

ADMINISTRATIVE PANEL DECISION

Kooapps LLC v. limin thoi

Case No. DIO2023-0009

1. The Parties

The Complainant is Kooapps LLC, United States of America ("United States"), represented by Wilson Sonsini Goodrich & Rosati, United States.

The Respondent is limin thoi, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <snakeio.io> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 8, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 8, 2023, 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, as well as the registrant organization (Privacy service provided by Withheld for Privacy ehf) in Annex 1 to the Complaint. The Center sent an email communication to the Complainant on March 9, 2023 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 March 13, 2023. On March 21, 2023, the Center requested the Complainant to amend the Mutual Jurisdiction, and the Complainant filed the second amended Complaint in that respect on March 22, 2023.

The Center verified that the Complaint together with the amended Complaints satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the "Policy"), the Rules for the .IO Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for the .IO 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 March 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 14, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on April 21, 2023. 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.

On May 10, 2023, the Panel instructed the Center to send an email communication to the Parties requesting the Complainant by reply email to revoke the second amended Complaint which was submitted to the Center on March 22, 2023, and to confirm also by reply email that it wished to proceed in this case on the basis of the original Complaint of March 8, 2023, and the first amended Complaint of March 13, 2023. On May 12, 2023, the Complainant confirmed that it wished to revoke the second amended Complaint which was submitted to the Center on March 22, 2023, and to proceed in this case on the basis of the original Complaint of March 8, 2023, and the first amended Complaint of March 13, 2023.

4. Factual Background

The Complainant is a mobile and online gaming studio and publisher. It was established in 2008 and has developed over 50 games, which have been downloaded, in total, over 250 million times. One of the Complainant's games is the multiplayer game Snake.io, the Complainant having acquired the rights to this game from the original developer in 2019. Snake.io was launched as a mobile game in 2016 and as a computer game in July 2021. As of March 2023, there had been 38 million downloads of the Complainant's game from the Apple App Store and 160 million downloads of it from the Google Play.

The Complainant has protected its rights in SNAKE.IO by way of trade mark registrations. These include, by way of example, United States trade mark, registration number 6,230,302, for SNAKE.IO, registered on December 22, 2020 in class 9. The Complainant also operates the domain name <snake.io> which resolves to a website promoting the Snake.io game and from which it can be downloaded as well as containing tutorials, a blog and other information of interest to gamers.

The disputed domain name was registered on April 4, 2022. It has previously resolved to a website the home page of which was headed "Gulper.io", this being a reference to a game ostensibly developed by the Respondent. The Respondent's website also featured a section headed "Snake.io" which contained content about the Complainant and its Snake.io game, including information about its features and formats. A further section explained that Gulper.io is a game similar to Snake.io and was developed from it. In addition, the Respondent's website advertised third party games as well. The disputed domain name does not presently resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to its SNAKE.IO trade mark, only differing from it by the addition of the letters "io" after the word "snake".

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not known by the name "Snake.io" and has no trade mark or other rights in this term. The Complainant has not licensed or otherwise permitted the Respondent to use its SNAKE.IO mark, nor does the Respondent need to use its mark in order to advertise its Gulper.io game. The Respondent has used the disputed domain name in order to divert Internet users to a scam website that conspicuously displays the Complainant's SNAKE.IO mark and is designed to capitalize on confusion between the Parties' respective domain names. Such a diversion does not comprise a legitimate, noncommercial or fair use of the disputed domain name.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name long after the Complainant adopted and began using

its SNAKE.IO trade marks. The Respondent had no other reason to register the disputed domain name other than to take advantage of and exploit the Complainant's goodwill in its mark. The fact that the Respondent's website refers to the Complainant and its Snake.io game evidences its knowledge of the Complainant. Moreover, Internet users who visit the Respondent's website are likely to believe that they have accessed a website relating to the Complainant and its Snake.io game. The Respondent's registration and use of the disputed domain name in these circumstances is in bad faith.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint: (i) the disputed domain name is identical or confusingly similar to a trade mark 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 or is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided details of the registered trade marks it owns for SNAKE.IO, an example of one of these marks having been provided above, and has thereby established its rights in this term. As a technical requirement of registration, the country code Top-Level Domain ("ccTLD"), that is ".io" in the case of the disputed domain name, is usually disregarded when assessing confusing similarity. However, it should be noted that, whilst ".io" is the ccTLD for the British Indian Ocean Territory, this designation is often of interest to the software and information technology communities since IO (or I/O) is an acronym for input/output in computer science. It therefore has a particular resonance in the context of the Parties' promotion of gaming software applications.

