

## **ADMINISTRATIVE PANEL DECISION**

Elec Games Ltd. v. Regery Ukraine

Case No. D2024-4870

### **1. The Parties**

The Complainant is Elec Games Ltd., Malta, represented by Abion AB, Sweden.

The Respondent is Regery Ukraine, Ukraine.

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

The disputed domain name <bigboostcasinos.net> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 26, 2024. On November 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 27, 2024, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 4, 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 December 5, 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 December 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 27, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on January 7, 2025. 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. Further Procedural Considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should continue. The Panel has reached this conclusion in part because the Panel recognizes that the Center employed all reasonably available means calculated to achieve actual notice to the Respondent. In particular, the Center successfully sent the Notification of the Complaint to the email address disclosed for the Respondent by the Registrar in its Registrar Verification Response. There is no indication that the email notification has not been successfully delivered.

Furthermore, the Panel notes that the disputed domain name was created in August 2024, during the international conflict, suggesting that the Respondent is able to access the Internet, maintain control of the disputed domain name (reinforced by the changing content displayed thereon, mentioned below), and should have received at least electronic notice of this proceeding.

Finally, for the reasons which are set out later in this Decision, the Panel has no serious doubt that the Respondent registered and has used the disputed domain names in bad faith.

The Panel therefore concludes that the Respondent has been given a fair opportunity to present his case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

#### **5. Factual Background**

The Complainant describes itself as a company specializing in the development and distribution of electronic gaming experiences.

It results from the Complainant's documented allegations, that remained undisputed, that it is the holder of several trademark registrations for BOOST CASINO for products in classes 9, 38, and 41, amongst others:

- European Union Trademark Registration No. 017754681 (verbal), registered on May 18, 2018;
- United Kingdom Trademark Registration No. UK00917754681 (verbal), registered on May 18, 2018.

The Respondent registered the disputed domain name on August 24, 2024. According to the evidence provided by the Complainant, the disputed domain name resolved to websites with different content:

- on November 26, 2024, the website showed a parking page with links;
- while on September 23, 2024, the website contained an online gambling website in English language ("Play Casino", "Place a bet" etc.) operating under the title "BIG BOOST CASINO".

Finally, it results from the Complainant's documented evidence that on September 23, 2024, it contacted the Respondent through the Registrar with a cease-and-desist letter requesting, among other things, the disputed domain name to be transferred to the Complainant. The Complainant did not receive any response by the Respondent.

## **6. 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 name.

Notably, the Complainant contends that:

- (1) the disputed domain name incorporates entirely the Complainant's registered trademark BOOST CASINO. The word element <boostcasinos> is almost identical to the Complainant's registered rights for BOOST CASINO, but in plural (the addition of a "s");
- (2) The Respondent does not have any rights to the BOOST CASINO trademark, nor is the Respondent a licensee of the Complainant. Furthermore, the website hosted on the disputed domain name appears to be designed to deceive visitors into believing that it is associated with or endorsed by the Complainant, which is not the case;
- (3) The Complainant has been using its BOOST CASINO trademark long before the disputed domain name was registered. This implies knowledge of the Complainant's Trademarks and business. The Respondent is trying to take advantage of the trademarks to draw traffic to the disputed domain name. Therefore, the Complainant submits that the disputed domain name has been registered to commercially profit from the likelihood of confusion between the BOOST CASINO trademark and the disputed domain name.

### **B. Respondent**

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

## **7. 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".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

## **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 name, 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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "big" and the "s" after the term "casino", may bear on assessment of the second and third elements, the Panel finds the addition of such term and the letter "s" does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.8. In fact, in the Panel's view, the BOOST CASINO mark remains clearly recognizable within the disputed domain name.

The Panel finds 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 name.

In particular, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy. Furthermore, the Complainant has not given its consent for the Respondent to use its registered BOOST CASINO trademark in any domain name registration.

Moreover, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation, since it identically contains the Complainant's trademark BOOST CASINO with an additional non-distinctive term "big" and the addition of the letter "s". Generally speaking, previous UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see [WIPO Overview 3.0](#), at section 2.5.1). The Panel shares this view and notes that in particular non-distinctive terms such as "big" and/or a simple addition of the letter "s" at the end of a domain name are to be seen as tending to suggest sponsorship or endorsement by the trademark owner.

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 name such as those enumerated in the Policy or otherwise.

The Panel finds 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.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that – at least in September 2024 – the disputed domain name resolved to a website which contained an online gambling website in English language ("Play Casino", "Place a bet" etc.) operating under the title "BIG BOOST CASINO". For the Panel, noting also the fact that the Complainant's BOOST CASINO trademark predates the disputed domain name's registration by several years, it is more likely than not that the Respondent knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel finds that the Respondent also knew that the disputed domain name included the Complainant's BOOST CASINO trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name identically includes the Complainant's trademark.

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the nature of the disputed domain name, identically containing the Complainant's mark combined with the non-distinctive term "big" and the addition of letter "s";
- (ii) the Respondent's failure to submit a response to the Complainant's cease and desist letter and to the Complaint and, therefore, not providing any evidence of actual or contemplated good faith use;
- (iii) absence of rights or legitimate interests coupled with no explanations for the Respondent's choice of the disputed domain name; and
- (iv) the Respondent originally hiding its identity behind a proxy service.

The Panel finds that the Complainant has established the third element of the Policy.

### **8. 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 <bigboostcasinos.net> be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: February 4, 2025