

## **ADMINISTRATIVE PANEL DECISION**

ZeniMax Media Inc. v. Polyakov Andrey  
Case No. D2024-1244

### **1. The Parties**

The Complainant is ZeniMax Media Inc., United States of America (“United States”), represented by Kisch Global Limited, South Africa.

The Respondent is Polyakov Andrey, Ukraine.

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

The disputed domain names <doom-game.net>, <hi-fi-rush-game.com>, <redfall-game.net>, and <skyrimdl.net> are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2024. On March 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 22, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 25, 2024 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 26, 2024.

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 April 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 25, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on May 10, 2024. 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. Outstanding Procedural Matters**

##### **A. Consolidation of Proceedings**

The Complainant seeks a direction that the proceedings in respect of the four disputed domain names be consolidated (see e.g. section 4.11 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). However, since the Registrar has confirmed that the Respondent is the registrant of all four of the disputed domain names, no such direction is required.

##### **B. Location of Respondent**

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 or not this is indeed accurate), 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 the proceeding should continue. The Panel notes that the Center has successfully sent the Notification of Complaint by email to the Respondent at its email address and by international courier to its postal address as registered with the Registrar. There is no evidence that the case notification email to the email address and courier delivery to the postal address were 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 established under the laws of the State of Delaware, United States. It is a creator and publisher of interactive entertainment including video games. Those video games include products named and trademarked DOOM, HI-FI RUSH and REDFALL. The Complainant also offers a series of games named "The Elder Scrolls", the fifth instalment of which is named and trademarked SKYRIM.

The Complainant is the owner of trademark registrations for the above marks including, for example, the following:

- United States trademark registration number 74338782 for the word mark DOOM, registered on April 8, 1997 in International Class 28;
- United Kingdom trademark registration number 3584380 for a figurative mark comprising the word DOOM in a stylized form (the "DOOM Logo"), registered on August 6, 2021 in International Class 25;

- International trademark registration number 1594651 for the word mark HI-FI RUSH, registered on January 8, 2021 in International Classes 9 and 41 and designating numerous countries worldwide;
- United Kingdom trademark registration number 3839782 for a figurative mark comprising the words HI-FI RUSH in a stylized form, (the “HI-FI RUSH Logo”) registered on January 6, 2023 in International Classes 9 and 41;
- United States trademark registration number 7008686 for the word mark REDFALL, registered on March 28, 2023 in International Classes 9 and 16;
- United States trademark registration number 4080839 for the word mark SKYRIM, registered on January 3, 2012 in International Class 9; and
- United States trademark registration number 5814170 for a figurative mark comprising a diamond-shaped device and the words VR THE ELDER SCROLLS V SKYRIM (the “SKYRIM Logo”), registered on July 23, 2019 in International Classes 9 and 16.

The Complainant submits that it also has registered trademark rights in a specific stylized form of the word REDFALL (the “REDFALL Logo”), although the Panel was unable readily to see evidence of any such registration. However, the Panel accepts that the REDFALL Logo has been used on its website referring to that game as mentioned below.

The Complainant operates official websites relating to each of the games referred to above at the following locations:

“[www.bethesda.net/en/game/doom](http://www.bethesda.net/en/game/doom)”;  
“[www.bethesda.net/en-US/game/hifirush](http://www.bethesda.net/en-US/game/hifirush)”;  
“[www.bethesda.net/en/game/redfall](http://www.bethesda.net/en/game/redfall)”; and  
“[www.elderscrolls.bethesda.net/en](http://www.elderscrolls.bethesda.net/en).”

The Complainant also operates separate websites offering merchandise relating to each of the relevant games.

The disputed domain names were registered on the following dates:

<[doom-game.net](http://doom-game.net)> on May 30, 2022;  
<[hi-fi-rush-game.com](http://hi-fi-rush-game.com)> on February 10, 2023;  
<[redfall-game.net](http://redfall-game.net)> on March 31, 2023; and  
<[skyrimdl.net](http://skyrimdl.net)> on January 22, 2024.

