

## **ADMINISTRATIVE PANEL DECISION**

Gaijin Games Kft. v. Leonid Kramnoi  
Case No. D2023-0699

### **1. The Parties**

The Complainant is Gaijin Games Kft., Hungary, represented internally.

The Respondent is Leonid Kramnoi, Ukraine.

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

The disputed domain names <ruwarthunder.net> (the “first disputed domain name”) and <ruwarthunder.org> (the “second disputed domain name”) are registered with Internet Domain Service BS Corp (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2023. On February 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 17, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (LLC “Effectivniy Management” / Redacted for privacy, Whois Privacy Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 24, 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 March 1, 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 of the Complaint, and the proceedings commenced on March 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on March 30, 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 (b) and 10 (c) 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.

The Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. Thus, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10(b) and 10(c) of the Rules, whether the proceeding should continue.

It appears that the Complaint together with the amended to the Complaint were delivered to the Respondent's email address, as provided by the Registrar, and the Respondent submitted an informal email.

The Panel concludes that the Respondent allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

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

The Complainant is the designer and operator of a free-to-play cross-platform MMO ("massively multiplayer online game") military game known as "War Thunder". War Thunder is widely played internationally, and the Complainant has protected this trading style by trade mark registrations, including, by way of example, International Trade Mark for WAR THUNDER, registration number 1164387, registered on March 19, 2013 in classes 9 and 41.

The first disputed domain name was registered on October 26, 2020 and the second disputed domain name was registered on July 27, 2022. Each of the disputed domain names resolves to websites, the contents of which are primarily in Russian language, which purport to offer for sale tokens and in-game items, which are intended for use in connection with the Complainant's computer game. The appearance and content of the Respondent's websites are similar to that of the Complainant's own in-game store website.

#### **6. Parties' Contentions**

##### **A. Complainant**

The Complainant says that the disputed domain names are confusingly similar to its WAR THUNDER trade mark. Each of them incorporates the Complainant's trade mark in its entirety, and adds the prefix "ru". The addition of this term does not prevent either of the disputed domain names from being found confusingly similar to the Complainant's mark.

The Complainant says also that the Respondent has no rights or legitimate interests in the disputed domain names. Each of them is being used for fraudulent purposes in offering counterfeit goods. Only the Complainant and a limited number of third-party gaming platforms are authorized by it to distribute in-game items and codes that can be activated in the Complainant's video game. The Respondent has never been authorized by the Complainant to do so, nor has it ever been connected with the Complainant in any way. The disputed domain names are being used in order to resolve to scam and fraudulent websites in that the Respondents' websites are not able to deliver any items for use in the Complainant's computer games and such use cannot confer any legitimate interest on the Respondent. Moreover, the Respondent has never been known by either of the disputed domain names, nor is it making a legitimate, non-commercial or fair use of them.

Lastly, the Complainant says that the disputed domain names were registered and are being used in bad faith. Having regard to the fact that as at the date of registration of the earliest of the disputed domain names, the Complainant's trade mark had been in place for more than eight years, it is reasonable to assume that the Respondent was aware of the Complainant's and its War Thunder video game when it registered the disputed domain names. The Respondent is intentionally attempting to divert, for commercial gain, Internet users to its fraudulent websites by providing competing services to those of the Complainant. The Respondent has engaged in opportunistic, bad faith aimed at harming the Complainant's business and misleading Internet users with fake sales of in-game items. This is continuing to cause the Complainant commercial detriment in terms of consumer confusion.

## **B. Respondent**

The Respondent did not serve a formal response to the Complainant's contentions save that on March 4, 2023, it sent an email to the Center asserting that the user terms and conditions on its website made it clear that all in-game property could only be purchased from the Complainant's website and that no relationship had been claimed between the Respondent and the Complainant. The Respondent also offered to sell both disputed domain names to the Complainant for a total of USD 2,000.

## **7. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant proves 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 its trade mark registrations for WAR THUNDER, including the mark in respect of which details are set out above, which thereby establish its rights in this mark.

As a technical requirement of registration, the generic Top-Level Domains ('gTLDs'), that is ".net" and ".org" in the case of the disputed domain names, are typically disregarded when assessing confusing similarity. Each of the disputed domain names comprises the Complainant's WAR THUNDER trade mark in its entirety, preceded by the letters "ru". This additional term does not prevent the disputed domain names from being found confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark 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."

