

## **ADMINISTRATIVE PANEL DECISION**

**NCSoft Corporation v. Alison Pellizzari Carvalho**

**Case No. D2022-4559**

### **1. The Parties**

The Complainant is NCSoft Corporation, Republic of Korea, represented by Greenberg Traurig, LLP, United States of America ("U.S.").

The Respondent is Alison Pellizzari Carvalho, Brazil.

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

The disputed domain name <aionamerica.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 30, 2022. On November 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 1, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 amendment to the Complaint on December 1, 2022.

The Center verified that the Complaint together with the amendment to the 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 December 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 23, 2022.

The Center appointed Andrea Mondini as the sole panelist in this matter on January 3, 2023.

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 is an international video game developer and publisher headquartered in South Korea with numerous subsidiaries all over the world, which *inter alia* offers the Aion game. The Complainant owns all rights, title, and interest in the Aion game, including copyrights as well as all related trademarks.

The Complainant owns and operates websites offering and promoting the Aion game to its consumers at “www.aiononline.com” in North America, and at “https://aion.plaync.com” in South Korea.

The Complainant owns numerous registrations for the trademark AION, *inter alia*, the U.S. trademark AION (Registration No. 3,720,149, registered in Class 9 on December 1, 2009) and the U.S. trademark AION (Registration No. 5,109,832, registered in Class 41 on December 27, 2016).

The disputed domain name was registered on July 6, 2020.

The disputed domain name resolves to a website that contains elements that mimic the Complainant's website and displays the Complainant's AION mark.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends as follows:

Since the Complainant started exclusively using its AION mark in 2008, the goods and services in connection with the AION mark, including the Aion game, have generated tens of millions of dollars in revenue and the game has had millions of unique players and consumers all over the world, which shows that the AION mark is well known.

The disputed domain name is confusingly similar to the AION trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the word “america” is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name and is not commonly known by the disputed domain name. The Respondent has not been authorized by the Complainant to use this trademark and the Respondent was not and is not using the disputed domain name in connection with a *bona fide* offering of goods and services. Rather, the Respondent uses the disputed domain name to provide a website that displays the Complainant's AION mark and offers an unauthorized Aion server, in competition with the Complainant.

The disputed domain name was registered and is being used in bad faith because it is evident that the Respondent had knowledge of both the Complainant and its well-known trademark AION at the time it registered the disputed domain name. The Respondent registered and is using the disputed domain name in bad faith as the Respondent intentionally attracts Internet users and would-be players of the Complainant's Aion game to the Respondent's website by intentionally creating a likelihood of confusion with the Complainant's AION mark. These activities not only disrupt the Complainant's business in relation to the Aion game, but also, financially benefit the Respondent.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant owns trademark registrations for its AION trademark.

The Panel notes that the disputed domain name incorporates the AION trademark in its entirety. The addition of the word "america" does not prevent a finding of confusing similarity under Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's mark AION.

The first element of paragraph 4(a) of the Policy has been met.

### **B. Rights or Legitimate Interests**

The Complainant states it has not authorized the Respondent to use the trademark AION and that before notice of the dispute, the Respondent's use of the disputed domain name was not in good faith. Rather, the use was inherently misleading and sought to take unfair advantage of the Complainant's mark to offer competing services. The Panel does not see any contrary evidence from the record. Moreover, the Panel notes that the use is commercial in nature, for example, the website contains a "shop" page and "support us" link seeking funds from Internet users.

In the view of the Panel, the Complainant has succeeded in raising a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. For its part, the Respondent failed to provide any explanations as to any rights or legitimate interests. Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising the Complainant's trademark and the term "america" (a geographic term tending to suggest sponsorship or endorsement by the Complainant), carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The second element of paragraph 4(a) of the Policy has been met.

### **C. Registered and Used in Bad Faith**

The Complainant has shown to the satisfaction of the Panel that its AION trademark is well known.

In the view of the Panel, considering that the Respondent used the disputed domain name to offer unauthorized goods and services related to and in competition with the Complainant's video game, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well-known trademark and its Aion game. In the circumstances of this case, this is evidence of registration in bad faith.

The Respondent uses the disputed domain name in conjunction with a website that contains elements that mimic the Complainant's website to offer an unauthorized Aion server that is in direct competition with the Complainant's legitimate game to intentionally attract for commercial gain Internet users to the Respondent's website by intentionally creating a likelihood of confusion with the Complainant's AION mark. Such use constitutes use in bad faith in the sense of paragraph 4(b)(iv) of the Policy.

The Panel thus finds that the disputed domain name was registered and is being used in bad faith.

The third element of paragraph 4(a) of the Policy has been met.

## **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 <aionamerica.com> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: January 16, 2023