The disputed domain name <[doom-game.net](http://doom-game.net)> has resolved to a website which makes prominent use of the DOOM Logo, invites visitors to “Download Doom Game for Free or Play Online on PC” and includes a button marked “Download Game”. The website also features “Top 5 Alternatives to Doom Game”.

The disputed domain name <[hi-fi-rush-game.com](http://hi-fi-rush-game.com)> has resolved to a website which makes prominent use of the HI-FI RUSH Logo, invites visitors to “DOWNLOAD HI-FI RUSH GAME FOR FREE” and includes a button marked “Download Game” and a link to “EXCLUSIVE MERCH”.

The disputed domain name <[redfall-game.net](http://redfall-game.net)> has resolved to a website which makes prominent use of the REDFALL Logo, invites visitors to “Download Redfall Game for PC” and includes buttons marked “Download Now” and “Play Now”.

The disputed domain name <[skyrimdl.net](http://skyrimdl.net)> has resolved to a website which is headed “The Elder Scrolls V SKYRIM”, which makes prominent use of a device similar to the SKYRIM Logo and invites visitors to

“DOWNLOAD SKYRIM GAME FOR FREE”. It includes buttons marked “PLAY GAME” and “DOWNLOAD GAME” together with download and installation instructions.

## 6. Parties' Contentions

### A. Complainant

The Complainant provides information concerning the nature of each of its four games and their commercial profile. It states that the original DOOM, released in 1993, sold over 3.5 million physical copies and that a 2016 reboot sold over two million copies on PC alone. It states that HI-FI RUSH had acquired two million players by March 2023. It describes REDFALL as having been released worldwide in 2023 and states that the first volume of “The Elder Scrolls” was released in 1994, with the SKYRIM instalment having been launched in 2011 and having sold over 60 million units by June 2023. The Complainant makes reference to gaming industry awards received by DOOM and “The Elder Scrolls” SKYRIM in particular.

The Complainant submits that the disputed domain names are confusingly similar to its trademarks DOOM, HI-FI RUSH, REDFALL, and SKYRIM. It states that all of the trademarks in question are imaginative terms invented by the Complainant. It contends that each of the disputed domain names adopts the relevant trademark in full, and that the remainder of each disputed domain name does not detract from its confusingly similarity with the relevant trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It states that it has never licensed or authorized the Respondent to use its DOOM, HI-FI RUSH, REDFALL, or SKYRIM trademarks and that the Respondent is not making any bona fide commercial use of the disputed domain names. The Complainant submits that, on the contrary, the Respondent is seeking to make unfair commercial gains by misleadingly suggesting an affiliation between the disputed domain names and the Complainant's relevant trademarks.

The Complainant refers to *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) and contends that a disputed domain name cannot fall within the criteria for permissible reference to a third-party trademark where the disputed domain name is itself misleading. The Complainant submits that all of the disputed domain names are inherently misleading, as suggesting in each case an affiliation with the trademark owner.

The Complainant further contends further that the contents of the Respondent's websites are misleading. It states that each of them makes prominent use not only of the Complainant's trademarks but also the DOOM Logo, the HI-FI RUSH Logo, the REDFALL Logo and the SKYRIM Logo respectively. Furthermore, the websites include copyright images directly copied from the Complainant's official websites, together with a notice falsely claiming that the Respondent is the relevant copyright owner. The Complainant exhibits evidence of numerous images so copied from its websites.

The Complainant submits that the Respondent's websites are offering unauthorized third-party downloads of the Complainant's games, links to other unauthorized third-party downloads, merchandise and other commercial offerings. It contends that these factors must of themselves exclude any bona fide use of the disputed domain names.

The Complainant submits that none of the Respondent's websites accurately discloses the identity of the website operator, i.e. the only references are to “Doom Fan Site”, “Hi-Fi Rush Fan Site, Redfall Fan Site” and “Skyrim Fan Site”. It further submits, with direct reference to the *Okidata* case, that the Respondent has failed in every case to disclose its (lack of) relationship with the Complainant in a clear and sufficiently prominent manner. The Claimant acknowledges that the websites linked to <hifi-rush-game.com> and <skyrimd.net> include a disclaimer that the website operator “... is not an official representative or the developer of this application, game or product,” but contends that these statements are outweighed by the

Respondent's use of the Complainant's trademarks, logos and copyright materials and do not in any event acknowledge the Complainant's trademark rights.

