

ADMINISTRATIVE PANEL DECISION

Score Media and Gaming Inc. v. Dave Jameson
Case No. D2022-4000

1. The Parties

The Complainant is Score Media and Gaming Inc., Canada, represented by Cantor Colburn LLP, United States of America (“United States”).

The Respondent is Dave Jameson, United States.

2. The Domain Name and Registrar

The disputed domain name <thescoreleague.com> is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2022. On October 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 28, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On October 31, 2022, the Center sent an email communication in English and Russian to the Parties in respect of the language of proceedings. On November 3, 2022, the Complainant filed an amended Complaint including a request for English to be the language of the proceeding. The Respondent did not make any comments 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Russian of the Complaint, and the proceedings commenced on November 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 30, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on December 9, 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 digital sports media company that provides online content regarding sports, e-sports, and sports betting news, original and curated editorial content, mobile sports games, audio and audio-visual content, and betting information. The Complainant's mobile application "theScore" has had over 10 million downloads on Google Play. The Complainant states that it has used the name "theScore" and the THESCORE trademark for sports media offerings in Canada since 1999, and in the United States and internationally since 2001.

The Complainant is the owner of the following trademark registrations protecting variations of the sign "THESCORE" (the "THESCORE trademark"):

- the Hong Kong, China trademark E THESCORE with registration No. 303785608, registered on May 24, 2016 for goods and services in International Classes 9, 35 and 41;
- the United States trademark THESCORE with registration No. 5216434, registered on June 6, 2017 for services in International Class 41, with first use in commerce on May 26, 2016;
- the United States trademark THESCORE ESPORTS with registration No. 5372488, registered on January 9, 2018 for goods and services in International Classes 9, 35 and 41;
- the United States trademark E THESCORE with registration No. 5940977, registered on December 24, 2019 for goods and services in International Classes 9, 35 and 41; and
- the United States trademark THESCORE BET with registration No. 6392304, registered on June 22, 2021 for goods and services in International Classes 9, 35 and 41.

The Complainant also owns and uses a number of domain names that include the THESCORE trademark, including <thescore.com>, <thescore.bet>, and <thescoreesports.com>. These domain names resolve to the Complainant's website.

The disputed domain name was registered on April 29, 2022. It resolves to a landing webpage of the Registrar in Russian. At the time of the filing of the Complaint, the disputed domain name featured images and text that also appeared on the Complainant's website and sports betting application.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its THESCORE trademark, because it fully incorporates this trademark with the addition of the dictionary word "league." The Complainant adds that the confusing similarity to its THESCORE trademark is exacerbated by the website at the disputed domain name which intentionally misleads consumers into believing that it is an official website of the Complainant or is approved by the Complainant. The website at the disputed domain name improperly features copied images and text that also appear on the Complainant's THESCORE website and sports betting application.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant notes that when the disputed domain name was registered in 2022, the Complainant's rights in the THESCORE trademark had been firmly established. The Complainant states that the Respondent does not use the disputed domain name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial or fair use. The Complainant states that there is no relationship

between the Parties that would give rise to any authorization to the Respondent to own or use the disputed domain name. The Complainant adds that the Respondent is not commonly known by the disputed domain name. According to the Complainant, the disputed domain name is being used intentionally to mislead consumers that the website under the disputed domain name is an official website of the Complainant, so visitors to this website are likely to believe that its content is affiliated with the Complainant. The Complainant concludes that the THESCORE trademark is used intentionally in the disputed domain name to undertake a fraudulent scheme whereby Internet users encounter and interact with the Respondent's website under the erroneous assumption that it is an official website of the Complainant or is authorized by it. The Complainant adds that the disputed domain name contains links that purport to serve as download links for its "theScore Bet" mobile application, but instead direct to an internal page of the website at the disputed domain name that prompts users to register a user account with it. The website also improperly includes Twitter and YouTube links that link to the Complainant's theScore actual esports social media accounts, further passing off the website at the disputed domain name as being affiliated with the Complainant when it is not. The Complainant concludes that the disputed domain name was registered solely to create an impression of an association with the Complainant and their reputable services, in violation of the Policy, and to mislead and divert consumers into believing it is officially associated with the Complainant for commercial gain.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent selected the disputed domain name to disrupt the business of the Complainant and to attract internet users to its website by creating a likelihood of confusion with the Complainant's THESCORE trademark. The Complainant states that, in view of the fame of the THESCORE trademark, its inclusion in the disputed domain name coupled with the dictionary word "league" and the use of the disputed domain name in connection with content described above, shows that the Respondent knew of the existence of the Complainant's THESCORE trademark and its significance in the market as a strong and well-known mark as of the registration date of the disputed domain name. The Complainant maintains that the Respondent acted with opportunistic bad faith by registering the disputed domain name that is confusingly similar to the Complainant's THESCORE trademark.

