

## **ADMINISTRATIVE PANEL DECISION**

Gaijin Games Kft. v. Iakiv Bak-Studennikov

Case No. D2022-4319

### **1. The Parties**

The Complainant is Gaijin Games Kft., Hungary, represented by Aleksandra Mirgorodskaia, Hungary.

The Respondent is Iakiv Bak-Studennikov, Ukraine.

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

The disputed domain names <warthunder.uno>, and <wartunder.net> 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 November 14, 2022. On November 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 15, 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, and informing that the language of the registration agreement for the disputed domain name is Russian. On November 15, 2022, the Center sent to the Parties a document in both English and in Russian about the language of proceedings. The Complainant has submitted a request that English be the language of the proceedings, to which the Respondent has not replied.

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 in both English and Russian the Respondent of the Complaint, and the proceedings commenced on December 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 29, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on January 10, 2023. 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 and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's postal address is stated to be in Ukraine (whether this is indeed accurate is not clear), which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Center has successfully sent the written notice of the Complaint to the privacy service named in Whois records for the disputed domain name (Protection of Private Person), and has sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar. There is no evidence that the case notification email to this email address was not successfully delivered.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of a formal Response) that the Respondent registered and has used the disputed domain names in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

On this basis, the Panel concludes that the Parties have been given a fair opportunity to present their cases, and proceeds to issue the present decision on the substance of the dispute.

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

The Complainant develops and offers a free-to-play cross-platform MMO<sup>1</sup> military game, dedicated to aviation, armored vehicles, and naval vessels. The game is offered under the name War Thunder.

The Complainant is the owner of the International Trademark WAR THUNDER with registration No. 1164387, registered on March 18, 2013 for goods and services in International Classes 9 and 41 (the "WAR THUNDER trademark").

The Complainant is also the owner of the domain names <warthunder.com>, and <warthunder.net>, which resolve to the Complainant's main website available in English, Russian and other language versions.

The disputed domain name <warthunder.uno> (the "First disputed domain name") was registered on June 2, 2022, and the disputed domain name <wartunder.net> (the "Second disputed domain name") was registered on July 10, 2022. They are currently inactive. At the time of filing of the Complaint, the disputed domain names directed to Russian language websites offering in-game items for the War Thunder game of the Complainant.

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<sup>1</sup> This abbreviation stands for "massively multiplayer online" game - a video game that can be played by many people simultaneously.

## **6. Parties' Contentions**

### **A. Complainant**

The Complainant states that the disputed domain names are confusingly similar to its WAR THUNDER trademark. The First disputed domain name includes the WAR THUNDER trademark in its entirety, and the Second disputed domain name includes the WAR THUNDER trademark except for the missing letter "h", which makes it an intentional misspelling of the Complainant's trademark and of its domain names <warthunder.com>, and <warthunder.net>. The Complainant notes that the sound "h" is silent and "th" is sometimes pronounced as "t", so the WAR THUNDER trademark is recognizable in the Second disputed domain name. The Complainant points out that the WAR THUNDER trademark is used multiple times on the websites at the disputed domain names with its correct spelling.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain names, because it has never been connected to the Complainant or authorized to use the WAR THUNDER trademark. The Complainant points out that the websites at the disputed domain names mimic the Complainant's official War Thunder in-game store Gaijin.Net Store, include the original logo of the War Thunder videogame and include its original items and features, such as Golden Eagles currency, vehicles and premium accounts that are offered by the Complainant to its users at Gaijin.Net Store. The Complainant points out that neither of the disputed domain names has been approved by it, and the activation codes offered for sale on the websites at the disputed domain names cannot be valid. The Complainant points out that when visitors to the Respondent's websites attempt to buy in-game items for the War Thunder videogame, they do not receive anything after enabling the payment. The Complainant maintains that the Respondent therefore does not offer any goods or services in good faith, and the websites at the disputed domain names are being used for consumer fraud offering counterfeit goods.

The Complainant contends that the disputed domain names were registered and are being used in bad faith. It notes that the disputed domain names were registered in 2022, whereas the WAR THUNDER trademark was registered in 2013. According to the Complainant, the Respondent is intentionally attempting to divert, for commercial gain, Internet users to the Respondent's fraudulent websites, through which it provides directly competing services for commercial gain, namely access to the in-game items, improvements, and other valuables for War Thunder videogame. The Complainant states that the websites at the disputed domain names are using identical copyrighted images and descriptions of the Complainant's products (in-game items and valuables) as in the official Complainant's Gaijin.Net Store to create consumer confusion. The Complainant assumes that the Respondent was aware of the Complainant and its well-known War Thunder videogame, the title of which is protected with the WAR THUNDER trademark. The Complainant concludes that the Respondent's use of the disputed domain names in bad faith is aimed at bringing disruption and harm to the Complainant's business.

