

ADMINISTRATIVE PANEL DECISION

SNK Corporation v. Domains by Proxy, LLC / CloudMining li
Case No. DIO2022-0024

1. The Parties

The Complainant is SNK Corporation, Japan, represented Frost Brown Todd LLC, United States of America ("United States").

The Respondent is Domains by Proxy, LLC, United States / CloudMining li, China.

2. The Domain Name and Registrar

The disputed domain name <metakof.io> 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 June 17, 2022. On June 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 22, 2022, 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 June 23, 2022, 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 June 27, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the "Policy"), the Rules for .IO Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .IO 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 June 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 20, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on July 22, 2022. 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 was founded in 2001. Its predecessor in interest is Shin Nihon Kikaku Corporation (“SNK”). Together they have provided computer games software and programs and computer gaming services for over 40 years.

The Complainant’s predecessor released *The King of Fighters ’94*, the first *KOF* game, in 1994, and since then the series of *KOF* have followed, being “*KOF XV The King of Fighters*”, the fifteenth title of the series released on February 17, 2022.

The Complainant is the owner of the following trademark registrations:

- United States trademark registration No. 4824383 for *KOF*, registered on October 6, 2015, in classes 9 and 41; and
- United States trademark registration No. 3016261 for *KOF MAXIMUM IMPACT* and device, registered on November 15, 2005, in class 9.

The disputed domain name <metakof.io> was registered on January 19, 2022, and presently does not resolve to an active webpage. The disputed domain name has been used in the past in connection with a webpage offering games and non-fungible tokens (“NFTs”) based on the Complainant’s “King of Fighters” artwork and game design as well as using the *KOF* trademark (Annex 14 to the Amended Complaint).

5. Parties’ Contentions

A. Complainant

The Complainant asserts to be known for its arcade fighting games such as *Fatal Fury*, *Art of Fighting*, and *Samurai Shodown*, being *The King of Fighters* series its most popular arcade fighting game series. According to the Complainant, *The King of Fighters* series is also known and trademarked as “*KOF*”.

Also according to the Complainant, upon its release, *The King of Fighters ’94* was the second-most-popular arcade game in Japan and third-most-popular arcade game in North America, having the *KOF* series received acclaim and various awards from unrelated third parties, showcasing the strength and value of the *KOF* trademark, such *The King of Fighters XII* was awarded in 2009 the “best fighting game” by IGN, a long-running video game review website (Annex 7 to the Amended Complaint) and the thirteenth sequel, *The King of Fighters XIII*, was awarded the Best Fighting Game of the Year for 2011 and was nominated for “Fighting Game of the Year” in 2012 by the Academy of Interactive Arts & Sciences (Annex 8 to the Amended Complaint) and the most recent sequel, *KOF XV*, was the eighth best-selling video game for the week of February 14, 2022, selling a total of 9,062 physical copies in one week in Japan (Annex 9 to the Amended Complaint).

Beyond video games, the Complainant also offered an animated series based on the *KOF* storylines and characters, which received an award in China for “popular game animation” in 2018 (Annex 10 to the Amended Complaint), asserting the Complainant that the popularity of the *KOF* video game series and its characters has a global reach, covering countries and regions such as Japan, China, North America, and Latin America (Annex 11 to the Amended Complaint).

Under the Complainant's view, the disputed domain name incorporates the KOF trademark in its entirety, the addition of "meta" not preventing a finding of confusing similarity given that it does not change the overall impression of the disputed domain name as being confusingly similar to the Complainant's trademark.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

- (a) the Respondent is neither a licensee nor otherwise affiliated with the Complainant;
- (b) the use made of the disputed domain name by the Respondent appearing to be a legitimate affiliate or licensee of the Complainant does not equate to a *bona fide* offering of goods or services in connection with the disputed domain name; and
- (c) the presence of MX records implies that the disputed domain name could be used as part of an email phishing scheme in the future.

As to the registration or use of the disputed domain name in bad faith, the Complainant asserts that the Respondent knew, or at least should have known, of the existence of the Complainant's trademark given the use made of the disputed domain name offering games and NFTs based on the Complainant's "King of Fighters" artwork and game design as well as using the KOF trademark.

In addition to that, the Respondent choose to retain a privacy protection service to conceal its identity to frustrate communication attempts.

Lastly, given the MX-records that are set up for the disputed domain name the Complainant contends that there is a risk that the Respondent could use the disputed domain name in e-mail communication in an attempt to pass off as the Complainant for fraudulent activities.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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 or is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has established rights in the KOF trademark.

The Panel finds that the disputed domain name reproduces the entirety of the Complainant's mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the

complainant's trademark and the disputed domain name". See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.¹ The addition of the "meta" does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. The first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights to or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to and/or legitimate interests in the disputed domain name.

Nevertheless, the burden is still on the Complainant to first make a *prima facie* case against the Respondent (being the overall burden of proof always with the Complainant, but once the 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).

In that sense, the Complainant indeed states that the Respondent is neither a licensee nor otherwise affiliated with the Complainant.

Also, the absence of any indication that the Respondent holds rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the disputed domain name that could be inferred from the details known of the Respondent or a webpage relating to the disputed domain name available at the disputed domain name, corroborate with the Panel's finding of the absence of rights or legitimate interests.

Therefore, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name. The second element of the Policy has also been met.

C. Registered or Used in Bad Faith

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration or use of the disputed domain name:

- a) the Complainant is a well-known company that holds registered trademarks in KOF, which is reproduced in its entirety in the disputed domain name;

¹ Given the similarities between the .IO Policy and Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules, the Panel finds UDRP precedent to be relevant to this case. See *IOTA Foundation v. Privacy Service provided by Withheld for Privacy ehf /Super Green*, WIPO Case No. [DIO2022-0001](#).

- b) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name;
- c) the present inactive use of the disputed domain name indicates the Respondent's bad faith;
- d) the Respondent's choice to retain a privacy protection service;
- e) the indication of what appears to be false contact details not having the Center been able to deliver the Written Notice to it; and
- f) the potential use of the disputed domain name in connection with e-mail addresses.

Further, previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration or use of the disputed domain name.

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, <metakof.io> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: August 3, 2022