

ADMINISTRATIVE PANEL DECISION

Licensing IP International S.à r.l. v. Kozak Ihor
Case No. D2024-5013

1. The Parties

Complainant is Licensing IP International S.à r.l., Luxembourg, represented by Mitchell, Silberberg & Knupp, LLP, United States of America ("United States").

Respondent is Kozak Ihor, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <brazzers-hd.mobi> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 4, 2024. On December 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to Complainant on December 6, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 12, 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 Respondent of the Complaint, and the proceedings commenced on December 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 5, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 6, 2025.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on January 29, 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. Procedural Issues

Paragraph 10(b) of the Rules requires the Panel to ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case. Furthermore, paragraph 10(c) requires that the administrative proceeding takes place with due expedition.

Respondent's mailing address is in Ukraine, which is subject to an international conflict at the date of this decision. These circumstances may impact case notification and it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether or not the proceeding should continue.

The Panel is of the view that the proceeding should continue, having considered all the circumstances of the case.

In particular, the Panel notes that the mail service was not able to deliver the Written Notice sent by registered mail to Respondent's address in Ukraine ("Delivery failed: Recipient absent"); however, the Complaint was delivered to Respondent's email address provided by the Registrar without any delivery failure response. Also, Respondent has not opposed the continuation of the proceedings.

Complainant, in turn, has specified that any challenge made by Respondent to any decision to transfer the disputed domain name will be submitted to "the jurisdiction of the courts situated in the location of Registrar's address, as shown for the registration of the Infringing Domain Name in the concerned Registrar's Whois database at the time of the submission of this Amended Complaint" (the United States of America).

Additionally, as set out below, the Panel has formed the view that Respondent registered and has used the disputed domain name in bad faith.

5. Factual Background

Complainant is a company organized under the laws of Luxembourg that is active in the online adult entertainment industry; it operates since more than two decades the adult entertainment website at "www.brazzers.com" and offers related goods and services under the BRAZZERS brand.

Complainant has provided evidence that it is the registered owner of various trademarks relating to its BRAZZERS brand, including, but not limited to, the following:

- word mark BRAZZERS, United States Patent and Trademark Office ("USPTO"), registration number: 3621514, registration date: May 19, 2009, status: active;
- word mark BRAZZERS, USPTO, registration number: 3621570, registration date: May 19, 2009, status: active.

Respondent, according to the Registrar's verification, is located in Ukraine. The disputed domain name was registered on October 11, 2020. By the time of the rendering of this decision, it resolves to a typical parking website provided by the Registrar. Complainant, however, has demonstrated that at some point before the filing of the Complaint, e.g. on November 12, 2024, the disputed domain name resolved to a website at "www.brazzers-hd.mobi" which offered adult content in direct competition with the services offered by Complainant, thereby displaying Complainant's BRAZZERS trademark and promoting in part copyright protected content from Complainant's official website at "www.brazzers.com" without any authorization to do so.

Complainant requests that the disputed domain name be transferred to Complainant.

6. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, Complainant contends that it has been using its BRAZZERS trademark in commerce since at least as early as January 30, 2004, and that it has invested substantial time and other resources ever since in developing, advertising, and promoting its adult entertainment website and related goods and services under such trademark, which, as a result of these efforts, has meanwhile developed considerable goodwill.

Complainant submits that the disputed domain name is confusingly similar to Complainant's BRAZZERS trademark, as it incorporates the entirety of the latter, and the existence of the term "hd" (presumably an abbreviation for "high definition") does not preclude a finding of confusing similarity. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent neither is a licensee of Complainant, nor has Respondent obtained permission, either express or implied, from Complainant to use its BRAZZERS trademark, or any domain name incorporating it, (2) Respondent is using the disputed domain name for a website that offers adult entertainment content that is directly competitive with Complainant's website and content, and (3) by incorporating Complainant's BRAZZERS trademark into the disputed domain name, Respondent uses the latter to misdirect or bait Internet users seeking to utilize or learn more about Complainant's adult entertainment website and related goods and services to Respondent's competing website. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent could not plausibly assert that, in registering the disputed domain name, it was unaware of Complainant's rights in the BRAZZERS trademark, considering the strong reputation and fame of such trademark and the operation of an infringing website under the disputed domain name that offers the same type of content as Complainant offers on its official BRAZZERS website and also prominently features Complainant's BRAZZERS trademark, and (2) the disputed domain name is so obviously indicative of Complainant and its services that Respondent's use thereof would, at minimum, inevitably lead to confusion of some sort to the detriment of Complainant and its goodwill.

B. Respondent

Respondent did not reply to Complainant's contentions.

7. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

First, 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 Complainant's BRAZZERS 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.

Complainant has shown rights in respect of its BRAZZERS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Moreover, the entirety of such trademark is reproduced within the disputed domain name, merely added by the term "hd" (presumably an abbreviation for "high definition"). Accordingly, the disputed domain name is confusingly similar to Complainant's BRAZZERS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, the term "hd") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and Complainant's BRAZZERS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel, therefore, finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Second, paragraph 4(c) of the Policy provides a list of circumstances in which 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

In particular, Respondent has not been authorized to use Complainant's BRAZZERS trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term "brazzers" on its own. Quite to the contrary, the disputed domain name, at some point before the filing of the Complaint, e.g. on November 12, 2024, resolved to a website at "www.brazzers-hd.mobi" which offered adult content in direct competition with the services offered by Complainant, thereby displaying Complainant's BRAZZERS trademark and promoting in part copyright protected content from Complainant's official website at "www.brazzers.com" without any authorization to do so. Such making use of the disputed domain name, therefore, qualifies neither as bona fide nor as legitimate noncommercial or fair within the meaning of the Policy, not even so under the so-called Oki Data principles which would indeed have required Respondent e.g. to accurately and prominently disclose on such website the nonexistent relationship between Respondent and Complainant as the BRAZZERS trademark holder, which Respondent has not done. [WIPO Overview 3.0](#), section 2.8. Finally, UDRP panels have long held that the use of a domain name for illegitimate activity (here, Complainant's impersonation/passing-off by Respondent) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel, therefore, finds the second element of the Policy has been established, too.

C. Registered and Used in Bad Faith

Third, 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.

The circumstances to this case leave no doubts that Respondent was fully aware of Complainant's rights in its BRAZZERS trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name to run a website at "www.brazzers-hd.mobi" which offered at some point adult content in direct competition with the services offered by Complainant, thereby displaying Complainant's BRAZZERS trademark and promoting in part copyright protected content from Complainant's official website at "www.brazzers.com" without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's BRAZZERS trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Finally, UDRP panels have long held that the use of a domain name for illegitimate activity (here, Complainant's impersonation/passing-off by Respondent) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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

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, <brazzers-hd.mobi>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: February 12, 2025