

## **ADMINISTRATIVE PANEL DECISION**

**VOODOO v. CreoBits LLC**

**Case No. D2023-0071**

### **1. The Parties**

The Complainant is VOODOO, France, represented by Jones Day, France.

The Respondent is CreoBits LLC, Russian Federation, represented by Internet & Law, Russian Federation.

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

The disputed domain names <hole-io.com> and <paper-io.com> (the “Domain Names”) are registered with RU-CENTER-MSK (Regional Network Information Center, JSC dba RU-CENTER) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 6, 2023. On January 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On January 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Privacy protection service - whoisproxy.ru) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 17, 2023, 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 January 19, 2023.

On January 17, 2023, the Center sent an email in English and Russian to the Parties regarding the language of the proceeding. On January 18, 2023, the Respondent confirmed that it would agree to any language determination made by the Panel. The Complainant confirmed its request that English be the language of the proceeding on January 19, 2023.

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 in English and Russian of the Complaint, and the proceedings commenced on January 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2023. The Response was filed in English with the Center February 9, 2023.

The Center appointed Jeremy Speres, William Lobelson, and Assen Alexiev as panelists in this matter on March 1, 2023. The Panel finds that it was properly constituted. Each member of 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, a French company incorporated in 2013, is an interactive game publisher specialised in hyper-casual games for smartphones. Amongst the Complainant's most successful games are:

- "Paper.io", launched on November 25, 2016, notably on the Android Play Store, consisting of a directional game aimed at gaining a coloured territory and preventing other players from doing so by moving a block around a map. The first version was followed by a second version launched in 2018. The game has been highly successful.
- "Hole.io", launched on May 25, 2018, on the Apple App Store and on June 21, 2018, on the Android Play Store, in which players control a hole in the ground in order to consume various objects, which enlarges the hole, aimed at consuming larger objects and other players' holes. This game, too, has been highly successful.

The Complainant owns trade mark registrations for these games, including:

- French trade mark registration No. 4417545 PAPER.IO registered on June 29, 2018, in classes 9, 28, 38, 41, and 42
- European Union Trade Mark registration No. 018407002 HOLE.IO registered on June 10, 2021, in class 9

The Respondent is a Russian company that develops web browser games. The Respondent owns the following Russian trade marks:

- Registration No. 677788 PAPER-IO (stylised) registered on October 25, 2018, in class 9
- Registration No. 823776 HOLE.IO (device) registered on August 10, 2021, in class 9

The Respondent also owns software copyright registrations in the Russian Federation for software programs entitled "PAPER-IO" and "HOLE-IO", dated April 6, 2018 and September 30, 2021, respectively.

The Domain Names were registered and have been used as follows:

Domain Name	Registration Date	Usage
<paper-io.com>	November 29, 2016	Resolves to a website offering a browser game entitled "Paper.io 2" in which the user manoeuvres a block around a map in order to capture territory. The website features commercial advertising through an affiliate network.
<hole-io.com>	June 13, 2018	Resolves to a website offering a browser game entitled "Hole.io" in which the user manoeuvres a hole around a city, absorbing various objects. The website features commercial advertising through an affiliate network.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends as follows. The Domain Names are identical or at least confusingly similar to the Complainant's registered and well-known trade marks.

The Respondent does not have any rights or legitimate interests in the Domain Names given that the Complainant has not authorised the Respondent to use its trade marks, and the use made of the Domain Names has been to imitate the Complainant's games and take advantage of the Complainant's trade marks for financial gain.

The Respondent registered and has used the Domain Names in bad faith given that they were registered within days of the Complainant launching its own games; the Domain Names have been used for games that imitate the Complainant's games using the same names; and the Respondent has adopted the same *modus operandi* in respect of another of the Complainant's games – Aquapark.io – and it is unlikely that the Respondent could have independently and in good faith developed three different games that imitate the gameplay and graphics of the Complainant's games using identical names to those used by the Complainant.

### B. Respondent

The Respondent objects that this dispute is beyond the competence of the Panel given that it concerns software copyright and factual and legal questions that the Panel is not authorised to resolve.

The Respondent does not dispute the similarity of the Complainant's trade marks to the Domain Names. The Respondent claims rights and legitimate interests based on its own trade mark and software registrations, and the use of the Domain Names for its own games.

The Respondent denies bad faith for the following reasons. The Complainant has not proven unregistered rights predating registration of the Domain Names. The Respondent applied for its trade mark and software registrations prior to the Complainant's own trade mark applications. The Respondent's games were developed independently, exhibit numerous material differences to the Complainant's games, and to the extent that there are similarities, these derive from common features in the genre.

The Respondent requests a finding of Reverse Domain Name Hijacking as it was obvious that the Complaint was without merit.

## 6. Discussion and Findings

### 6.1 Preliminary Matter: Language of the Proceeding

Paragraph 11(a) of the Rules provides that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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 submitted its Complaint in English and confirmed its request for English to be the language of the proceeding on January 19, 2023.

The Respondent submitted its Response in English and confirmed its agreement to any language determination by the Panel.

Accordingly, given the Respondent's apparent familiarity with English and consent to any language determination by the Panel, the Panel determines that English be the language of the proceeding.

