

ADMINISTRATIVE PANEL DECISION

Poncle Limited v. Phu Cuong Ha
Case No. DIO2023-0022

1. The Parties

The Complainant is Poncle Limited, United Kingdom (“UK”), represented Wiggin LLP, UK.

The Respondent is Phu Cuong Ha, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <vampiresurvivors.io> (the “Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2023. On June 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Name.com, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 17, 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 July 20, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .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 July 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 17, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on August 22, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a UK-based computer games developer. One of the Complainant's best-known computer games is a game called Vampire Survivors. It was first released in December 2021, and on a more general release in the autumn 2022. The Complainant has made significant sales of Vampire Survivors and received industry accolades.

The Complainant owns trademark registrations for the mark VAMPIRE SURVIVORS, such as UK trademark registration number UK00003780915 (registered on July 22, 2022) and European Union Trade Mark registration number 18693601 (registered on November 26, 2022).

The Respondent registered the Domain Name on December 19, 2022. The Domain Name has redirected to website that promotes goods and services related to the Complainant's Vampire Survivors game and reproducing the Complainant's trademark without authorization or approval. The website makes a version of the Complainant's Vampire Survivors game available for free.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations. By virtue of the goodwill embodied in the VAMPIRE SURVIVORS trademark, the Complainant is entitled under the law of passing off to prohibit the use in the UK of a mark by a third party that gives rise to a misrepresentation. The Domain Name is identical or confusingly similar to the Complainant's trademarks.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent has not been commonly known by the Domain Name. The Complainant has neither authorized, nor given its consent to the Respondent to register or use the Domain Name. The Complainant is not aware of any use by the Respondent, or demonstrable preparations to use, the Domain Name, or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Use of a domain name for illegal activity such as counterfeit and impersonation/passing off cannot confer rights or legitimate interests for a respondent.

The Complainant argues that it is evident from the use of the Domain Name that the Respondent knew about the Complainant and its computer game. The Respondent is using, without permission, the Complainant's trademark rights in order to generate traffic to its website and to obtain commercial gain from the false impression created for Internet users. The activity also disrupts the Complainant's business.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7¹.

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](#).

The Complainant has established that it has rights in the trademark VAMPIRE SURVIVORS. The Domain Name is identical to the Complainant's trademark. For the purpose of assessing the confusing similarity under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"); see [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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. 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. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. 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 Domain Name.

Based on the record, the Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The Respondent's use of the Domain Name is rather evidence of bad faith, see below.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered or 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.

The composition and use of the Domain Name make it obvious that the Respondent was aware of the Complainant and its prior rights when the Respondent registered the Domain Name. Based on the case file, it is clear that the Respondent freerides on the Complainant's trademark rights in order to generate traffic to its website for commercial gain from the false impression created for Internet users.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy.

The third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders the Domain Name <vampiresurvivors.io> transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: August 31, 2023