

## **ADMINISTRATIVE PANEL DECISION**

Victory Willbeours N.V. v. Privacy service provided by Withheld for Privacy ehf / Maksim Reznik  
Case No. D2022-1447

### **1. The Parties**

The Complainant is Victory Willbeours N.V., Curaçao, Netherlands represented by TB Business Support, LLC, Latvia.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Maksim Reznik, Ukraine.

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

The disputed domain names <azinocasinos777.co> (the “first disputed domain name”), <azino-com.net> (the “second disputed domain name”) and <azino-ru.biz> (the “third disputed domain name”) are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 22, 2022. On April 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 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 May 5, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on May 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2022. The proceeding was suspended on June 27, 2022 and was reinstated on August 2, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on August 4, 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. Further Procedural Considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

The identity of the underlying personal-named Respondent<sup>1</sup> was concealed by a privacy service. The contact details provided by the Registrar for the Respondent, which will have been provided to the Registrar by the Respondent, are for a postal address in Kiev, Ukraine, together with an email address. As at the date of this Decision, Ukraine is subject to an international conflict, that may impact on service on the Respondent of documents related to these proceedings, and it is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceedings should continue. The prime consideration in this respect is whether the Panel can be satisfied either that the proceedings have come to the attention of the Respondent or, if not, that the reason they have not done so is because the Respondent has provided false contact information to the Registrar.

In considering the above factors, the Panel notes that the Written Notice sent to the Respondent was delivered on May 25, 2022. This suggests that the Respondent's address is genuine..

The Panel notes also that emails to the "postmaster" addresses of each of the disputed domain names have been undelivered. However, so far as the Panel can establish, none of the emails sent by the Center to the Respondent using the email address provided by the Respondent to the Registrar as his email address, including that which served the Complaint on the Respondent on May 11, 2022, has been rejected by the Respondent's mail server. The Panel is therefore satisfied that this means of Notification of Complaint has been successful and that the proceedings have come to the attention of the Respondent via his email contact address and by the courier service.

The Respondent has not given any indication to the Center that he has required additional time to consider the Complaint and serve a Response, whether due to the conflict in Ukraine or for any other reason. The Panel concludes that the Respondent has been given a fair opportunity to present his case, and, having regard to the requirement under the Rules that the administrative proceeding takes place with due expedition, the Panel accordingly proceeds to determine the Complaint.

#### **5. Factual Background**

The Complainant is a provider of online gambling services, which are provided worldwide through its website at "www.azino777.com". The Complainant's website has been in operation since 2014 and its services are particularly popular and well-known in Russian-speaking countries. The Complainant owns various trade marks to protect its "Azino777" brand, including European Union Trade Mark, registration number 017903921, for AZINO777, in classes 9 and 41, registered on September 13, 2018.

The first disputed domain name was registered on January 29, 2021 and the second and third disputed domain names were each registered on October 29, 2021. As at the time of filing the Complaint, the first disputed domain name resolved to a gambling website, the content of which was in Russian script. At the top of the home page was a notice which, in translation, read; "Azino777 has all the necessary licences". The second disputed domain name also resolved to an online gaming website which contained a notice at

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<sup>1</sup> Save whether the context otherwise requires, references in the remainder of this section to "the Respondent" are to the personal-named Respondent.

the top “Azino777” and, in translation from Russian script, the claim “Play for money at Azino777- the official website of the online casino”. The third disputed domain name also resolved to a gaming website, prominently headed “AZINO777 -ONLINE CASINO”. None of the disputed domain names presently resolves to an active website.

## **6. Parties’ Contentions**

### **A. Complainant**

The Complainant says that each of the disputed domain names is identical or confusingly similar to its registered trade mark for AZINO777. The first disputed domain name incorporates the entirety of its mark. The added term, “casinos”, does not significantly alter the perception of confusing similarity and simply reflects the intention of the associated website to offer gambling services. The second disputed domain name incorporates the “AZINO” component of the Complainant’s mark. Neither the lack of the numeral “777” nor the addition of the term “-com” significantly changes the perception of the second disputed domain name as confusingly similar to the Complainant’s mark, as the term “azino” comprises the first and dominant element of its mark and the term “-com” will be perceived as referring to the generic Top-Level Domain (“gTLD”) “.com”. The third disputed domain name also incorporates the dominant “azino” element of the Complainant’s mark. The added term “-ru” does not have a significant impact on the overall perception as “ru” is a term which will be perceived as referring to the country-code Top-Level Domain (“ccTLD”) for Russia.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The “AZINO” component portion of the Complainant’s mark is an invented word and, as such, could not have been chosen by the Respondent accidentally. The Complainant has not licensed or otherwise permitted the Respondent to use its trade mark or any derivatives from it, nor to use any domain names incorporating its mark. Nor is there any evidence that the Respondent is commonly known by the disputed domain names. Moreover, it is apparent that the Respondent’s use of the disputed domain names cannot be considered a legitimate non-commercial or fair use of them, since it is evident from the websites to which they resolve that their purpose is to provide commercial services for online gaming and gambling and to attract consumers by their unauthorized use of the Complainant’s well-known trade mark.