The Complainant submits that it sent a demand letter to the Respondent on June 29, 2022. This letter demanded that the Respondent cease the activity which is the subject of the Complaint and requested the disputed domain name be transferred. The e-mail to the Respondent was returned as undeliverable.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue – Language of the proceeding

According to the information provided by the Registrar, the language of the registration agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, 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 Complainant requests that the language of the proceeding be English, and notes that conducting the proceeding in Russian would impose an undue burden and disadvantage on the Complainant, causing additional expense and delay due to the need for translation of the Complaint and annexes to it into Russian. The Complainant adds that it and its legal representatives are based in the United States, speak English, and do not speak or understand Russian, and that previous UDRP panels have accepted English as the language of the proceeding in cases involving the same Registrar under similar circumstances.

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent did not respond and did not make any objections to the Complainant's request that the proceeding be held in English. The Respondent did not show any intention to participate in the proceeding. The name of the Respondent, Dave Jameson, appears as the name of an English-speaking person, and his address, as provided to the Registrar, is in the United States, where English is the official language. Considering these circumstances, it appears to the Panel as likely that the Respondent speaks English.

In view of the above, the Panel finds no reasons to conclude that the Respondent would be disadvantaged if the language of the proceeding is English, and accepts that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding be English.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (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 was registered and is being used in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain- name holder) to retain registration and use of the disputed domain name [...]"

The Respondent however did not respond to the statements and allegations contained in the Complaint and did not include any bases for the Respondent to retain registration and use of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the THESCORE trademark. Therefore, the Panel is satisfied that it has established its rights in this trademark for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain ("TLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" generic TLD section of the disputed domain name for the purposes of the comparison to the Complainant's trademark.

The THESCORE trademark is clearly recognizable in the disputed domain name. The addition of the dictionary word "league" does not prevent the THESCORE trademark from being easily recognizable in the disputed domain name. As discussed in sections 1.7 and 1.8 of the [WIPO Overview 3.0](#), 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. 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.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the THESCORE trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not authorized it to use the THESCORE trademark and there is no relationship between the Parties. The Complainant contends that the disputed domain name is being used intentionally to attract consumers to the associated website which is designed to appear as an official website of the Complainant. The Complainant adds that the website at the disputed domain name contains links that appear as download links for the Complainant’s “theScore Bet” mobile application, but instead direct to an internal page of the Respondent’s website that prompts users to register user accounts with it. The website also includes Twitter and YouTube links to the Complainant’s theScore actual esports social media accounts, further passing off the website at the disputed domain name as being affiliated with the Complainant. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response or disputed the contentions of the Complainant.

The disputed domain name is confusingly similar to the THESCORE trademark, and the evidence shows that it indeed resolves to a website that has similar appearance and content to the website of the Complainant, features the THESCORE trademark and contains links that prompt visitors to create accounts on the website. There is no disclaimer for the lack of relationship between the Parties.

Taking the above into account, and in the lack of any evidence or allegation pointing to a different conclusion, it appears as more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant’s THESCORE trademark and targeted it when registering the disputed domain name, which resolves to a website that impersonates the Complainant and misleads visitors that the services offered on it originate from or are authorized by the Complainant. This use of the disputed domain name does not appear as a legitimate activity giving rise to rights or legitimate interests in the disputed domain name.

This is sufficient for the Panel to reach the conclusion that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The disputed domain name is confusingly similar to the THESCORE trademark and the Respondent does not provide any plausible explanation for the registration and use. The disputed domain name resolves to a website that has similar appearance and content to the website of the Complainant, features the THESCORE trademark and contains links that prompt visitors to create accounts on the website. There is no disclaimer for the lack of relationship between the Parties.

In view of this, and considering the Panel’s analysis under the second element, the Panel concludes that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the THESCORE trademark, in an attempt to attract visitors by impersonating the Complainant and offering them services that appear as originating from the Complainant for commercial gain. The fact that the disputed domain name currently resolves to a landing webpage of the Registrar in Russian does not prevent a finding of bad faith.

In view of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

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 <thescoreleague.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: December 23, 2022