Panel finds that it was duly demonstrated that Respondent was aware of Complainant's rights to the trademark MAD RUSH at the time of the registration - as Complainant enclosed proof that the disputed domain name resolved to a website using Complainant's trademark and offer of online games and gambling aiming to divert Internet users (Annex 5 to the Complaint). Moreover, the use of the disputed domain name as a copycat version of Complainant's website exposes the likelihood of Respondent's knowledge of Complainant's trademark and a clear intent to take a free ride on Complainant's renown.

The Panel concludes the registration and use is in bad faith under paragraph 4(b) of the Policy as the use of the disputed domain name falls under paragraph 4(b)(iv) of the Policy as Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's mark.

Panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name to impersonate Complainant aiming to potentially obtain financial gain (Annex 5 to the Complaint) constitutes bad faith under the Policy.

The Panel finds that the circumstances of the present case allows a finding of bad faith in the registration and use of the disputed domain name, considering that (i) Respondent would likely obtain commercial gain by using a confusingly similar disputed domain name to Complainant's trademark; (ii) Complainant operating an almost identical domain name, such that Respondent most likely knew (or should have known) of its existence, taking advantage of the Internet user confusion caused by its use in the disputed domain name; and (iii) the use of the disputed domain name in order to divert customers to a copycat version of Complainant's website, possibly diverting Internet users and possibly obtaining financial gain.

Moreover, the Panel finds it relevant that Respondent has not provided any evidence of good faith registration or use, or otherwise participated in this dispute. Complainant has put forward serious claims regarding the apparent bad faith use of the disputed domain name that the Panel would expect any legitimate party would seek to refute.

Based on the available record, the Panel finds that 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 <madrush.casino> be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: April 19, 2024