

ADMINISTRATIVE PANEL DECISION

Splice Video Editor S.R.L v. Sergey Zdrilyuk / Francis Starlite
Case No. D2022-3292

1. The Parties

The Complainant is Splice Video Editor S.R.L, Italy, represented by Bugnion S.p.A., Italy.

The Respondents are Sergey Zdrilyuk, Russian Federation (the “Respondent 1”) and Francis Starlite, United States of America (“United States”) (the “Respondent 2”).

2. The Domain Names and Registrar

The disputed domain names <spliceapps.com> (the “Domain Name 1”), <splicecorp.site> (the “Domain Name 2”), <spliceapp.site> (the “Domain Name 3”), and <splicesapp.com> (the “Domain Name 4”) (collectively referred to as the “Domain Names”) are registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2022. On September 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On September 5, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent 1 and 2 are listed as the registrant and providing the contact details.

On September 13, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on September 14, 2022. The Respondents did not comment on the language of the proceeding.

The Center verified that 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”).

On September 27, 2022, the Center notified the Complainant that there appears to be at least *prima facie* grounds sufficient to warrant accepting the Complaint for the Panel’s final determination of the consolidation request on appointment.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents of the Complaint, and the proceedings commenced on September 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 18, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on November 1, 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 wholly owned subsidiary of Bending Spoons S.p.A. ("Bending Spoons"), an Italian mobile application developer founded in 2013. One of the mobile applications developed by Bending Spoons is Splice – a video editor application. It has currently more than 1 million downloads on Google Play and 80 million downloads on App Store.

Bending Spoons is the owner of the United States of America Trademark Registration SPLICE No. 5317747 registered on October 24, 2017.

The Complainant's official domain name incorporating the SPLICE trademark is <spliceapp.com> (the "Complainant's Official Website").

The Domain Names 1, 2 and 3 were registered on July 14, 2022, while the Domain Name 4 was registered on August 13, 2022.

The Complainant presented the evidence that the Domain Names 1 and 4 were previously used to attract Internet users to the website constituting a copy of the Complainant's Official Website. The Domain Names 2 and 3 resolved to inactive websites. As of the date of this Decision, all the Domain Names resolve to inactive websites.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Names be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Names are confusingly similar to the SPLICE trademark registrations in which the Complainant has rights.

Second, the Complainant argues that the Respondents have neither rights nor legitimate interests in the Domain Names.

Third, the Complainant submits that the Domain Names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

(i) the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondents have no rights or legitimate interests in the Domain Names; and

(iii) the Domain Names have been registered and are being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A. The Complainant’s standing to file the Complaint

As noted above, the owner of the United States of America Trademark Registration SPLICE No. 5317747 registered on October 24, 2017 is Bending Spoons – the sole shareholder of the Complainant.

Under the UDRP a trademark owner’s affiliate such as a subsidiary of a parent or of a holding company is considered to have rights in a trademark for purposes of standing to file a complaint. See section 1.4.1, [WIPO Overview 3.0](#).

Thus, the Panel acknowledges that the Complainant has a standing to file the Complaint.

B. Consolidation of the Respondents

The Complainant has submitted the Complaint against multiple Respondents.

Paragraph 3(c) of the Rules provides that the complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. Moreover, pursuant to section 4.11.2 of the [WIPO Overview 3.0](#), where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

In the present case, the Panel finds that various commonalities between the Domain Names provide sufficient evidence that they are owned and/or controlled by a common individual/entity.

Firstly, the Panel notes the proximity in the dates of registration of the Domain Names. The Domain Names 1, 2 and 3 were registered on July 14, 2022, while the Domain Name 4 was registered on August 13, 2022.

Secondly, the Panel observes the similarity of the content of the Domain Names. Each of the Domain Names includes the Complainant’s SPLICE trademark alongside the terms “app”, “apps” or “corp”.

Thirdly, the Panel acknowledges identical content hosted historically at the websites connected to the Domain Names 1 and 4. The Panel also notes that the Domain Names 2 and 3 both resolved to inactive websites.

Finally, all the Domain Names were registered with the same Registrar – Registrar of Domain Names REG.RU, LLC.