### **B. Respondent**

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

## **7. Discussion and Findings**

### **7.1. Procedural issue - Language of proceedings**

According to the information provided by the Registrar, the language of the Registration Agreement for both disputed domain names 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 proceedings be English. It submits that the Respondent understands English, because it has provided its details for the disputed domain names registration in Latin characters, even though both English and Russian languages could be used. The Complainant adds that it is incorporated and conducting business in Hungary, and the translation of all the documents and information related to the proceedings into Russian would lead to substantial expenses incurred by the Complainant. According to the Complainant, conducting the present proceedings in English is reasonable and efficient.

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 has not submitted a Response or any objections to the Complainant's request that the proceedings be held in English. It has not expressed any interest in actively participating in this proceeding.

The above satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and 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 will be English.

## **7.2. 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 names:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names were registered and are 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 names.

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

The Complainant has provided evidence that it is the owner of the WAR THUNDER trademark. Therefore, the Panel is satisfied that the Complainant 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 “.net” and “.uno” gTLD sections of the disputed domain names for the purposes of their comparison to the Complainant's trademark.

The First disputed domain name reproduces the WAR THUNDER trademark in its entirety with no other elements. Therefore, the Panel finds that this disputed domain name is identical to the WAR THUNDER trademark in which the Complainant has rights.

The Second disputed domain name reproduces the WAR THUNDER trademark in its entirety with the omission of the letter “h”. Although this letter is missing, the WAR THUNDER trademark remains recognizable in this disputed domain name, which appears as an obvious misspelling of the trademark and an example of typosquatting. As discussed in section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Therefore, the Panel finds that the Second disputed domain name is confusingly similar to the WAR THUNDER trademark of the Complainant.

## **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 WAR THUNDER trademark and there is no relationship between the Parties. The Complainant maintains that the disputed domain names have been used to resolve to websites that copy elements of the design of the Complainant’s website, feature the WAR THUNDER trademark, and are being used for consumer fraud offering what appears to be counterfeit goods, and the buyers of these goods do not receive anything after enabling the payment. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names.

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

One of the disputed domain names is identical to the WAR THUNDER trademark, and the other is a typosquatting version of it. The evidence submitted by the Complainant shows that both of them have been used for substantially identical websites featuring the WAR THUNDER trademark (correctly written) and offering in-game items for the Complainant’s War Thunder game. There is no evidence whether these items are operational and whether one would receive them after payment is made, and the Complainant denies having authorized the operation of these websites. There is a disclaimer for the lack of relationship between the Respondent’s websites with the Complainant, but it is only included at the bottom of the websites and is written in small dark grey font on black background, which makes it quite difficult to notice and take into account, so its existence does not appear as likely to prevent the confusion of Internet users.

Taking the above into account, and in the absence of any allegation or evidence to the contrary, it appears as more likely than not that the Respondent has registered the disputed domain names with knowledge of the Complainant’s WAR THUNDER trademark and targeted it when registering and using the disputed domain names for websites that feature the same trademark, copy elements of the Complainant’s website, and offer goods related to the Complainant’s game. Such use of the disputed domain names appears as an attempt to impersonate the Complainant and confuse Internet users for commercial gain as to the origin and affiliation of the websites to which the disputed domain names resolve and of the goods offered there, and cannot be regarded as a legitimate activity giving rise to rights or legitimate interests in the disputed domain names.

The Panel therefore reaches 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 names are identical or confusingly similar to the WAR THUNDER trademark and have been used for websites featuring the WAR THUNDER trademark and offering in-game items for the Complainant’s War Thunder game. There is no evidence whether the offered items are operational and whether one would receive them after making payment. In view of this, the Panel concludes that it is more likely than not that the Respondent has registered the disputed domain names with knowledge of the Complainant and targeting the WAR THUNDER trademark, and has used them to attract, for commercial gain, Internet users to the associated websites by creating a likelihood of confusion with the Complainant’s WAR THUNDER trademark as to the source, sponsorship, affiliation, or endorsement of these websites and of the products offered there. This conclusion supports a finding that the disputed domain names have been registered and used in bad faith.

The Respondent’s websites include a disclaimer for the lack of relationship with the Complainant, but it is only included at the bottom of the websites and is written in small dark grey font on black background, which makes it quite difficult to notice and take into account. As discussed in section 3.7 of the [WIPO Overview 3.0](#), in cases where the respondent appears to otherwise have a right or legitimate interest in a disputed domain name, a clear and sufficiently prominent disclaimer would lend support to circumstances suggesting its good faith. On the other hand, where the overall circumstances of a case point to the respondent’s bad faith, the mere existence of a disclaimer cannot cure such bad faith. In such cases, panels may consider the respondent’s use of a disclaimer as an admission by the respondent that users may be confused. The circumstances of this case, as evident from the case file, do not support a finding that the Respondent has rights or legitimate interests in the disputed domain names, and in any event the disclaimer is not sufficiently prominent. Rather, as discussed above, the overall circumstances of the case point to the Respondent’s bad faith, so the inclusion of the disclaimer may indeed be regarded as an admission by the Respondent that visitors to its websites may be confused about their origin and affiliation.

In view of the above, the Panel finds that the disputed domain names have been registered and 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, <warthunder.uno>, and <wartunder.net>, be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: January 23, 2023