

ADMINISTRATIVE PANEL DECISION

ZeniMax Media Inc. v. Nano Techan
Case No. D2024-3139

1. The Parties

The Complainant is ZeniMax Media Inc., United States of America (“United States”), represented by Kisch Global Limited, South Africa.

The Respondent is Nano Techan, Nigeria.

2. The Domain Names and Registrar

The disputed domain names <falloutshop.com> and <skyrimstore.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2024. On July 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 31, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 7, 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 on August 8, 2024.

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, and the proceedings commenced on August 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 9, 2024.

The Center appointed Philippe Gilliéron as the sole panelist in this matter on September 17, 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 is a company affiliated to Microsoft Corporation and part of its gaming division.

The Complainant's studios have notably edited a role-playing video under the name Fallout, which was released in 1997, with sequels in 1998, 2008, and 2015 as well as numerous spin-off games. The game has sold over 600,000 copies by 2017, and has received numerous awards from gaming sites and publications. A television series based on the Fallout video games series was released on Amazon Prime Video in April 2024.

The Complainant's studios have also edited The Elder Scrolls' game, including The Elder Scrolls V: Skyrim, which is the fifth instalment in The Elder Scrolls series. The game, released in November 2011, has sold over 60 million units by June 2023 and has also received numerous awards from gaming sites and publications.

The Complainant owns numerous trademarks related to these games on a worldwide basis, notably:

- International Trademark Registration No. 905457 for FALLOUT, registered on November 2, 2006;
- International Trademark Registration Nos. 1488042 and 1488042A for FALLOUT, both registered on November 2, 2018;
- United States Trademark Registration No. 4280859 for SKYRIM, registered on January 22, 2013;
- United States Trademark Registration No. 4080839 for SKYRIM, registered on January 3, 2012; and
- United States Trademark Registration No. 5380829 for SKYRIM, registered on January 16, 2018.

On April 3, 2024, the Respondent registered the disputed domain name <skyrimstore.com>.

On May 7, 2024, the Respondent registered the disputed domain name <falloutshop.com>.

Both disputed domain names relate to websites that display a similar layout. These websites are online shops selling products and accessories related to the FALLOUT and SKYRIM games, which reproduce the Complainant's trademarks on numerous instances and include statements according to which they would be "the OFFICIAL Merchandise Store for Fallout fans", respectively the "OFFICIAL Merchandise store for Skyrim fans".

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to its FALLOUT and SKYRIM trademarks, as both are incorporate into the disputed domain names with the mere addition of the descriptive terms "shop" and "store".

The Complainant then affirms that the Respondent has no rights or legitimate interests in the disputed domain names. It has never license or otherwise authorized the Respondent to use any of its trademarks or to register domain names incorporating its FALLOUT and SKYRIM trademarks. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names.

The Complainant finally is of the view that the disputed domain names were registered and are being used in bad faith. The Respondent's use of the dispute domain names clearly demonstrates that the Respondent knew of the Complainant's FALLOUT and SKYRIM trademarks when it registered the disputed domain names. Taking into account the use made by the Respondent of the disputed domain names, the Respondent has the intent to attract, for commercial gain, Internet users to the websites by creating a likelihood of confusion with the Complainant. Such use obviously amounts to a use in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "[...] decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements to obtain an order that the disputed domain names should be cancelled or transferred:

- (i) the disputed domain names are identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

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 names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of trademarks or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the FALLOUT and SKYRIM marks is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of the terms "shop" and "store" do not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

The Panel finds that 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 names. 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 names such as those enumerated in the Policy or otherwise.

Furthermore, the Panel notes the composition of the disputed domain names, which carries a risk of implied affiliation with the Complainant, [WIPO Overview 3.0](#), section 2.5.1, and that the disputed domain names resolve to websites whose layout resembles the Complainant’s one purportedly offering identical services to the Complainant’s ones.

The Panel finds that 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.

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.

In the present case, the Panel notes that the disputed domain names resolve to websites purportedly offering the Complainant’s merchandising products related to the games the Complainant has developed, all such items bearing the Complainant’s FALLOUT or SKYRIM trademarks. The websites are meant to lead the Internet users to falsely believe that the websites are affiliated to the Complainant. Taking into account the very strong reputation enjoyed by the Complainant’s trademarks, there is no doubt that the Respondent was well aware of the Complainant’s trademarks when it registered the disputed domain names and that, in doing so, the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s trademarks.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain names constitutes bad faith under 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 names <falloutshop.com> and <skyrystore.com> be transferred to the Complainant.

/Philippe Gilliéron/

Philippe Gilliéron

Sole Panelist

Date: October 1, 2024