

ADMINISTRATIVE PANEL DECISION

Athleats LLC v. Vladislav Zhelkovskii

Case No. D2023-0349

1. The Parties

The Complainant is Athleats LLC, United States of America (“United States”), represented by Proskauer Rose, LLP, United States.

The Respondent is Vladislav Zhelkovskii, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <phoodlegame.org> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 25, 2023. On January 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2023, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 2023 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 February 3, 2023.

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 February 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2023. No formal Response was filed with the Center, but the Respondent sent three informal emails to the Center on January 31, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on March 14, 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, Athleats LLC, is a United States-based company which registered the <phoodle.net> domain on March 17, 2022 and officially launched its game PHOODLE at the said domain on May 9, 2022. The Complainant submits media articles dated May 2022, as well as Internet extract showing use of the PHOODLE game on its website under the domain name <phoodle.net> for the Complainant's game, thus demonstrating it acquired substantial media attention in relation to the PHOODLE name.

The Complainant owns pending United States federal trademark filings for the trademarks PHOODLE and PHOODLE.NET, for, *inter alia*, downloadable software for games, puzzles, and culinary-related puzzles, such as the following:

- the United States trademark serial number 97331167 for the word PHOODLE, filed on March 25, 2022, and claiming goods and services in Nice classes 9, 41, and 42; and
- the United States trademark serial number 97331415 for the word PHOODLE.NET, filed on March 25, 2022, and claiming goods and services in Nice classes 9, 41 and 42.

The disputed domain name <phoodlegame.org> was registered on July 22, 2022, and, at the time of filing the Complaint, it was connected to an online word game identical to the Complainant's game located at its official website, in which players have six tries to guess a five-letter food-related word. Also, on the website under the disputed domain name were featured various other elements from the Complainant's website, such as the Complainant's Phoodle logo, various website functionalities and pop-ups.

When the Panel visited the website under the disputed domain name this was inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is substantively identical to its trademarks, domain name, and established unregistered trademark rights in the names PHOODLE and PHOODLE.NET; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

On January 31, 2023, the Center received three email communications from the Respondent asking what is the complaint about and lastly, that "the site has been taken down and will no longer be available. In my opinion this should be enough".

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

Under the Policy, a pending trademark application would not by itself establish trademark rights within the meaning of UDRP paragraph 4(a)(i). See section 1.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant's use of the PHOODLE and PHOODLE.NET names started rather recently, in March 2022. However, the Panel is satisfied that, in particular due to (i) the degree of inherent distinctiveness of the name at issue; (ii) the nature of the services provided under the brand PHOODLE, namely an online game, which is easy to spread and use widely through the Internet; and (iii) the immediate media attention it got after the game's launch as demonstrated by the Complainant, it shows that the Complainant has established unregistered trademark rights on the brand PHOODLE, albeit within a short period of time. See also *Athleats LLC v. Domain Protection Services, Inc. / Shinjiru International Inc.*, WIPO Case No. [D2022-3108](#).

Furthermore, the Panel notes the composition of the second-level part of the disputed domain name which incorporates the name PHOODLE and the word "game" which is closely related to the Complainant's activity on its official website at "www.phoodle.net", as well as the manner in which the related website under the disputed domain name is used, such facts demonstrates that the Respondent has been targeting the Complainant's mark which has achieved significance as a source identifier. See section 1.3. of the [WIPO Overview 3.0](#).

Accordingly, the Panel is satisfied that the Respondent established unregistered trademark rights in respect of PHOODLE for the purpose of the first element of the Policy.

The disputed domain name <phoodlegame.org> contains the Complainant's unregistered trademark PHOODLE and the element "game". Numerous UDRP panels have considered that the addition of other terms (whether geographical, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity, where the relevant trademark is recognizable within the domain name. See section 1.8 of the [WIPO Overview 3.0](#).

Further, it is well established in decisions under the UDRP that the Top-Level-Domain ("TLD") (e.g., ".com", ".org", ".info") in a domain name may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's unregistered trademark PHOODLE, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license or authorization whatsoever to use the mark PHOODLE, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, "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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element". See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not replied to the Complainant's contentions to advance a claim to any rights or legitimate interests in the disputed domain name.

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain name.

On the contrary, as the Complainant demonstrated, at the time of filing the Complaint, the disputed domain name was used to host a website that copied the Complainant's game and mimicked its website in an attempt to mislead consumers into thinking that the services offered on this website originate from or are endorsed by the Complainant. Such use demonstrates neither a *bona fide* offering of services nor a legitimate interest of the Respondent. See section 2.5. of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant registered and is using the domain name "www.phoodle.net" and the name PHOODLE since March 2022 and rapidly acquired a substantial recognition among Internet users.

The disputed domain name was registered in July 2022 and incorporates the Complainant's distinctive unregistered trademark together with the word "game", which is descriptive for the Complainant's activity under its website. Furthermore, the content on the website under the disputed domain name copies the content of the Complainant's official website.

For the above reasons, the Panel finds more likely than not that the Respondent had the Complainant's mark and business in mind when registering the disputed domain name.

At the time of filing the Complaint the Respondent was using without permission the Complainant's trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant.

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] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name reproduces the Complainant's distinctive trademark PHOODLE together with a term closely related to the Complainant's business, and the website operated under the disputed domain name copies the look-and-feel of the Complainant's website, displays the Complainant's trademark, logo, various website functionalities and pop-ups and has no disclaimer, indeed in this Panel's view, the Respondent 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, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

The Respondent failed to substantially submit a response; in fact, his communications, particularly the third one in which he stated that he will shut down the website under the disputed domain name, together with the

other circumstances in this case, in the eyes of this Panel, may amount to an acknowledgement of registration and use in bad faith.

As mentioned, the Respondent failed to provide a response to the Complainant's allegations. Also, the physical addresses listed in the WhoIs was inaccurate or incomplete. Along with other circumstances in this case, such facts constitute a further sign of bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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, <phoodlegame.org>, be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: March 27, 2023