The Complainant's WAR THUNDER mark is recognizable within each of the disputed domain names and the Panel accordingly finds that they are 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 of the disputed domain names to resolve to websites, which purport to offer for sale tokens and in-game items intended for use in connection with the Complainant's computer game, coupled with the creation of content, the form of which is similar in style to the appearance of the Complainant's websites does not comprise use in connection with a *bona fide* offering of goods and services. In addition, the close similarities between the Respondent's websites and the Complainant's website and its use of a very similar trading style will inevitably (and intentionally) mislead Internet users into believing that the Respondent is, in some way, authorized by, or associated with, the Complainant. This does not comprise use in connection with a *bona fide* offering of goods and services; see *eBay Inc. v. Artgrafi Multimedya Hizmetleri*, WIPO Case No. [D2008-1935](#) and also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that "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".

In this context, the Respondent's assertions that the terms and conditions on its websites make it clear that in-game content can only be purchased from the Complainant, even if true, do not impact on the assessment of the Panel because (contrary to the Respondent's assertion) the overall and misleading impression given by the Respondent's websites is that they are associated with, or authorized by, the Complainant and that is plainly not the case. The Respondent is accordingly piggy-backing off the reputation of the Complainant's WAR THUNDER mark for its own financial benefit.

There is no evidence to indicate that the Respondent has been commonly known by either of the disputed domain names and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain names and their characteristics are strongly suggestive of an affiliation or connection with the Complainant (which does not exist), which prevents their use from being considered fair; see, for example, *ISAE SUPAERO Institut Supérieur de l'Aéronautique et de l'Espace v. jia jie li*, WIPO Case No. [D2022-1639](#).

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. Notwithstanding the Respondent's contentions, as summarized above, it has failed to satisfy that burden.

The Panel accordingly 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 fact, that following its registration of the disputed domain names, the only known use of them by the Respondent has been to resolve to websites which have been closely modelled on the Complainant's website, establishes both an awareness by the Respondent of the Complainant's rights as at the date of registration of the disputed domain names and an intention on its part to take unfair advantage of them. Additionally, each of the disputed domain names incorporates the Complainant's WAR THUNDER mark in full and simply adds the prefix "ru", a recognized abbreviation for the Russian Federation, as a consequence of which they are apt to be perceived by many Internet users as denoting the Russian version of the Complainant's websites. As explained at section 3.1.4 of the [WIPO Overview 3.0](#), "[UDRP panels] 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". See also *Amazon Technologies, Inc. v. julan pirali, justinow justin, james kualan, jukalee alee*, WIPO Case No. [DIO2022-0058](#). The Respondent's registration of the disputed domain names is accordingly in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is 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, as described above, falls within this circumstance in that the form and content of its websites will have led Internet users to believe that they are authorized or approved by the Complainant. Such a belief will have been reinforced because of the confusing similarity between the disputed domain names and the Complainant's trade mark. See, by way of example, *G4S Limited v. Ltd "Vite"*, WIPO Case No. [DGE2022-0002](#).

Paragraph 4(b)(i) of the Policy provides a further circumstance which evidences bad faith registration and use, namely (in summary) if a respondent has acquired a domain name primarily for the purpose of selling, renting, or otherwise transferring it to the complainant for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name. Whether the Respondent's primary motive has been to earn income from its websites or from a sale of the disputed domain names is unclear and so it is an open question as to whether the Respondent's conduct falls within the scope of paragraph 4(b)(i) of the Policy. However, the circumstances of bad faith registration and use set out at paragraph 4(b) of the Policy are expressed to be without limitation and the Respondent is clearly trying to profit in some manner from the confusing similarity between the disputed domain names and the Complainant's WAR THUNDER trade marks. In these circumstances, the Panel finds the Respondent's offering to sell the disputed domain names, for a sum which is likely to be appreciably in excess of their actual costs of registration, provides further affirmation of the Respondent's bad faith.

The Panel therefore finds that the disputed domain names were both 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 <ruwarthunder.net> and <ruwarthunder.org> be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: April 6, 2023