

## **ADMINISTRATIVE PANEL DECISION**

Futuremark Ltd. v. Dmitrii Gunichev  
Case No. D2024-3575

### **1. The Parties**

The Complainant is Futuremark Ltd., Finland, represented by Greenberg Traurig, LLP, United States of America.

The Respondent is Dmitrii Gunichev, Russian Federation.

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

The disputed domain name <3d-mark.com> is registered with Registrar of Domain Names REG.RU LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on September 3, 2024. On September 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 5, 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 (Protection of Private Person) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 13, 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 in English on the same date.

On September 13, 2024, the Center informed the Parties in Russian and English, that the language of the registration agreement for the disputed domain name is Russian. On September 13, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 in English and Russian of the Complaint, and the proceedings commenced on September 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 10, 2024.

The Center appointed Alissia Shchichka as the sole panelist in this matter on October 14, 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. Factual Background**

The Complainant, Futuremark Ltd., is a Finnish company specializing in computer benchmarking applications for home, business, and media use. In 1998, the Complainant launched its 3DMARK software, designed to assess 3D graphic rendering and CPU performance. Since then, several versions of the 3DMARK software have been released, and it is available on both the Apple and Google app stores, with over 5 million downloads to date.

Due to its continued use of the 3DMARK trademark in connection with computer software, the Complainant asserts its exceptionally strong common law rights in the 3DMARK mark. Additionally, the Complainant has provided evidence of being the registered owner of numerous 3DMARK trademarks worldwide, including but not limited to the following:

- United States of America registration No. 2480324, registered on August 21, 2001, for the word mark 3DMARK, in class 9;
- European Union registration No. 002913861, registered on February 16, 2004, for the word mark 3DMARK, in classes 9, 16, and 42;
- United Kingdom registration No. UK00902913861, registered on February 16, 2004, for the word mark 3DMARK, in classes 9, 16, and 42.

The Complainant is also the owner of the domain name <3dmark.com>, registered on January 17, 1998. The aforementioned trademark and domain name were registered prior to the disputed domain name, which was registered on April 15, 2024. The disputed domain name prominently displays the 3DMARK trademark and features information about the 3DMark software. It includes a "Download" button that appears to allow consumers to purchase or download versions of the 3DMARK software. However, when clicked, the button simply redirects users back to the top of the page, without providing access to the software.

The Respondent, according to the disclosed Whois information for the disputed domain name, is located in the Russian Federation.

#### **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.

According to the Complainant, the disputed domain name is identical to the Complainant's 3DMARK trademark, as it incorporates the entire trademark. The addition of a hyphen, does not prevent a finding of confusing similarity. In respect of the generic Top-Level Domain ("gTLD") ".com", which forms part of the disputed domain name, the Complainant requests that the Panel disregard it under the first element as it is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (1) the Respondent is not commonly known by the disputed domain name; (2) the Respondent is neither authorized, licensed, nor permitted by the Complainant to register or use the disputed domain name; (3) the Respondent has not used, nor shown any intention or preparation to use, the disputed domain name in connection with a bona fide offering of goods or services; (4) the Respondent is using the disputed domain name to divert traffic by impersonating the Complainant, prominently displaying the Complainant's 3DMARK trademark and replicating the appearance of the Complainant's official website, possibly engaging in fraudulent activities or distributing malware; and (5) the Respondent has listed the disputed domain name for sale.

Finally, the Complainant contends that the Respondent's registration and use of the disputed domain name constitutes bad faith on the following grounds: (1) the Respondent has used the disputed domain name to host a website falsely representing itself as the Complainant's, potentially engaging in fraudulent transactions or attempting to steal consumer's personal or corporate information; (2) the presence of active MX (mail exchange) records associated with the disputed domain name suggests it is being used for email communications, indicating a potential for additional bad-faith activities such as phishing or fraudulent emails; (3) the Respondent had both actual and constructive knowledge of the Complainant's 3DMARK trademark given its widespread registrations, and the clear connection of the disputed domain name to the Complainant indicates opportunistic bad faith; and (4) the Respondent has offered the disputed domain name for sale at USD 300, far exceeding the domain name registration cost, further demonstrating intent to profit illegitimately from the Complainant's trademark.