Accordingly, the Panel finds that the Domain Names are subject to a common control for the purposes of these proceedings. The Respondents have not denied these assertions, thus the Panel permits the consolidation of the proceedings and refers to all the registrants of the Domain Names as the "Respondents".

C. Language of the Proceeding

The language of the Registration Agreement for the Domain Names is Russian. Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English.

The Complainant contends, *inter alia*, that it is unable to communicate in Russian. Thus, the translation of the Complaint would financially burden the Complainant and delay the proceedings. Furthermore, the Complainant notes that all the Domain Names include the SPLICE trademark which constitutes an English word written in Latin characters. This suggests that the Respondents have knowledge of English language. Moreover, the Complainant observes that the address of the Respondent 2 is in Indianapolis, United States. Lastly, the Complainant alleges that the Domain Names 1 and 4 resolved previously to the website featuring a copy of the Complainant's Official Website, which is available exclusively in English.

The Panel agrees that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondents did not comment on the language of the proceeding, even though they were notified in English and Russian regarding the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

D. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Names are identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant has rights in valid SPLICE trademark registration, which precede the registration of the Domain Names.

The Domain Names incorporate the SPLICE trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of such terms as "apps", "corp" or "app" in the Domain Names does not prevent a finding of confusing similarity between the Domain Names and the SPLICE trademark in which the Complainant has rights. Prior UDRP panels have consistently held that 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. See section 1.8, [WIPO Overview 3.0](#).

The generic Top-Level Domains (“gTLDs”) “.com” and “.site” in the Domain Names are viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Names are confusingly similar to the SPLICE trademark in which the Complainant has rights. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

E. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondents have no rights or legitimate interests in the Domain Names.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it 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.

Although given the opportunity, the Respondents have not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the SPLICE trademark registrations, in which the Complainant has rights, predate the Respondents’ registrations of the Domain Names. There is no evidence in the case file that the Complainant has licensed or otherwise permitted the Respondents to use this trademark or to register the Domain Names incorporating this trademark. There is also no evidence to suggest that the Respondents have been commonly known by the Domain Names.

Moreover, it results from the evidence in the record that the Respondents do not make use of the Domain Names in connection with a *bona fide* offering of goods or services, as well as they do not make a legitimate, noncommercial or fair use of the Domain Names without intent for commercial gain.

On the contrary, the Complainant presented evidence that the Domain Names 1 and 4 were previously used to attract Internet users to the websites constituting a copy of the Complainant’s Official Website, while the Domain Names 2 and 3 resolved to inactive websites. Such use of the Domain Name does not confer rights or legitimate interests on the Respondents.

Given the above, the Respondents have failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Names. Thus, there is no evidence in the case file that refutes the Complainant’s *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

F. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Names have been registered and are being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the SPLICE trademark predate the registration of the Domain Names. This Panel finds that the Respondents were or should have been aware of the Complainant's trademark at the time of registration of the Domain Names. This finding is supported by the content of the Domain Names 1 and 4, which copied the content of the Complainant's Official Website and impersonated the Complainant. Moreover, it has been proven to the Panel's satisfaction that the SPLICE trademark is well known and unique to the Complainant and Bending Spoons. Thus, the Respondents could not likely reasonably ignore the reputation of products under this trademark. In sum, the Respondents in all likelihood registered the Domain Names with the expectation of taking advantage of the reputation of the SPLICE trademark in which the Complainant has rights.

Moreover, the Complainant presented evidence that the Domain Names 1 and 4 were previously used in bad faith by the Respondents to attract Internet users to the websites, which copied the Complainant's Official Website and impersonated the Complainant. Thus, this Panel finds that the Respondents used the Domain Names in an attempt to attract, for commercial gain, Internet users to the websites by creating a likelihood of confusion with the SPLICE trademark as to the source, sponsorship, affiliation, or endorsement of the websites or the activity carried out through the websites by the Respondents.

Finally, the Complainant presented evidence that the Domain Names 2 and 3 resolved to inactive websites. In the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Names 2 and 3 does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, may not prevent a finding of bad faith under the Policy. Here, given the Respondents' failure to participate in this proceeding, and the implausible good faith use to which the Domain Names could be put, the Panel agrees with the above.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) 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 Domain Names <spliceapps.com>, <spliceapp.site>, <splicecorp.site> and <splicesapp.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: November 4, 2022