The Complainant submits that the disputed domain names have been registered and are being used in bad faith. It contends that, based on the Respondent's use of the disputed domain names, it was obviously aware of the Complainant's relevant trademarks when it registered the disputed domain names. The Complainant reiterates its submissions set out above and asserts in particular that the Respondent is misleadingly attempting to present its websites as being official or affiliated websites of the Complainant. The Complainant submits that the Respondent is therefore using the disputed domain names in bad faith in the manner contemplated by paragraph 4(b)(iv) of the Policy, i.e. to attract Internet users to its websites by causing confusion with the Complainant's trademarks.

The Complainant requests the transfer of the disputed domain names.

## **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 names are 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 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 established that it is the owner of registered trademark rights for the marks DOOM, HI-FI RUSH, REDFALL and SKYRIM.

The disputed domain name <doom-game.net> incorporates the Complainant's trademark DOOM, together with a hyphen and the term "game".

The disputed domain name <hi-fi-rush-game.com> incorporates the Complainant's trademark HI-FI RUSH, together with hyphens and the term "game".

The disputed domain name <redfall-game.net> incorporates the Complainant's trademark REDFALL, together with a hyphen and the term "game".

The disputed domain name <skyrimdl.net> incorporates the Complainant's trademark SKYRIM, together with the additional letters "dl".

In none of the above instances does the addition of the term "game" or the letters "dl" to the Complainant's trademark prevent that trademark from being recognizable within the relevant disputed domain names. The Panel therefore finds that each of the disputed domain names is confusingly similar to a trademark in which the Complainant has rights.

## **B. Rights or Legitimate Interests, and C. Registered and Used in Bad Faith**

The Panel finds it convenient to consider the second and third elements under the Policy in parallel in this case, since similar considerations inform the Panel's conclusions in each case.

Based on the Respondent's use of the disputed domain names for websites featuring the Complainant's related video games, there can be no doubt that the Respondent registered each of the disputed domain names in the knowledge of the Complainant's relevant trademark rights and with the intention of referring to the Complainant's respective video games in each case.

The Panel also accepts the Complainant's submission that each of the disputed domain names is inherently misleading. The Panel finds that the Complainant's trademarks and related video games are widely known in the video gaming world, and that by combining the Complainant's trademarks with the term "game" in each case, the disputed domain names are likely to mislead Internet users into believing that the relevant websites must be owned or operated by, or otherwise legitimately affiliated with, the Complainant. Moreover, the Complainant has offered no explanation for its choice of the disputed domain names, nor has it challenged any of the submissions made in the Compliant.

Since the disputed domain names are inherently deceptive, the *Ok! Data* criteria for the legitimate reference to a third-party trademark (see also section 2.8.1 of [WIPO Overview 3.0](#)) are unlikely to be engaged. However, even if such criteria were engaged, the Panel finds that none of the Respondent's websites contains any sufficient disclaimer making clear that the website in question has no official connection with the Complainant. On the contrary, despite the limited statements contained in two of the websites in question, each of the websites makes prominent use of the Complainant's trademarks, logos, and copyright content, thereby giving an overwhelming impression of authorized status and/or some legitimate commercial affiliation with the Complainant.

In the circumstances, both the disputed domain names themselves and the websites to which they resolve seek unfairly to target the Complainant's relevant trademarks by giving a misleading impression to Internet users that they must be legitimately connected with the Complainant. Deception of this nature cannot give rise to rights or legitimate interests in the disputed domain names and the Panel therefore finds that the Respondent has no rights or legitimate interests in respect of any of the disputed domain names.

Further, on the basis of the same factual circumstances, and the Respondent's offering on each of its websites of unauthorized third-party downloads of the Complainant's video games, as well as links to merchandise and other commercial offerings, the Panel finds that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites 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 websites (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain names have been 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 <doom-game.net>, <hi-fi-rush-game.com>, <redfall-game.net>, and <skyrimdl.net> be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: May 22, 2024