ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
NXC Corp. v. Mayank Vagadiya, Nexon Game Studio Pvt Ltd
Case No. D2024-4670

1. The Parties

The Complainant is NXC Corp., Republic of Korea, represented by KAI International IP Law Firm, Republic of Korea.

The Respondent is Mayank Vagadiya, Nexon Game Studio Pvt Ltd, India.

2. The Domain Name and Registrar

The disputed domain name <nexongamestudio.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 13, 2024. On November 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 2024, the Registrar transmitted by email to the Center its verification response confirming that English is the language of the registration agreement but disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Anonymous) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 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 amendment to the Complaint on November 19, 2024.

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 November 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 11, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on December 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

Since its establishment in 1994, the Complainant and its corporate group has been engaged in the production, development and operation of PC, mobile and online video games under the brand NEXON. It is also engaged in the financial market.

The Complainant and its corporate group have been promoting their games and services from, amongst others, the website at "www.nexon.com", which has been registered since 1996.

According to its website, the Complainant has published over 45 "live" games. It has 1.9 billion global registered users from more than 190 different countries. Some of the Complainant's games include MapleStory, Dungeon & Fighter, Sudden Attack, and KartRider. The Complainant's corporate group had revenues of USD 3 billion in 2023.

According to the website, the MapleStory franchise has had over 250 million users worldwide since its launch in 2003, generating combined life-to-date gross revenues over USD 5 billion. The Dungeon & Fighter franchise has achieved over 850 million registered users since its launch in 2005 with combined life-to-date gross revenues over USD 22 billion.

In December 2021, the Complainant announced its games would start accepting a number of digital currencies for in game purchases including Bitcoin, Ethereum, Litecoin and Dogecoin. It also purchased 100 million Bitcoin which brought its holdings at the time to 1,717 which were then worth USD 83.83 million. The Complainant noted in a press release at the time that these holdings were equivalent to less than two per cent of its cash and cash equivalents on hand.

The Complaint includes evidence that the Complainant holds numerous registered trademarks for NEXON around the world including for example:

(1) United States Registered Trademark No 2,481,744, NEXON, which was registered in the Principal Register on August 28, 2001 in respect of online interactive gaming services in International Class 41;

(2) United States Registered Trademark No 4,168,236, NEXON, which was registered in the Principal Register on July 3, 2012 in respect of, amongst other things, downloadable computer game software in International Class 9 and technical research in the field of on-line games and computer software design in International Class 42;

(3) European Union Registered Trademark (EUTM) No 006077309, NEXON, which was registered on March 2, 2011 with effect from July 6, 2007 in respect of a wide range of goods and services in International Classes 9, 41 and 42 including video games and video gaming services;

(4) Indian Registered Trademark No 5338321, NEXON, which was registered on February 26, 2024 with effect from its application date on February 21, 2022 in respect of, amongst other things, computer game software in International Class 9, game services provided on-line and providing electronic publications in International Class 41 and computer software development in the field of on-line games and computer programming in International Class 42.

As noted, these are examples only of the numerous registrations around the world evidenced in the Complaint.

According to the WhoIs report, the disputed domain name was registered on July 3, 2023.

It resolves to a website in English which promotes NEXON as a Game Development Studio providing game development services across a variety of platforms.

It appears from a search of the Indian Companies Register maintained by Ministry of Corporate Affairs, India that the Respondent was incorporated on July 14, 2023.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct WhoIs details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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 first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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

The Complainant has proven ownership of the trademark NEXON.

The comparison of the disputed domain name to the Complainant's trademark simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., WIPO Overview 3.0, section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. WIPO Overview 3.0, section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark and the term "game studio". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g., WIPO Overview 3.0, section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or

(iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While 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 often impossible 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. 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.

The Respondent registered the disputed domain name well after the Complainant began using the trademark and also after the Complainant had registered its trademark in many countries.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it or its corporate group.

The disputed domain name is not derived from the individual Respondent's name. However, it is very close to the corporate Respondent's name.

Although the corporate Respondent was incorporated several days after the disputed domain name was registered, the Panel would be prepared to treat them as essentially being registered simultaneously since it is not uncommon for the promoters of a new company to secure the domain name before or in conjunction with registering the company under the proposed name.

Nonetheless, a respondent cannot invoke the protection of paragraph 4(c)(ii) of the Policy simply by incorporating a company under a confusingly similar name to someone else's trademark. The name must be adopted in good faith, otherwise the Policy would be set at naught.

In the present case, it appears highly likely that the Respondent, or its promoters, were aware of the Complainant and its trademark when choosing the disputed domain name and the corporate name. As the Complaint alleges and the statistics set out in Section 4 above support, the Complainant's NEXON brand name appears to be very well- and widely known especially in the field of gaming. It seems most unlikely that someone with the skills and experience in gaming design and development claimed on the Respondent's website would have been unaware of the Complainant and its trademark.

Given the scale of use and reputation of the Complainant's trademark in the field of gaming and on-line gaming in particular, the adoption of the corporate Respondent's name and the disputed domain name both appear to be calculated to cause confusion as to the source, sponsorship or affiliation of the Respondent and its services with the Complainant. On the information before the Panel, it appears most unlikely that the Respondent and its promoters would not have appreciated the disputed domain name and the use of the trademark NEXON would be likely to cause such confusion. In those circumstances, the reflection of the corporate name in the disputed domain name (if the latter was registered in anticipation of the incorporation of the company), cannot support a defence under paragraph 4(c)(ii) of the Policy. Further, the deliberate adoption of a disputed domain name likely to cause such confusion, therefore, does not qualify as a good faith offering of goods or services under the Policy.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that prima facie case or advance any claimed entitlement.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. D2017-0183.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As explained in Section 5B above, it appears very likely that the Respondent and its promoters were well aware of the Complainant and the Complainant's trademark when the disputed domain name was registered.[1]

The reasons leading to the conclusion that the Respondent does not have rights or legitimate interests in the disputed domain name also lead in this case to the conclusion that the disputed domain name was registered to take advantage of the Complainant's reputation in the trademark NEXON. Accordingly, the

[1]The Panel does not have any information about who the initial registrant was or when the disputed domain name was transferred into the name of the corporate Respondent. Given the degree of correspondence between the disputed domain name and the corporate name, it would seem likely the person or persons involved in incorporating the Respondent were also involved in the initial registration of the disputed domain name. Nothing appears to turn on this, however, as strictly speaking the question of registration in bad faith falls to be determined at the time the corporate Respondent became the registrant and, for the reasons given, it seems highly likely that those involved in the corporate Respondent were well aware of the Complainant and its trademark.

Panel finds that the disputed domain name was registered in bad faith.

In addition, the manner of use of the disputed domain name in connection with a business apparently offering computer game development services is calculated to cause confusion about the origin of the Respondent's services or falsely suggest an association with the Complainant. The services being offered by the Respondent fall within the scope of the Complainant's trademark registrations in class 42 and, in any event, are so closely related to the gaming services being offered by the Complainant that the public would likely (falsely) assume they are associated. Accordingly, the Panel finds that the disputed domain name is being used in bad faith.

Accordingly, the Complainant has established all three requirements under 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 <nexongamestudio.com> be transferred to the Complainant.

/Warwick A. Rothnie/
Warwick A. Rothnie
Sole Panelist
Date: December 27, 2024