The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **I. Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint has been submitted in English, and the Complainant requests that the proceedings be conducted in English for several reasons. First, the disputed domain name includes English words and abbreviations written in Latin script instead of Cyrillic. Second, it features the Complainant's trademark along with the generic term "mark," both of which mention English letters. Third, the disputed domain name directs users to a website that impersonates the Complainant and contains content in English. These factors suggest that the Respondent is likely familiar with the English language.

Conversely, the Complainant's legal counsel lacks proficiency in reading or writing Russian. Conducting the proceedings in Russian would require the engagement of a translator, incurring additional costs for the Complainant, who is already responsible for filing expenses, and would likely delay the initiation of the proceedings.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the

proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **II. Substantive Issues**

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

- (i) that the disputed domain name 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.

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

### **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 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. Accordingly, the disputed domain name is confusingly similar to the mark, and phonetically identical, 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.

Indeed, the Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the 3DMARK trademark or to seek registration of any domain name incorporating the trademark. The Respondent is also not known to be associated with the 3DMARK trademark, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

The disputed domain name resolves to a website that impersonates the Complainant, features information about the 3DMARK software, and includes a “Download” button that appears to allow consumers to purchase or download versions of the 3DMARK software. Previous panels have consistently held that such use of the disputed domain name does not represent a bona fide offering because it capitalizes on the reputation and goodwill of the Complainant’s trademark. Furthermore, the use of a domain name for illegal activities, such as impersonation or passing off, cannot confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel also notes that the composition of the disputed domain name carries a risk of implied affiliation or suggests sponsorship and/or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Complainant has provided evidence supporting its prima facie claim that the Respondent lacks any 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.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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.

On the issue of registration, the Panel observes that the Complainant has used the 3DMARK trademark for several decades prior to the registration of the disputed domain name and the Complainant’s rights to the 3DMARK trademarks substantially precede the Respondent’s registration of the disputed domain name. The Complainant’s software bearing the 3DMARK trademarks has been downloaded over 5 million times. This extensive use and widespread recognition of the Complainant’s trademarks support the conclusion that the Respondent knew or should have known about the Complainant’s trademarks at the time of registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2

Further, the mere registration of the disputed domain name that is confusingly similar to the Complainant’s widely-known trademarks by the Respondent, who is unaffiliated with the Complainant, can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

In terms of use, the disputed domain name resolves Internet visitors to a website that impersonates the Complainant. This site displays the Complainant’s trademarks and logos while providing information about the Complainant’s products and allegedly offering the ability to download the relevant software. In the Panel’s view, the Respondent has intentionally sought to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademarks regarding the source, sponsorship, affiliation, or endorsement of its website or the products offered on it. Under paragraph 4(b)(iv) of the Policy, this conduct constitutes evidence of bad faith registration and use of the domain name. [WIPO Overview 3.0](#), section 3.1.4.

Additionally, the disputed domain name has active MX records, as indicated by the MX records lookup, which suggests a potential use for email services. Given the Respondent's control over the disputed domain name and its associated MX records, there exists an implied ongoing threat that the Respondent may use these records to further impersonate the Complainant in email communications.

The selection of a domain name identical to the Complainant's trademark, coupled with the absence of any credible explanation from the Respondent, leads the Panel to conclude that the Respondent was aware of the Complainant's market reputation and intended to exploit it. In this context, the Panel also emphasizes the significance of the Respondent's failure to submit any Response. Therefore, the Panel finds that, under the circumstances of this case, the Respondent's registration and use of the disputed domain name constitute bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

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 <3d-mark.com> be transferred to the Complainant.

*/Alissia Shchichka/*

**Alissia Shchichka**

Sole Panelist

Date: October 28, 2024