

ADMINISTRATIVE PANEL DECISION

Elec Games Ltd. v. Regery Ukraine
Case No. D2024-5216

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 <boostcasinos.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 December 18, 2024. On December 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 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 27, 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 January 1, 2025.

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 January 2, 2025. In accordance with the Rules, paragraph 5, the due date for Response was January 22, 2025. The Respondent did not submit any response. A third party sent an email communication to the Center on December 27, 2024. The Center informed the Parties that it would proceed with the panel appointment on January 30, 2025.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on February 3, 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, even though the delivery of the Written Notice to the address failed according to the courier delivery records ("Recipient absent"). The Panel has nevertheless 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 December 2024, during the international conflict, suggesting that the Respondent is able to access the Internet, maintain control of the disputed domain name, 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 name 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 is specialized in the development and distribution of electronic games. Under its trademark BOOST CASINO it operates one of its online casino and gaming websites through its sister company Ninja Global OÜ and the domain name <boostcasino.com>.

It further results from the Complainant's documented allegations that it is the owner of several verbal trademark registrations for BOOST CASINO, e.g.:

- European Union trademark registration No. 017754681, registered on May 18, 2018, for goods and services in classes 9, 38 and 41;
- United Kingdom trademark registration No. UK00917754681, registered on May 18, 2018, for goods and services in classes 9, 38 and 41.

The disputed domain name was registered on December 4, 2024, and resolves to a website apparently in Finish language, with the Complainant's figurative BOOST CASINO logo on the left upper side and proposing several menu items such as "Boost Casino", "Boost Casino bonus" or "Boost Casino top-up". The Complainant sent a Cease-and-Desist letter to the Respondent on December 13, 2024, without, however, receiving any reply.

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, which only diverges for the addition of an "s" in the end (plural). Therefore, the trademark remains clearly recognizable within the disputed domain name;
- (2) The Respondent does not have any rights to the trademark BOOST CASINO, nor is the Respondent a licensee of the Complainant. The Complainant has not given the Respondent any permission to register the trademark as a domain name or to use or present an offering of goods and services on the disputed domain name under the Complainant's trademarks;
- (3) It is obvious that the Respondent was aware of the Complainant's trademarks and business when registering the disputed domain name. The Respondent is trying to take advantage of the Complainant's trademarks to draw traffic to the website under the disputed domain name. Therefore, the Complainant submits that the website has been registered to commercially profit from the likelihood of confusion between the trademark and the disputed domain name. With its pre-complaint Cease-and-Desist letter the Complainant allowed the Respondent to solve the matter amicably, and they actively chose not to reply. In addition, the Respondent's choice to use a privacy service when registering the disputed domain name ought to be considered an indication of bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Center received an email from a third party on December 27, 2024, indicating "Good afternoon. Please explain the nature of the claim and options to resolve the situation without problems".

7. Discussion and Findings

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 with an additional letter “s”. The Panel finds this addition does not prevent a finding of confusing similarity. Rather it finds that the mark remains clearly recognizable 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.

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 trademarks in any domain name registration.

Moreover, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation, since the disputed domain name identically contains the Complainant’s trademark BOOST CASINO – merely with a final “s” added – and that said trademark is not one that would be legitimately adopted as a domain name unless to suggest an affiliation with the Complainant. Generally speaking, previous UDRP panels have found that domain names which identically include 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 compositions cannot constitute fair use if they effectively impersonate or suggest sponsorship or endorsement by the trademark owner (see [WIPO Overview 3.0](#), at section 2.5.1). The Panel shares this view in the case at hand, where merely a final “s” has been added to the trademark BOOST CASINO, which will be understood as a indicating the plural form and therefore several casinos.

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.

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.

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 the disputed domain name resolves to a website prominently using the Complainant's figurative BOOST CASINO logo on the left upper side and proposing several menu items such as "Boost Casino", "Boost Casino bonus" or "Boost Casino top-up". 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 evident that the Respondent knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name identically contains 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) a clear absence of rights or legitimate interests;
- (ii) the Respondent's failure to submit a response to the Cease-and-Desist letter or to the Complaint and to provide any evidence of actual or contemplated good faith use;
- (iii) 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 <boostcasinos.net> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: February 17, 2025