

ADMINISTRATIVE PANEL DECISION

Tripledote Studios Limited v. Karyna Kandyba
Case No. D2023-2271

1. The Parties

The Complainant is Tripledot Studios Limited, United Kingdom, represented by Tyz Law Group PC, United States of America (“United States”).

The Respondent is Karyna Kandyba, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <woodokugames.com> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 2023. On May 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 26, 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 (Unknown Registrant / Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 8, 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 June 9, 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 June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on July 31, 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 mailing 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 has reached this conclusion in part because the Panel does not believe the Respondent's purported mailing address in Ukraine to be genuine. The Panel notes in particular that the website hosted at the disputed domain name is in the English language, which may further support an inference that the Respondent is not located in Ukraine.

The Panel notes that the Center did, however, successfully send the written notice of the Complaint to the named Privacy Service. The Center also sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar and to a postmaster email address as specified by the Rules. There is no evidence that the case notification email to the first email address was not successfully delivered.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, Porkbun LLC, is in Sherwood, Oregon, United States.

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 any Response) that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

The Panel concludes that the Parties have been given a fair opportunity to present their 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 a mobile games studio based in the United Kingdom that has developed casual mobile games such as the solitaire application ("app") and several puzzle games since as early as 2017.

The Complainant owns and operates the "WOODOKU" game on mobile platforms such as iOS and Android, and originally released it on mobile storefronts on March 2, 2020.

The Complainant is the owner of the following, amongst others, trademarks (Annex 4 to the Complaint):

- United States trademark registration No. 6,292,505, for WOODOKU, registered on March 16, 2021, claiming first use in commerce on March 11, 2020, in class 9;

- European Union Trade Mark registration No. 018483851, for WOODOKU, registered on September 22, 2021, in class 9; and
- United Kingdom trademark registration No. UK00003649463, for WOODOKU, registered on October 15, 2021, in classes 9.

The disputed domain name was registered on December 15, 2022 and presently resolves to an active webpage reproducing the Complainant's trademark and offering what appears to be an online version of the Complainant's game.

6. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is nearly identical to its WOODOKU trademark, only differing by the addition of the term "games" which is not sufficient to differentiate the disputed domain name from the Complainant's trademark.

In addition to that, the Complainant asserts that the website available at the disputed domain name contains a clone of the WOODOKU game that was not developed by the Complainant but nevertheless uses the registered WOODOKU trademark, thus indicating that the Respondent was clearly trying to falsely claim association, sponsorship, or affiliation with the Complainant's WOODOKU trademark, and otherwise trick consumers into believing that its website houses an official browser-based version of the Complainant's game.

Also according to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the Respondent has intentionally designed its website to mislead consumers into thinking that the disputed domain name would be a browser-based version of the Complainant's established mobile game;
- (ii) the disputed domain name was registered in 2022, years after WOODOKU was first launched on the mobile app stores and over a year after the Complainant's word mark WOODOKU was registered;
- (iii) the Respondent's website also uses a nearly identical version of the Complainant's stylized logo, in addition to a number of links to unrelated third-party games;
- (iv) the Respondent has not been commonly known by the disputed domain name, not having the Respondent acquired trademark or service mark rights in the name "WOODOKU";
- (v) the Respondent has made no legitimate noncommercial or fair use of the disputed domain name, other than to trade on the consumers' goodwill and divert Internet traffic from the legitimate WOODOKU game in order to generate advertising revenue for itself; and
- (vi) the Respondent is not authorized by the Complainant to use the disputed domain name.

The Complainant further contends that the disputed domain name was both registered and used in bad faith to mislead consumers into believing that it was an official browser-based version of the Complainant's mobile game, having the Respondent intentionally registered the disputed domain name that includes the Complainant's registered trademark in its entirety, and used it in connection with a website to provide a

blatant clone of the Respondent's "WOODOKU" mobile game, thus intentionally attempting to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the Respondent's website.

B. Respondent

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

7. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which the Complainant must meet in order for the Panel to order 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; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the term "games" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or

- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

While the overall burden of proof in UDRP proceedings is on the complainant, 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent whom has used the disputed domain name in connection with a website offering what could be perceived as an online version of the Complainant’s game while displaying various third-party games, what clearly does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv), in view of the website that is available at the disputed domain name, which creates a likelihood of confusion with the Complainant’s goodwill.

Moreover, in these circumstances, bad faith of the Respondent is also supported here by (i) the lack of reply by the Respondent invoking any rights or legitimate interests; and (ii) the choice to retain a privacy protection service so as to conceal the Respondent’s identity.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 name <woodokugames.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: August 14, 2023