

ADMINISTRATIVE PANEL DECISION

Gaijin Games Kft. v. Valentin Iaptev
Case No. D2023-3950

1. The Parties

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

The Respondent is Valentin Iaptev, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <warthundershop.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 21, 2023. On September 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 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 (Domain Manager (Whois protection)) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 28, 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 October 2, 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 October 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 31, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on November 3, 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 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 is a company located in Hungary. It is the provider of a free-to-play, cross-platform, massively multiplayer online ("MMO") military-style video game under the name and trademark WAR THUNDER.

The Complainant is the owner of International (Madrid) trademark registration number 1164387 for the word mark WAR THUNDER, registered on March 18, 2013, for goods and services including downloadable computer game software in International Class 9, and computer games and electronic game entertainment in International Class 41, and designating the European Union, Japan, the Republic of Korea, China, and the Russian Federation.

The Complainant operates a website at "www.warthunder.com" which provides access to the Complainant's game and includes a "store" for the purchase of in-game items.

The disputed domain name was registered on November 16, 2022.

The disputed domain name has resolved to Russian-language website, prominently branded WAR THUNDER, and offering purchases of what appear to be in-game items in connection with the Complainant's video game. The "look and feel" of the relevant website strongly resembles that of the Complainant's website referred to above.

6. Parties' Contentions

A. Complainant

The Complainant asserts that its WAR THUNDER game is internationally known and has been played all over the world for more than ten years. It claims up to 113,000 simultaneous players on the Steam video games platform. It exhibits evidence of industry awards, including "Best Simulation Game" at Gamescom 2013.

The Complainant submits that the disputed domain name is confusingly similar to its WAR THUNDER trademark. It contends that the disputed domain name differs from its trademark only by the addition of the element "shop", which does not lessen the risk of confusion.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent, that it has never authorized it to use its WAR THUNDER trademark, and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name.

In particular, the Complainant contends that only the Complainant and authorized gaming platforms are permitted to sell in-game items for the Complainant's game. It states that, while that the Respondent has no authorization in this regard, it is purporting nonetheless to sell in-game activation codes. The Complainant's contends that the Respondent's website mimics its own website and appears to offer the Complainant's original items and features, including in-game currency, vehicles, and premium accounts.

The Complainant further submits that purchasers of in-game items from the Respondent's website do not in fact receive any effective activation codes after making payment, and that the disputed domain name is therefore being used for the purposes of a fraudulent operation.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith. Based upon the above submissions, the Complainant contends that the Respondent clearly registered the disputed domain name in order to take advantage of its WAR THUNDER trademark, being an example of "opportunistic bad faith". It adds that the Respondent is using both the disputed domain name and its website, which mimics the Complainant's website, to divert Internet customers for commercial gain. It contends further that the disputed domain name is being used for the purpose of fraud, and that it is causing continuing commercial detriment to the Complainant.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights in the mark WAR THUNDER. The disputed domain name wholly incorporates that trademark, together with the additional term “shop”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent having made no reply to the Complainant’s contentions, the Panel finds as facts that the Respondent has used the disputed domain name for the purpose of a website which mimics the Complainant’s own website and offers what purport to be activation codes for the Complainant’s video game. In the view of the Panel, both the nature of the disputed domain name and its use described above falsely imply to Internet users that the disputed domain name is owned or operated by, or otherwise commercially affiliated with, the Complainant. The use of a domain name deliberately to misrepresent a legitimate connection with the trademark owner cannot give rise to rights or legitimate interests.

The Panel also notes the Complainant’s assertion that Internet users who make payment to the Respondent do not receive any activation codes in return, and the Respondent’s venture is therefore fraudulent. Since the Complainant does not appear to provide evidence specific to this point, the Panel make no finding in this regard, although this is not material to the Panel’s overall findings in the case.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds the disputed domain name to be inherently misleading, as inevitably suggesting to Internet users that it is owned or operated by, or otherwise legitimately affiliated with, the Complainant. Moreover, the Respondent has used the disputed domain name for the purpose of a website which impersonates the Complainant’s own website and purports (without due authorization) to offer the Complainant’s activation codes for sale. The Panel finds in the circumstances that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is 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 name, <warthundershop.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: November 20, 2023