### 6.2 Preliminary Matter: Competence of the Panel

The Panel rejects the Respondent's objection to its competence. The Panel does not need to make any findings concerning software copyright in order to decide the issues raised in the Complaint concerning, primarily, bad faith targeting under the Policy. This is particularly so given that the issues concerning software copyright were introduced by the Respondent. Regarding any factual differences between the Parties, the Panel considers that the evidence before it is sufficient to determine those on the applicable standard of balance of probabilities.

### 6.3 Substantive Matters

#### A. Identical or Confusingly Similar

The Complainant has registered rights for trade marks that are virtually identical, if not identical, to the Domain Names. The fact that these registered rights may only have accrued after registration of the Domain Names does not preclude the Complainant's standing or a finding of confusing similarity under the first element (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.1.3). Such consideration may be relevant under the later elements. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

#### B. Rights or Legitimate Interests

The Respondent owns trade mark and software copyright registrations corresponding to the Domain Names. However, the existence of a respondent trade mark does not automatically confer rights or legitimate interests on the respondent. For example, panels have generally declined to find respondent rights or legitimate interests in a domain name on the basis of a corresponding trade mark registration where the overall circumstances demonstrate that such trade mark was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant's exercise of its rights (even if only in a particular jurisdiction) ([WIPO Overview 3.0](#) at section 2.12.2).

In *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#), the panel held as follows:

"However, it would be a mistake to conclude that mere registration of a trademark creates a legitimate interest under the Policy... To establish cognizable rights, the overall circumstances should demonstrate that the registration was obtained in good faith for the purpose of making *bona fide* use of

the mark in the jurisdiction where the mark is registered, and not obtained merely to circumvent the application of the Policy.”

In light of what is discussed below in relation to bad faith, it is highly probable that the Respondent’s intention was to take advantage of the Complainant’s trade marks for its own financial gain. The Panel notes that this proceeding involves two disputed domain names targeting two different trade marks of the Complainant. The Panel’s view is that the Respondent’s registered trade marks and software rights were likely acquired to provide Respondent with an apparent defence against Complainant’s enforcement of its rights, in full knowledge of the Complainant’s games, in order to circumvent the Policy or to frustrate the Complainant’s use or registration of its trade marks in the Russian Federation.

The Respondent’s usage of the Domain Names in these circumstances plainly cannot represent a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy and cannot confer rights or legitimate interests under the Policy (*Sistema de Ensino Poliedro Vestibulares Ltda., Editora Poliedro Ltda. v. Anonymize, Inc. / STANLEY PACE*, WIPO Case No. [D2022-1981](#)). The Policy would be self-defeating if bad faith use of a domain name, or trade mark registrations to prevent Complainant’s exercise of its rights, could simultaneously confer rights or legitimate interests. The Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The Respondent presented a screenshot from the Internet Archive’s Wayback Machine depicting the website to which <paper-io.com> resolved as at December 2, 2016 – three days after that Domain Name was registered by the Respondent. The Respondent’s evidence excluded the first part of the Wayback Machine screenshot and only depicted the latter part. Further to a panel’s general powers under paragraphs 10 and 12 of the Rules to conduct limited factual research, the Panel independently viewed the same screenshot directly on the Wayback Machine and noted that the website stated as follows at the top:

“Paper.io play online

More! More! More territory! Take it all with new game from Voodoo - Paper.io”

Taken together with the fact that the game depicted at the website featured gameplay and graphics highly similar to those of the Complainant’s corresponding game and used an identical name, the statement quoted above shows a clear intention to impersonate the Complainant and its game. The fact that the Respondent chose to exclude from its evidence the first part of the website, containing the instructive statement, is telling.

Given that the statement quoted above appeared on the website a mere three days after <paper-io.com> was registered, and seven days after the Complainant launched its “Paper.io” game, it is reasonable to conclude that the Respondent had the intention to impersonate the Complainant and its game when it registered the nearly identical <paper-io.com> Domain Name (*L’Oréal v. N Rahmany*, WIPO Case No. [D2021-4080](#)).

As for <hole-io.com>, the statement quoted above clearly shows an awareness of the Complainant, and an intention to target it, long prior to registration of <hole-io.com> in 2018. The Complainant’s evidence establishes that, in addition to the Domain Names, the Respondent has also registered a third domain name - <aquapark.io> - which follows a similar pattern. That domain name’s website also features a game with striking similarities to the corresponding game of the Complainant, using an identical name, namely “Aquapark.io”. It is highly improbable that the Respondent independently developed three different games, in good faith without intending to target the Complainant, in circumstances where all three games exhibit strong gameplay and graphical similarities with the Complainant’s corresponding games and use nearly identical or identical names.

In the circumstances, it is abundantly clear that the Respondent registered and has used the Domain Names with a view to deceiving users into believing that the games offered at the Domain Names are those of the Complainant, for the purpose of generating revenue through the commercial advertisements displayed on the websites concerned. This falls squarely within paragraph 4(b)(iv) of the Policy. The Complainant has satisfied 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, <hole-io.com> and <paper-io.com>, be transferred to the Complainant.

*/Jeremy Speres/*  
**Jeremy Speres**  
Presiding Panelist

*/Assen Alexiev/*  
**Assen Alexiev**  
Panelist

*/William Lobelson/*  
**William Lobelson**  
Panelist  
Date: March 15, 2023