The disputed domain name contains the entirety of the Complainant's SNAKE.IO mark save for the period, together with the ccTLD ".io". The Complainant's SNAKE.IO trade mark is, accordingly, clearly recognizable within the disputed domain name. As explained at section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")¹, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The Panel therefore finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or legitimate interests in a domain name. These are, summarized briefly: (i) if the respondent has been using the domain name in connection with a *bona fide* offering of goods and

¹ Given the similarities between the ioDRP and the Uniform Domain Name Resolution Policy ("UDRP"), the Panel finds it appropriate to refer to UDRP jurisprudence, including reference to the [WIPO Overview 3.0](#).

services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

The former use of the disputed domain name to resolve to a website which promoted a game which competes directly with the Complainant's Snake.io game was evidently intended to capture the interest of Internet users who would have been apt to assume that any website to which the disputed domain name resolved was likely to have been operated by the Complainant or with its authorization. The Respondent was therefore using the repute of the Complainant's mark, without its permission, in order to lure Internet users to its website for commercial gain. Such use does not comprise use in connection with a *bona fide* offering of goods and services.

The Respondent's name, as disclosed by the Registrar, does not correspond with the Complainant's SNAKE.IO mark. There is accordingly no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. The third circumstance is also inapplicable; the Respondent's website, whilst in use, was commercial in character and the composition of the disputed domain name is such that it carries a significant risk of implied affiliation with the Complainant, which prevents its use by the Respondent from being considered fair. Lastly, the current inactive status of the disputed domain name comprises neither a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of it; see, by way of example, *G4S Plc v. Muyou Chen, wer*, WIPO Case No. [D2020-0715](#).

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any response from the Respondent to the Complaint, it has failed to satisfy that burden. The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

C. Registered or Used in Bad Faith

As the disputed domain name is confusingly similar to the Complainant's SNAKE.IO mark and the only known active use of it has been to resolve to a website which openly acknowledges that the Respondent's Gulper.io game has been derived from, and is similar to, the Complainant's Snake.io game, it is apparent, on at least a balance of probabilities, that the Respondent registered the disputed domain name with an awareness of the Complainant's mark and with the intention of taking unfair advantage of it. Registration of the disputed domain name in these circumstances is in bad faith; see *Verkada, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Teresa Swanzy*, WIPO Case No. [D2021-0484](#). See also section 3.1.4 of the [WIPO Overview 3.0](#), "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

As the Policy provides that a complainant is required to establish either bad faith registration or bad faith use, the above findings are determinative of the Complaint. However, for completeness, the Panel considers the question of bad faith use. Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent has previously put the disputed domain name falls within these circumstances in that, having regard to the confusing similarity between the disputed domain name and the Complainant's mark, Internet users familiar with the Complainant's Snake.io game are likely to have believed that any website to which the disputed domain name resolved was likely to have been owned and operated, or at least, authorized, by the Complainant. The fact that most Internet users visiting the Respondent's website

are likely to have appreciated their mistake is immaterial in that the Respondent will, by then, have gained the opportunity of deriving financial benefit from such visits; see *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#).

The current inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. Section 3.3 of the [WIPO Overview 3.0](#) explains that; “[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding”. The factors that are typically considered when applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use, (iii) the respondent’s concealment of its identity or its use of false contact details, and (iv) the implausibility of any good faith use to which the domain name may be put. See also *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#).

Applying these factors to the current circumstances: (i) in the context of the Policy, the Complainant’s SNAKE.IO mark is distinctive and the Complainant has provided evidence of its widespread use; (ii) the Respondent has not provided a response to the Complaint and the previous use made of the disputed domain name was in bad faith; (iii) the Respondent has used a privacy service to conceal its identity; (iv) there is no plausible good faith use to which the disputed domain name could be put by the Respondent. Accordingly, the circumstances of the Respondent’s holding of the disputed domain name support a finding of bad faith use under the doctrine of passive holding.

The Panel accordingly finds that the disputed domain name is also being used in bad faith.

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 <snakeio.io> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: May 16, 2023