

ADMINISTRATIVE PANEL DECISION

Elec Games Ltd. v. Nikita KOLESNIKOV
Case No. D2024-1994

1. The Parties

The Complainant is Elec Games Ltd., Malta, represented by Abion AB, Sweden.

The Respondent is Nikita KOLESNIKOV, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <boost-casino.org> is registered with NETIM SARL (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 14, 2024. On May 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 16, 2024, 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 May 23, 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 May 28, 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 May 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 19, 2024.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on June 24, 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.

On July 5, 2024, the Panel issued Procedural Order No. 1 (the "Procedural Order"), inviting the Complainant to clarify its activity and to confirm that the website at "www.boostcasino.com" was linked to the Complainant. The Panel also invited the Complainant's to clarify its possible relationship with the company managing the website at "www.boostcasino.com" as well as its relationship with the company on behalf of which a cease and desist letter was sent to the Respondent for the transfer of the disputed domain name. The Panel granted the Complainant until July 9, 2024 to provide the requested clarifications and information and until July 13, 2024 for the Respondent to reply. On July 8, 2024, the Complainant replied to the Panel's requests. The Respondent did not provide any comment.

4. Factual Background

The Complainant is a Maltese company operating in the field of distribution and development of innovative electronic gaming experiences. Through a partner, the Complainant operates an online gaming platform at the Internet address "www.boostcasino.com".

The Complainant is the owner of the word mark BOOST CASINO, registered, among others, in the European Union under No. 017754681 of May 18, 2018, for goods and services in classes 9, 38, and 41.

The Respondent is an individual allegedly located in the Russian Federation, who registered the disputed domain name on February 8, 2024. The disputed domain name resolves to a parking page of the hosting provider. On April 12, 2024, a company connected with the Complainant sent a cease and desist to the Respondent informing the Respondent of the earlier BOOST CASINO mark and requesting the immediate transfer of the disputed domain name, which infringed those earlier rights. The Respondent never replied to this letter.

5. 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 identical or confusingly similar to the Complainant's BOOST CASINO mark, as it incorporates it entirely and is clearly recognizable within the disputed domain name.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name because the Respondent does not own any trademark rights on the terms "boost casino", the Respondent is not a licensee of the Complainant, and the Complainant did not authorize the Respondent to incorporate its BOOST CASINO mark in the disputed domain name, or to present an offering of goods or services through the disputed domain name. Moreover, the Respondent does not appear to be commonly known by the disputed domain name and is not making a legitimate noncommercial or fair use of the disputed domain name.

Moreover, the Complainant maintains that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant has been using its BOOST CASINO marks since long before the registration of the disputed domain name. Accordingly, the Respondent was well aware of the Complainant's mark when it registered the disputed domain name. As the disputed domain name is confusingly similar to the Complainant's mark the Respondent registered the disputed domain name to mislead consumers searching for information about the Complainant and to commercially profit from the

likelihood of confusion between the Complainant's mark and the disputed domain name. Although the Respondent is passively holding the disputed domain name, such cannot prevent a finding of bad faith under the doctrine of passive holding.

Lastly, in reply to the Panel's Procedural Order, the Complainant confirmed that: the website associated with "www.boostcasino.com" is linked to the Complainant; the Complainant has a partnership with Ninja Global OÜ, through which the "www.boostcasino.com" website is operated and managed; and, Ninja Global Ltd is a subsidiary of Ninja Global OÜ that issued a cease and desist letter concerning the disputed domain name in furtherance of its management of the Complainant's online platform, while operating under the authority and supervision of the Complainant.

B. Respondent

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

6. Discussion and Findings

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.

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 entirety of the mark is reproduced within the disputed domain name. The only difference between the Complainant's mark and the disputed domain name lies in the hyphen between the words "boost" and "casino" in the disputed domain name. This difference is insignificant and is likely to remain unnoticed. 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.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 the case at issue, the Complainant has indicated that it has no relationship with the Respondent and that it never authorized the Respondent to incorporate its trademark in the disputed domain name. Moreover, the Respondent does not appear to have been commonly known by the disputed domain name. The Respondent's name does not coincide with, or contain the words "boost casino" and the Respondent did not show that it owns rights over a BOOST CASINO trademark. Moreover, the disputed domain name resolves to a parking page of the hosting provider and this use cannot amount to a bona fide offering of goods or services or to a legitimate noncommercial or fair use of the disputed domain name under these circumstances. In particular, the Panel notes that the disputed domain name is essentially identical to the Complainant's mark, which implies a high risk of affiliation. A respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

In light of the foregoing, and having the Respondent not rebutted the Complainant's arguments with adequate and convincing evidence, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, 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.

In the present case, the Panel notes that the disputed domain name is essentially identical to the Complainant's mark BOOST CASINO registered in the European Union some years before the registration of the disputed domain name. Although the trademark BOOST CASINO consists of the adjunction of two common English words, it creates, because of the unusual combination of each of its constituent elements in relation to the goods and services covered, an impression sufficiently far removed from that produced from the mere combination meanings lent by those elements. Therefore, in the Panel's view, this trademark is endowed with distinctive character. The Panel has performed some independent online research using the keyword "boost casino" in compliance with the general powers conferred to the Panel in paragraph 10 of the Rules, and has found entries linked to the Complainant only, among which the BOOST CASINO platform at the Internet address "www.boostcasino.com". The Panel notes that the website at "www.boostcasino.com" is in English, Estonian, Finnish, and Russian and that the Respondent is allegedly located in the Russian Federation. All these circumstances lead to the conclusion that the Respondent was likely aware of the Complainant's mark and activity when it registered the disputed domain name and that it registered the disputed domain name to target the Complainant's mark. Moreover, in these circumstances, absent explanation from the Respondent, the Panel is unable to conceive of any legitimate purpose for registration of the disputed domain name, other than to improperly take advantage of or otherwise abuse the Complainant's mark.

The registration of a domain name identical to a third party's distinctive trademark being aware of this trademark and without rights or legitimate interests amounts to registration in bad faith.

The disputed domain name does not resolve 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's trademark, the composition of the disputed domain name, and the Respondent's failure to submit a Response (or to answer to the Complainant's cease and desist letter) or to provide any evidence of actual or contemplated good-faith use. Accordingly, the Panel

finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Accordingly, the Panel finds that the Complainant has established the third element of the Policy.

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 <boost-casino.org> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: July 17, 2024