

ADMINISTRATIVE PANEL DECISION

Rootz LTD v. Hond, Hugo
Case No. DNL2022-0046

1. The Parties

The Complainant is Rootz LTD, Malta, represented by Wilmark Oy, Finland.

The registrant of the disputed domain name is Hond, Hugo, Netherlands.

2. The Domain Name and Registrar

The disputed domain name <wildzcasino.nl> (the “Domain Name”) is registered with SIDN through Internationale Domeinregistratie Nederland.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 10, 2022. On November 10, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name.

On November 11, 2022, SIDN transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 14, 2022, providing the information disclosed by SIDN, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on November 15, 2022.

The Center verified that the Complaint as amended satisfies the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 15, 2022. In accordance with the Regulations, article 7.1, the due date for Response was December 5, 2022. The Center received email communications from the Respondent on December 6 and 15, 2022.

On December 19, 2022, SIDN commenced the mediation process. On January 16, 2023, SIDN extended the mediation process until, in the end until February 15, 2023. On January 19, 2023, SIDN informed parties that the dispute had not been solved in the mediation process.

The Center appointed Willem J. H. Leppink as the panelist in this matter on January 31, 2023. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

4. Factual Background

The following facts are undisputed.

The Complainant is an igaming company based in Malta that is licensed and regulated by the Malta Gaming Authority. As such, the Complainant operates several online casinos. One of the online casinos is called WILDZ. For its official website for this online casino, the Complainant uses the domain name <wildz.com>. The biggest payout in this online casino in 2020 was over EUR 4 million.

The Complainant is the owner of several trademark registrations comprising of the word element WILDZ, including, but not limited to, the European Union trademark WILDZ (word mark), with registration No. 017589813 and with a registration date of April 25, 2018, for goods and services in classes 9, 16, 25, 28, 35, 36, 38, 41, 42, and 45, and the International Registration for the trademark WILDZ (word mark), with registration No. 1443415 and with a registration date of June 13, 2018, for services in class 41, designating, *inter alia*, China, Singapore and the United States of America (together in singular also referred to as the "WILDZ Trademark").

The Domain Name was registered on August 2, 2022. The website to which the Domain Name resolves (the "Website") offers online gaming services whilst using and referring to the Trademark.

5. Parties' Contentions

A. Complainant

The Complainant contends the following.

The Domain Name is confusingly similar to the Trademark. More specifically, the Domain Name incorporates the Trademark in its entirety and only adds the descriptive term "casino" at the end of the Domain Name. Moreover, the domain suffix ".nl" does not prevent a finding of confusing similarity.

The Respondent has no rights or legitimate interests in regard to the Domain Name. The Respondent is not commonly known as "Wildz" or "Wildzcasino". Additionally, the Respondent is not licensed, permitted or otherwise authorized to use the Trademark or register the Domain Name. The Respondent is opportunistically using the Trademark in order to attract Internet users to the Website and has been using the Domain Name to divert Internet traffic to the Website. The Respondent registered the Domain Name on August 2, 2022. The Trademark and any other trademarks owned by the Complainant pre-date the registration of the Domain Name. There seems no question that the Respondent was aware of the Respondent's WILDZ casino at the time of registration of the Domain Name. The Respondent is not using the Domain Name for a *bona fide* offering of goods or services, nor for a legitimate or noncommercial fair use that might give rise to rights or legitimate interests in the Domain Name.

Moreover, the Domain Name has been registered and used in bad faith. The Respondent registered the Domain Name with prior knowledge of the Trademark, as it chose to register a Domain Name that includes the Trademark in its entirety, with the term "casino" and also displays the Trademark on the Website. The Domain Name was selected and is being used by the Respondent not for *bona fide* business purposes but rather to mislead Internet users. These circumstances indicate that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Website, by creating a likelihood of confusion with the Trademark as to the sources, sponsorship, affiliation, or endorsement of the Website by the

Complainant. This use negatively affects the Complainant's online presence and disrupts its business.

B. Respondent

The Respondent has not submitted a formal response.

After the deadline to file a response had passed, the Respondent sent informal email communications in Dutch to the Center. The Respondent mentioned that after receiving correspondence from the Center, he took the Website offline, but that his lawyer advised him that he is not under an obligation to transfer the Domain Name. The Respondent mentioned that he does not agree having to pay EUR 1,500 [the Panel notes that proceedings under the Regulations do not require any such payments from respondents]. Later he mentioned that it was not his intention to infringe the trademark rights of the Complainant. The Respondent merely wanted to build an "affiliate website" with information on the WILDZ casino and the different kinds of online games of chance. The Respondent confirmed that he refuses to transfer the Domain Name as he takes the position that the principle is "first come, first served".

