

ADMINISTRATIVE PANEL DECISION

Supercell Oy. v. Dong Nan Zhao
Case No. D2022-0113

1. The Parties

The Complainant is Supercell Oy., Finland, represented by Fondia Oyj, Finland.

The Respondent is Dong Nan Zhao, China.

2. The Domain Name and Registrar

The disputed domain name <supercell-brawlstars.com> is registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2022. On January 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 14, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 14, 2022 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 January 17, 2022.

On January 14, 2022, the Center transmitted an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed the request that English be the language of the proceeding on January 17, 2022. The Respondent did not comment on the language of the proceeding.

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 Chinese of the Complaint, and the proceedings commenced on January 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2022.

The Center appointed Rachel Tan as the sole panelist in this matter on February 25, 2022. 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, Supercell Oy, is a mobile game development company located in Finland. It uses the BRAWL STARS trade mark in connection with its mobile game. The game was released worldwide in 2018 and reached USD 1 billion total gross sales in 2020.

The Complainant is the owner of the SUPERCELL and BRAWL STARS marks in the United States and European Union, including United States Trade Mark Registration No. 4824684 for SUPERCELL, registered on October 6, 2015 in classes 9, 41 and 45; United States Trade Mark Registration No. 5567901 for BRAWL STARS, registered on September 25, 2018 in classes 6, 9, 16, 18, 20, 21, 25, 26, 28 and 41; European Union Trade Mark Registration No. 009704446 for SUPERCELL registered on October 29, 2013 in classes 9, 28 and 41; European Union Trade Mark Registration No. 013640421 for SUPERCELL registered on January 10, 2016 in classes 6, 9, 16, 18, 20, 21, 25, 26 and 28; European Union Trade Mark Registration No. 016753469 for SUPERCELL registered on September 29, 2017 in class 35; and European Union Trade Mark Registration No. 016733214 for BRAWL STARS registered on September 14, 2017 in classes 6, 9, 16, 18, 20, 21, 25, 26, 28 and 41.

The Complainant is the owner of the domain name <supercell.com> which it uses as a primary webpage for its business.

The Respondent is Dong Nan Zhao, China.

The disputed domain name was registered on December 2, 2021. At the date of filing the Complaint, the disputed domain name resolved to a website in English language allegedly promoting the possibility to earn cryptocurrency by playing the "BRAWL STARS" game. At the date of this Decision, the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is visually and aurally identical to the Complainant's SUPERCELL and BRAWL STARS marks, which cause immediate and obvious likelihood of confusion.

The Complainant further alleges that the Respondent does not have any rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed its marks to the use of the Respondent or otherwise permitted the Respondent to register the disputed domain name. There is no relationship between the Complainant and the Respondent. The Respondent does not have any other logical reason to register the disputed domain name other than to mislead consumers and to take advantage of the reputation of the Complainant's marks.

The Complainant finally asserts that by registering a domain name that is identical to the Complainant's marks, the Respondent clearly had a purpose of disrupting the Complainant's business. The Respondent has been using the disputed domain name with an intentional attempt of attracting internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's SUPERCELL and BRAWL STARS marks as to the source, sponsorship, affiliation, or endorsement of the resolved website. The resolved website contains the Complainant's mark and images that are similar to the copyright-protected content features on the Complainant's website. The resolved website is also used in

connection with goods and services that are identical to those covered by the Complainant's marks. It is evident that the Respondent has registered the disputed domain name in bad faith for the purpose of trading off on the Complainant's marks and the associated goodwill.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

(a) the disputed domain name resolved to a website that only contains material in English, which indicates the Respondent's familiarity with the requested language; and

(b) all pre-complaint correspondence to the Respondent has been submitted in the English language.

It is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel has considered the above circumstances, and finds that English shall be the language of this proceeding. The reasons are set out below:

(a) the Complainant is a company based in Finland. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;

(b) the Respondent's choice of Roman letters for the disputed domain name indicate that the Respondent is familiar with the English language;

(c) the contents in the resolved website of the disputed domain name are in English language;

(d) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not object to this request;

(e) the Respondent has failed to participate in the proceeding even though the Center sent the notification in English and Chinese of the Complaint, and has been notified of his/her default; and

(f) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

Accordingly, the Panel will proceed with issuing this Decision in English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the SUPERCELL and BRAWL STARS marks.

The Panel notes the disputed domain name is comprised of the SUPERCELL and BRAWL STARS marks in their entirety. In cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The use of a hyphen is inconsequential to the assessment of identity or confusingly similarity between the SUPERCELL and BRAWL STARS marks and the disputed domain name. It is permissible for the Panel to ignore the generic Top-Level Domain, in this case ".com". See section 1.11.1 of the [WIPO Overview 3.0](#). Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade marks.

Accordingly, the Panel finds that the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In circumstances where the Complainant possesses exclusive rights to the SUPERCELL and BRAWL STARS marks whereas the Respondent seems to have no trade mark rights, and considering the facts and arguments set out above, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of a domain name that is identical or confusing similar to the Complainant's SUPERCELL and BRAWL STARS marks. Further, there is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. The Complainant has not granted the Respondent a license or authorization to use the Complainant's SUPERCELL or BRAWL STARS marks or register the disputed domain name. Moreover, the Panel notes that the Respondent was previously allegedly using the resolved website to promote the possibility to earn cryptocurrency by playing the "BRAWL STARS" game. None of these circumstances indicates a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraph 4(c) of the Policy are present in this case.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's SUPERCELL and BRAWL STARS marks have been registered in the United States and European Union. The disputed domain name was registered after the registration of the Complainant's SUPERCELL and BRAWL STARS marks. Through extensive use and advertising, the Complainant's SUPERCELL and BRAWL STARS marks are well known throughout the world. Search results using the key words "supercell" and "brawl stars" on Internet search engines direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the SUPERCELL and BRAWL STARS

marks and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's SUPERCELL and BRAWL STARS marks when registering the disputed domain name, and has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". See *Barclays Bank PLC v. Andrew Barnes*, WIPO Case No. [D2011-0874](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that "[...] mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith". In this case, the disputed domain name is confusingly similar to the widely known SUPERCELL and BRAWL STARS marks and was registered by the Respondent who has no relationship with the Complainant, which means that a presumption of bad faith can be created.

The Panel notes that the disputed domain name previously resolved to a website allegedly displaying the BRAWL STARS mark and promoting the possibility to earn cryptocurrency by playing the "BRAWL STARS" game. The Panel is of the view that the Respondent intentionally created a likelihood of confusion with the Complainant's SUPERCELL and BRAWL STARS marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This demonstrates bad faith use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

In addition, the Panel finds that the current inactive use of the disputed domain name in this case would not prevent a finding of bad faith under the doctrine of passive holding. In its determination, the Panel considered the degree of distinctiveness and reputation of the Complainant's SUPERCELL and BRAWL STARS marks, as well as the Respondent's failure to respond in the face of the Complainant's allegations of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under paragraph 4(a) 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, <supercell-brawlstars.com>, be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: March 10, 2022