

## ADMINISTRATIVE PANEL DECISION

Red Hat, Inc. v. Name Redacted

Case No. DMD2024-0005

### 1. The Parties

The Complainant is Red Hat, Inc., United States of America (“United States”), represented by Kilpatrick Townsend & Stockton LLP, United States.

The Respondent is Name Redacted, Indonesia. <sup>1</sup>

### 2. The Domain Name and Registry

The disputed domain name <redhat.md> is registered with Public Institution “Information Technology and Cyber Security Service” (the “Registry”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 11, 2024. On September 12, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On September 13, 2024, the Registry 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 (Unknown) and contact information in the Complaint, and indicating that the language of the registration agreement was Romanian. The Center sent an email communication to the Complainant on September 17, 2024, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 18, 2024.

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<sup>1</sup>For the reasons discussed later in this decision, the Panel believes that Respondent has used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registry regarding transfer of the disputed domain name, which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registry as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

On September 17, 2024, the Center informed the Parties in Romanian and English, that the language of the registration agreement for the disputed domain name is Romanian. On September 18, 2024, the Complainant confirmed its request that English 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 of the Complaint in English and Romanian, and the proceedings commenced on September 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 14, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on October 16, 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, founded in 1993, is a provider of enterprise open source solutions, offering a broad portfolio of software solutions, including the Linux operating system, hybrid cloud infrastructure, middleware, agile integration, cloud-native application development, and management and automation solutions. Over nearly three decades, the Complainant has grown from a handful of employees to over 20,000 employees and has more than 100 locations in more than 40 countries.

The Complainant received numerous recognitions and accolades in its field.

The Complainant owns worldwide trademark registrations for RED HAT, such as the following:

- the International trademark registration number 861726 for RED HAT (word), registered on August 13, 2004, covering goods and services in International classes 9, 41, and 42, and designating numerous jurisdictions worldwide, including the Republic of Moldova; and
- the United States trademark registration number 2142662 for RED HAT (word), registered on March 10, 1998, covering goods and services in International classes 9 and 42.

The Complainant also owns a logo mark, protected, inter alia, by the United States trademark registration number 5802089, registered on July 9, 2019, covering goods and services in International classes 9, 41, and 42.

The Complainant owns, since 1994, and uses, since 1996, the domain name <redhat.com>.

The Complainant also uses its name and mark on several social media platforms.

The disputed domain name was registered on July 31, 2024. According to evidence provided as Exhibit L to Complaint, the disputed domain name has been used to promote gambling and gaming services through a number of subpages, some pages being in Indonesian language. Further, on the website corresponding to the disputed domain name, the RED HAT trademark and hat logo were displayed, including on the header tab, while no disclaimer or information concerning the Respondent was provided.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name.

Notably, the Complainant contends that, as a result of the Complainant's substantial activities and promotional efforts in connection with its trademark, the relevant consuming public and trade recognize and associate the RED HAT mark with the Complainant; its mark has acquired a substantial degree of public recognition and distinctiveness in not only the IT, open source and technological industries and communities, but amongst consumers of such products and services as well; the disputed domain name is identical to its trademark RED HAT; the Respondent has no rights or legitimate interests in the disputed domain name; the Respondent registered and is using the disputed domain name in bad faith and the Respondent has targeted the Complainant and the notoriety of the RED HAT trademark for the Respondent's benefit, this being clear from the Respondent's exact incorporation of the RED HAT mark in the disputed domain name, the use of the RED HAT mark and hat logo on the pages and header tab of the website under the disputed domain name, and the diversion of Internet users to third parties websites offering online gambling and gaming activities; in fact, a number of consumers have contacted the Complainant regarding the disputed domain name and the links to gambling content, believing it has a connection to the Complainant and asking that the Complainant take down the links.

Furthermore, the Complainant contends that the Respondent's name appears to be an official of the Indonesian government. Consequently, it is more than likely that Respondent has chosen to impersonate this government official for purposes of the Respondent's registration and use of the disputed domain name.

### **B. Respondent**

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

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **A. Preliminary Issue: Language of Proceeding**

The language of the Registration Agreement for the disputed domain name is Romanian. 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 was filed in English.

The Complainant requested that the language of the proceeding be English for the main following reasons: (i) the disputed domain name consists of an English language mark that consists of English words; (ii) while the Registry is located in Republic of Moldova, it offers its services in English and Romanian; (iii) over 30% of Indonesia's population speaks English (most of the subpages to which the disputed domain name resolved were in Indonesian language); (iv) the subpages corresponding to the disputed domain name are all using English language URLs; and (v) the principle of equity of the parties and expedite proceedings

excluding unnecessary burdensome of the Complainant ordering translations, and also causing unduly delay to the proceeding.

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).

The Complainant and its representative are United States companies. Accordingly, neither the Complainant nor its representative are able to understand and to communicate in Romanian.

The Panel further notes that the Center notified the Parties in Romanian and English of the language of the proceeding, as well as of the commencement of the proceeding.

The Respondent did not file any objections regarding the language of this proceeding.

The Panel is familiar with both, Romanian and English.

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.

## **B. 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.

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. Accordingly, the disputed domain name is identical 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.

## **C. 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.

The composition of the disputed domain name carries a high risk of implied affiliation, being identical to the Complainant's mark, thus suggesting an affiliation with the Complainant. Furthermore, on the website under the disputed domain name the Respondent displays the Complainant's logo and trademark, without any disclaimer. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

#### **D. 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 was registered in bad faith, with knowledge of the Complainant and its trademark particularly because it reproduces exactly the Complainant's mark, which predates the registration of the disputed domain name with more than 25 years and has acquired substantial international reputation in its industry. Further, the use of the disputed domain name enhances this finding.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location" is evidence of registration and use in bad faith.

Given that the disputed domain name reproduces the Complainant's trademark, the website operated under the disputed domain name displays the Complainant's trademark and logo, and has no information regarding the actual registrant or a disclaimer, indeed in this Panel's view, the Respondent has intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, or controlled by the Complainant, or somehow affiliated with or related to the Complainant, for the Respondent's commercial gain.

Further evidence of bad faith are the following facts: the nature of the disputed domain name which is reproducing exactly the Complainant's mark; the reputation of the Complainant's mark; the failure of the Respondent to submit a response; and the likely unauthorized use of a third party's name in registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.1.

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 <redhat.md> be transferred to the Complainant.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: October 28, 2024