6. Discussion and Findings

6.1 Preliminary Matter

Before entering into the merits of the case, the Panel addresses the matter of the late informal communications by the Respondent. Although these communications are late, in the circumstances of this case the Panel will admit them into the record.

6.2 Substantive Matter

Pursuant to article 2.1 of the Regulations, the Complainant must prove each of the following three elements:

- a. the Domain Name is identical or confusingly similar to:
 - I) a trademark or trade name protected under Dutch law in which the Complainant has rights; or
 - II) a personal name registered in the General Municipal Register ("Gemeentelijke Basisadministratie") of a municipality in the Netherlands, or the name of a Dutch public legal entity or the name of an association or foundation registered in the Netherlands under which the Complainant undertakes public activities on a permanent basis; and
- b. the Respondent has no rights to or legitimate interests in the Domain Name; and
- c. the Domain Name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has sufficiently proven to have rights in the Trademark, which grants protection also in the Netherlands.

The Domain Name consists of the Trademark in its entirety, to which the Respondent added the term "casino". The Trademark is clearly recognizable in the Domain Name. The Panel, therefore, finds that the Domain Name is confusingly similar to the Trademark.

As set out in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, the addition of other terms, such as "casino", would not prevent a finding of

confusing similarity between the Domain Name and the Trademark for purposes of the first element.¹

In accordance with section 1.11 of [WIPO Overview 3.0](#), the use of the country code Top-Level Domain (“ccTLD”) “.nl” may be disregarded under the first element.

The Panel, therefore, finds that the first element of article 2.1 of the Regulations has been satisfied.

B. Rights or Legitimate Interests

The Complainant in its Complaint has established a *prima facie* case that the Respondent has no rights to or legitimate interests in the Domain Name.

The Panel could not find any convincing evidence in the record of the type set forth in paragraph 4(c) of the Policy giving rise to rights to or legitimate interests in the Domain Name, such as:

(i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or

(ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or

(iii) making 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.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights to or legitimate interests in the Domain Name. However, the Respondent has not presented evidence of any such rights or legitimate interests, and the Panel, as noted, is unable to establish any such rights or legitimate interests on the basis of the evidence in the record.

The Complainant has asserted that the Respondent is not affiliated with the Complainant in any way. There is no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever been permitted by the Complainant to register or use the Domain Name.

Moreover, there is no evidence that “Wildz” or “Wildzcasino” is the Respondent’s name or that the Respondent is commonly known under this name.

The Respondent has also not put forward any evidence that would support the claim that the Respondent has used or made 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.

The Respondent indicated that he wanted to build an “affiliate website” for the Complainant’s casino. When reviewing the contents of the Website, the Panel finds that the Respondent has tried to impersonate, or at least to create the impression of a relationship with, the Complainant’s online casino. Apart from the fact that the Respondent has not done anything to avoid such impression, the Panel notes that the Domain Name is inherently misleading (section 2.5.1 of [WIPO Overview 3.0](#)).

The Panel finds that the Respondent lacks rights to or legitimate interests in the Domain Name.

Therefore, the Panel is satisfied that the second element of article 2.1 of the Regulations has been met.

¹ In view of the fact that the Regulations are substantially similar to the Uniform Domain Name Dispute Resolution Policy (“UDRP”), it is well established that both cases decided under the Regulations and cases decided under the UDRP, and therefore [WIPO Overview 3.0](#), may be relevant to the determination of this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

C. Registered or Used in Bad Faith

In light of its considerations under 6.B, based on the available record, the Panel finds that the Domain Name has been registered and is being used in bad faith.

The Panel notes that the Trademark was registered several years before the Domain Name, and has been in use since it was registered. The Website clearly displays the Trademark, as well as other combined word/device marks registered and used by the Complainant, and it further includes content that relates to online games of chance. Moreover, the Domain Name includes the additional term “casino” which describes the services for which the Trademark is registered and being used by Complainant. Indeed, the Respondent’s communications imply his awareness of the existence of the Complainant’s rights and activities at the time the Respondent registered the Domain Name.

The Panel finds that the Respondent is intentionally targeting the Complainant by taking advantage of the Trademark, relying on the confusion the Domain Name intentionally creates in order to redirect the Internet users to another website through which the Respondent offers online games of chance.

The Panel is thus satisfied that the third element of article 2.1 of the Regulations has been met, and that the Domain Name was registered and is being used in bad faith.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the domain name <wildzcasino.nl> be transferred to the Complainant.

/Willem J.H. Leppink/

Willem J. H. Leppink

Panelist

Date: February 10, 2023