

ADMINISTRATIVE PANEL DECISION

Evolution AB v. Privacy service provided by Withheld for Privacy ehf /
maibokrokA1 maibokrokA1

Case No. D2022-1208

1. The Parties

The Complainant is Evolution AB, Sweden, represented by Zacco Sweden AB, Sweden.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / maibokrokA1 maibokrokA1, Thailand.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 6, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 April 11, 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 amendment to the Complaint on the same date.

The Center verified that the Complaint together with the amendment to the 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 April 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2022.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on June 14, 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 is a Swedish company group that operates online casino services.

The Complainant's trademark EVOLUTION GAMING is the object of registrations in the European Union (trademark registration no. 009320854, registered on August 9, 2011), and in the United States of America (the "United States") (trademark registration no. 4,369,126, registered on July 16, 2013).

The Complainant also owns the domain name <evolutiongaming.com>, registered on March 11, 2004. The Respondent registered the disputed domain name on December 26, 2021.

When the Panel tried to access the disputed domain name – on June 26, 2022 – there was no active web site. However, the Complainant brought evidence that the Respondent has used the disputed domain name to host a website offering gaming contents, unauthorizedly reproducing the Complainant's EVOLUTION GAMING trademark and logo.

6. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Complainant is the owner of the trademark EVOLUTION GAMING (word and figurative mark), which has been registered and used in numerous countries for a long period of time, including in the European Union and the United States. The Complainant also owns several domain names that incorporate the EVOLUTION GAMING, such as <evolutiongaming.com>. The disputed domain name consists of the term "evolutiongaming", which is identical to the Complainant's trademark EVOLUTION GAMING. The addition of the generic Top-Level Domain (gTLD) name ".games" does not have any impact on the overall impression of the dominant portion of the disputed domain name and is therefore irrelevant when determining the confusing similarity between the trademark and the disputed domain name. There is a considerable risk that the trade public will perceive the disputed domain name either as a domain name owned by the Complainant or that there is some commercial relationship with the Complainant. By using the disputed domain name, the Respondent exploits the goodwill and the image of the Complainant's trademark, which may result in dilution and other damage for the trademark.

- The Respondent has no rights or legitimate interests in respect of the disputed domain name. No license or authorization of any other kind has been given by the Complainant to the Respondent to use the trademark EVOLUTION GAMING, and the Complainant has found no information indicating that the Respondent is somehow trading under a name corresponding to the disputed domain name. Furthermore, the Respondent is not an authorized representative of the Complainant's products and services and has never had a business relationship with the Complainant. No evidence has been found indicating that the Respondent is using the name "Evolution Gaming" as a company name or that it has any other legal rights to the name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the Respondent has intentionally chosen the disputed domain name based on the Complainant's trademarks and fame, in order to generate traffic and income through a website where the Respondent is attempting to impersonate the Complainant. The Respondent's website reproduces the Complainant's logotype, actively attempting to create the impression that the disputed domain name is

connected to the Complainant, which is not the case. Under such circumstances, the Complainant argues that it is obvious that potential visitors will risk assuming that the disputed domain name is somehow connected to the Complainant. The disputed domain name is being used for a commercial and possibly also fraudulent purpose, which will risk diluting and damaging the EVOLUTION GAMING trademark.

- The disputed domain name was registered and is being used in bad faith. The Complainant holds numerous registrations for the trademark EVOLUTION GAMING in various jurisdictions, with seniority for the EVOLUTION GAMING trademark in the European Union dating back to 2010, and to 2011 in the United States. The Respondent registered the disputed domain name on December 26, 2021. The fact that the website connected to the disputed domain name refers specifically to the Complainant and the Complainant's products and services makes it even more obvious that the Respondent was fully aware of the Complainant and the Complainant's trademarks at the time of registration of the disputed domain name. The Complainant issued a cease and desist letter to the Respondent, requesting that the disputed domain name be transferred to the Complainant. The Respondent chose not to respond to the cease and desist letter within the given time frame, even after receiving a reminder. Per the time of filing of this Complaint, the website connected to the disputed domain name remained active and the Complainant had received no response from the Respondent. By using the Complainant's logotype, name, and trademark, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its own website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

B. Respondent

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

7. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of a domain name, the Complainant must prove the following three elements:

- (1) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (2) the respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complaint's Annex 6 proves that the Complainant has had rights in the EVOLUTION GAMING trademark since at least 2011.

The Complainant's trademark EVOLUTION GAMING is wholly encompassed within the disputed domain name, which was registered in 2021.

It is already well established that the addition of a gTLD is typically irrelevant when determining whether a domain name is confusingly similar to a complainant's trademark. Especially when the gTLD is directly related to the Complainant's products and services (such as ".games" for a gaming company).

Therefore, the Panel finds the disputed domain name to be in effect identical to the Complainant's trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides some examples without limitation where a respondent can demonstrate a right or legitimate interest in a domain name by showing one of the following facts:

- (i) before receiving any notice of the dispute, the respondent used or made preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name; or
- (iii) the respondent is 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 at issue.

The Panel has concluded that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not licensed the trademark to the Respondent and there is no indication that the Respondent is commonly known by the disputed domain name.

The Panel also notes that the present record provides no evidence to demonstrate the Respondent's intent to use or to make preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent did not present any response to the Complaint, nor to the Complainant's cease and desist letters.

Indeed, the Complainant showed that the Respondent has used the disputed domain name in connection with a webpage unauthorizedly reproducing the Complainant's trademark and logo, together with contents related to gaming products and services.

Consequently, the Panel is satisfied that the Complainant has proven the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that the following circumstances in particular but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- “(i) circumstances indicating that the Respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or
- (ii) the Respondent 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 the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its web site or location.”

The disputed domain name fully encompasses the Complainant's trademark EVOLUTION GAMING.

When the disputed domain name was registered by the Respondent, in 2021, the trademark EVOLUTION

GAMING had already been registered and was being used for a decade by the Complainant.

The Respondent registered the disputed domain name under a gTLD that is directly related to the Complainant's business: ".games".

Also the contents that were recently published at the disputed domain name were related to gaming products and services, including reproductions of the Complainant's trademark and logo.

Therefore, it is not feasible that the Respondent could have been unaware of the Complainant's reputation and business registering the disputed domain name.

The use of the disputed domain name, which is identical to the Complainant's trademark, to host a commercial website featuring the Complainant's trademark and logo, illustrates the Respondent's intent to mislead unsuspecting Internet users searching for the Complainant for the Respondent's presumed commercial advantage.

From the Panel's search, the disputed domain name does not resolve to any active website.

However, UDRP panels have frequently found that the apparent lack of so-called active use of the domain name (passive holding) does not prevent a finding of bad faith. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 3.3; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Polaroid Corporation v. Jay Strommen*, WIPO Case No. [D2005-1005](#).

The non-collaborative posture of the Respondent, (a) not presently using the disputed domain name, (b) not indicating any intention to use it, and (c) not at least providing justifications for the use of a third party trademark, certainly cannot be used in benefit of the Respondent in this Panel's opinion.

Such circumstances, including (d) the lack of any plausible interpretation for the adoption of the term "evolutiongaming.games" by the Respondent, and (e) the evidence provided by the Complainant's demonstration of previous uses of the disputed domain name, are enough in this Panel's view to characterize bad faith registration and use in the present case.

Accordingly, the Panel finds that the Complainant has proven that the Respondent registered and used the disputed domain name in bad faith, satisfying 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 <evolutiongaming.games> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: June 29, 2022