The Complainant says also that the disputed domain names were registered and are being used in bad faith. The disputed domain names each use, at least, the “AZINO” component of the Complainant’s trade mark and were clearly registered by the Respondent because he was aware of the Complainant and the fact that each of the disputed domain names created an association with the Complainant’s brand and business.

The Complainant has used each of the disputed domain names to resolve to websites which are intended to mislead Internet users into believing that they are connected in some way with the Complainant. Indeed, each of the Respondent’s websites falsely suggests that the Complainant is the operator of it. Accordingly, the Respondent’s registration and use of each of the disputed domain names in order to resolve to websites which are seemingly connected with the Complainant is such as to create a likelihood of confusion with the Complainant’s trade mark as to the source, sponsorship or affiliation of his websites.

### **B. Respondent**

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

## **7. Discussion and Findings**

Dealing, first, with the Respondent’s failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission as it

considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain names are identical or confusingly similar to a trade mark 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

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

The Complainant has provided details of one of its trade mark registrations for AZINO777, details of which are set out above. It has thereby established its rights in this mark.

The gTLDs “.net” and “.biz” and the ccTLD “.co” in the disputed domain names are typically disregarded for the purposes of the comparison made under the first element, as they are a technical requirement of registration.

None of the disputed domain names reproduces exactly the Complainant’s mark. The first disputed domain name contains the entirety of the Complainant’s mark, albeit the word and numerical components are separated by the word “casinos”. The second and third disputed domain names each include the term “azino” which, having regard to the fact that it is the first and distinctive portion of the Complainant’s mark, is considered to be the dominant element of it.

Neither the added terms in each of the disputed domain names nor the fact that the second and third disputed domain names do not incorporate the entirety of the Complainant’s mark prevents them from being found confusingly similar to it. As explained at section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)); “While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. See also section 1.8 of the [WIPO Overview 3.0](#); “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”.

Additionally, the content of each of the Respondent’s websites clearly indicates that the disputed domain names were registered because he had been seeking to target the Complainant and its AZINO777 brand through his use of them. This therefore affirms the confusing similarity between the disputed domain names and the Complainant’s mark; see *Golden Goose S.p.A. v. Phillip Fischer*, WIPO Case No. [D2017-1010](#).

The Panel therefore finds that each of the disputed domain names is confusingly similar to a trade mark in which the Complainant has rights.

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

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used, or made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name or a name corresponding to the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

The use which has previously been made of the disputed domain names, namely to resolve to gambling websites which purport to be operated by the Complainant's is calculated to mislead Internet users. As explained at section 2.13.1 of the [WIPO Overview 3.0](#); "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent". See also, in similar circumstances, *Société Anonyme des Bains de Mer et du Cercle des Etrangers à Monaco v. Top Domain, Top*, WIPO Case No. [D2020-3247](#). None of the Respondent's websites have therefore comprised a *bona fide* offering of goods and services.

There is no evidence to indicate that the Respondent has been commonly known by any of the disputed domain names and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor has the Respondent made a legitimate noncommercial or fair use of them.

Lastly, the current inactive use of the disputed domain names comprises neither a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of them; see *Skyscanner Limited v. WhoisGuard Protected, WhoisGuard, Inc. / petrov petya*, WIPO Case No. [DCC2020-0003](#).

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent; see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). In the absence of any response from the Respondent to the Complainant's contentions, he has failed to satisfy that burden. The Panel therefore finds that the Respondent has no rights or legitimate interests with respect to the disputed domain names.

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

The Complainant has asserted that, as at the dates of registration of the disputed domain names, its AZINO777 mark was well-known, particularly in Russian speaking countries. In view of the use to which the Respondent has put the disputed domain names following registration, the Panel concludes that the Respondent was aware of the Complainant's AZINO777 mark as at the date of his registration of the disputed domain names and registered them in order to take advantage of the Complainant's repute in its mark. As explained at section 3.1.4 of the [WIPO Overview 3.0](#): "[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith." The Panel therefore finds the registration of the disputed domain names to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstances set out in paragraph 4(b)(iv) of the Policy are if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

The use to which the Respondent has put the disputed domain names falls squarely within these circumstances in that they pointed to websites which purported to be operated by, or with the authorization of, the Complainant. Moreover, the belief of Internet users that they have found one of the Complainants' websites will be reinforced because of the confusing similarity between the disputed domain names and the Complainant's AZINO777 trade mark.

The current inactive status of the disputed domain names does not prevent a finding of bad faith under the doctrine of passive holding; see section 3.3 of the [WIPO Overview 3.0](#). The factors that are typically considered when applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealment of its identity or use of false contact details, (iv) the implausibility of any good faith use to which the domain name may be put.

These factors are fulfilled in the current circumstances in that: (i) the evidence suggests that the Complainant's AZINO777 trade mark is distinctive in the context of the provision of online gambling and gaming services; (ii) the Respondent has not submitted a response and the only use made of the disputed domain names to date has been in bad faith; (iii) the Respondent has sought to conceal his identity through use of a privacy service; (iv) there is no plausible good faith use to which the disputed domain names could be put by the Respondent as their composition is such that they would implicitly be connected to the Complainant. See also *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#).

The Panel therefore finds that the disputed domain names have been registered and are being used in bad faith.

## 8. 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 names <azinocasinos777.co>, <azino-com.net> and <azino-ru.biz> be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: August 18, 2022