

## **ADMINISTRATIVE PANEL DECISION**

**Crytek IP Holding LLC v. Privacy Service Provided by Withheld for Privacy ehf / mike andres, OSONYO TRADE LTD**  
**Case No. D2022-1438**

### **1. The Parties**

The Complainant is Crytek IP Holding LLC, United States of America (“United States”), represented by Osborne Clarke Rechtsanwälte Steuerberater Partnerschaft mbB, Germany.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / mike andres, OSONYO TRADE LTD, United Kingdom.

### **2. The Domain Name and Registrar**

The disputed domain name <crytekmeta.com> 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 21, 2022. On April 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 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 May 4, 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 May 9, 2022.

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 May 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 1, 2022.

The Center appointed John Swinson as the sole panelist in this matter on July 6, 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 1999 and is an independent video game developer, publisher, and technology provider, and according to the Complainant's website at <crytek.com>, is based in Frankfurt, Germany.

The Complainant owns numerous registered trademarks including German trademark for CRYTEK (Registration No. DE 301342857) registered on September 18, 2001.

The Respondent did not file a Response, so little information is known about the Respondent. According to a search by the Panel the Respondent may have operated a website that facilitated cryptocurrency and foreign exchange trading (which has fallen on criticism); that website currently does not resolve to an active website.

The disputed domain name was registered on February 14, 2022.

The disputed domain name does not currently resolve to an active website.

At one time, the website at the disputed domain name was titled "Crytek" and "Welcome to the dark Meta Verse". It appeared to offer for sale NFTs and other digital products. The website included text such as the following, under a heading "Virtual Land":

"Each game will have its own governing planet. We will run virtual land auctions, where people can purchase their own piece of that planet and earn revenue from the game by completing specific tasks. In the future, these pieces of land can be used to build infrastructure for that planet, such as virtual NFT stores, collection galleries, weapon stores, and buy/sell NFTs from the game."

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant owns registered trademarks for CRYTEK in both word and logo format, including the German registration referred to in section 4 above.

The designation CRYTEK is further a well-established trade name in the video games and software industry for more than 20 years that enjoys a high international reputation.

The similarity of the Complainant's trademark CRYTEK to the disputed domain name is obvious and confusing. The first six letters of the disputed domain name are identical to the CRYTEK trademark. Thus, the trademark CRYTEK is entirely incorporated into the disputed domain name, which already constitutes confusing similarity of the disputed domain name.

The Complainant has never authorized, permitted, or allowed the Respondent to use the Complainant's trademarks as part of the disputed domain name or for any other purpose. The Respondent does not own any trademarks or trade names corresponding to the disputed domain name.

There is no evidence of 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, because the Respondent is using the website at the disputed domain name to mislead

consumers into believing there is a connection between the Respondent's website and the Complainant.

The risk of confusion is increased by the fact that the designation CRYTEK is an artificial term that is unique and highly distinctive. The suffix "meta" in the disputed domain name does not eliminate the likelihood of confusion. On the contrary, the suffix "meta" is a dictionary term. In the context of information technology, "meta" is a common designation for the concept of the metaverse.

At the time of the Complainant, the disputed domain name was used as an Internet address for a website. Under the disputed domain name, the Respondent operates a website that seems to offer certain digital products that are vaguely related to the metaverse concept, such as "pay-to-earn games" or Non-Fungible Tokens (NFTs), cryptocurrencies and other digital products. Further, the Respondent provides a Whitepaper on the website, which gives an overview over its "business-model".

It is therefore not clear to the public visiting the Respondent's website that it is not operated by the Complainant and that the Complainant's trademarks are used without their authorization. Rather, by using the Complainant's trademark on the Respondent's website, the Respondent is obviously trying to suggest an economic relationship to the Complainant that does not exist. The Respondent tries to give the impression that the Respondent is at least economically linked to the Complainant and that the Respondent markets certain video games, NFTs or cryptocurrencies with the Complainant's authorization.

The disputed domain name was clearly registered and used to take unfair advantage of the Complainant's trademark. Thus, the Respondent acted in bad faith. The disputed domain name was registered to suggest economic relationships to the Complainant that do not exist.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 and is being used in bad faith.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant owns trademark registrations for CRYTEK. The disputed domain name includes "crytek" in full and adds the word "meta" after "crytek".

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of other terms in the disputed domain name. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#); and *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunberg*, WIPO Case No. [D2021-3279](#)

The Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant succeeds on the first element of the Policy.

## **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] 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, even if [the Respondent] has acquired no 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that the Complainant has never authorized, permitted, or allowed the Respondent to use the Complainant's trademarks as part of the disputed domain name or for any other purpose. The Complainant also asserts that the Respondent does not own any trademarks or trade names corresponding to the disputed domain name. The Complainant also asserts that there is no evidence of 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, because the Respondent is using the website at the disputed domain name to mislead consumers into believing there is a connection between the Respondent's website and the Complainant.

The Panel considers that, based upon the above, the Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Respondent has chosen not to file a formal Response. The Respondent has not produced any evidence to establish its rights or legitimate interests in the disputed domain name.

Accordingly, none of the circumstances listed in paragraph 4(c) apply in the present circumstances. The Panel finds on the evidence before the Panel that the Respondent has no rights or any legitimate interests in the disputed domain name.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

### **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

In the recent past, the website at the disputed domain name promoted digital products and NFTs, including products relating to computer games and digital virtual worlds. The Complainant is a computer game developer. It is likely that Internet users would falsely associate the website at the disputed domain name with the Complainant.

There is no obvious reason for the Respondent to register the disputed domain name other than for the purpose of attempting to trade off the Complainant's goodwill in its CRYTEK trademark.

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy.

The fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith.

The Complainant succeeds on the third element of the Policy in relation to 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 <crytekmeta.com> be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: July 20, 2022