

ADMINISTRATIVE PANEL DECISION

Tencent Holdings Limited v. Mark Keith
Case No. DAI2023-0030

1. The Parties

The Complainant is Tencent Holdings Limited, United Kingdom, represented by Kolster Oy Ab, Finland.

The Respondent is Mark Keith, United States of America (“United States”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 15, 2023. On September 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 18, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 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 amendment to the Complaint on September 20, 2023.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on October 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 24, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on October 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. Factual Background

The Complainant provides Internet, mobile and telecommunication services and products, including entertainment, and artificial intelligence. Such products include QQ instant messenger, social media application WeChat, Tencent Games, Tencent Video, Tencent News, and Tencent Sports.

The Complainant is the owner of several trademark registrations for WEGAME, including the following, as per trademark certificates submitted as annexes to the Complaint:

- European Union trademark registration No. 016456352 for WEGAME (word mark), filed on March 10, 2017, and registered on November 13, 2017, in international classes 9, 35, 38, 41, 42, and 45;
- United States trademark registration No. 5548353 for WEGAME (word mark), filed on March 28, 2017, and registered on August 28, 2018, in international classes 9, 38, 42, and 45; and
- China trademark registration No. 26256759 for WEGAME (word mark), filed on September 06, 2017, and registered on August 21, 2021, in class 41.

The disputed domain name was registered on October 13, 2019, and is not pointed to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical to the trademark WEGAME in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the country code Top-Level Domain ("ccTLD") ".ai".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that it has in no way allowed the Respondent to register or use, whether by license or otherwise, the Complainant's trademark or the disputed domain name.

The Complainant also contends that the Respondent has not used, or made any demonstrable preparations to use, the disputed domain name in connection with *bona fide* offering of goods or services and that the Respondent has never been commonly known by the disputed domain name nor has he never acquired any trademark rights to the same. The Complainant submits that, on the contrary, the Complainant's trademark is well-known, making it inconceivable that there would be any legitimate use for the disputed domain name on the Respondent's part.

With reference to the circumstances evidencing bad faith, the Complainant indicates that considering its extensive use of the WEGAME trademark since 2017, it is highly unlikely that the Respondent would have been unaware of the Complainant at the time of registering the disputed domain name.

As a further circumstance evidencing bad faith in the use of the disputed domain name, the Complainant highlights that the disputed domain name has never been used in relation to an active website and is therefore being passively held by the Respondent, submitting that it would be difficult to imagine any plausible future active use of the disputed domain name by the Respondent that would be legitimate and not infringing the Complainant's well-known mark.

The Complainant further underlines that the Respondent's bad faith also lies in the fact that the disputed domain name consists entirely of the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

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, with the mere addition of the ccTLD ".ai", which is commonly disregarded under the first element confusing similarity test (section 1.11.1 of the [WIPO Overview 3.0](#)). Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy [WIPO Overview 3.0](#), section 1.7.

Therefore, 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.

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 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.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademark.

Moreover, there is no element from which the Panel could infer the Respondent's rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

Furthermore, there is no evidence that the Respondent may have used the disputed domain name – currently not pointed to an active website – in connection with a *bona fide* offering of goods or services of a legitimate noncommercial or fair use without intention to misleadingly divert the consumers or to tarnish the Complainant's trademark.

In addition to the above, the disputed domain name, being identical to the (famous) Complainant's trademark, carries a high risk of implied affiliation with the Complainant. WIPO Overview, section 2.5.1.

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

C. Registered and Used 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.

The Panel finds that, in light of (i) the prior registration and use of the trademark WEGAME by the Complainant since 2017, (ii) the widely known character of the Complainant and its trademark (as also demonstrated by the articles submitted as Annexes 7 and 8 to the Complaint), and (iii) the identity of the disputed domain name with the Complainant's trademark, the Respondent was very likely aware of the Complainant and its trademark at the time of registration.

The disputed domain name is not pointed to an active website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. In view of the widely known character of the Complainant's trademark, the identity of the disputed domain name with the trademark and the Respondent's failure to submit a response to provide any evidence of actual or contemplated good faith use, the Panel finds that the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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

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 disputed domain name <wegame.ai> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: November 13, 2023