

## **ADMINISTRATIVE PANEL DECISION**

Hill Climb Racing Oy v. Phu Cuong Ha  
Case No. DIO2025-0005

### **1. The Parties**

The Complainant is Hill Climb Racing Oy, Finland, self-represented.

The Respondent is Phu Cuong Ha, Viet Nam, self-represented.

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

The disputed domain name <hillclimbrace.io> 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 March 13, 2025. On March 14, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 18, 2025, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 21, 2025.

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 March 24, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2025. The Response was filed with the Center on March 27, 2025.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on April 17, 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. Factual Background

The Complainant is a Finnish limited liability company which appears to be an intellectual property holding company. It is the owner of certain rights relating to a computer game entitled “Hill Climb Racing”. The Panel notes in passing that a fuller and more detailed Complaint concerning the Complainant’s activities and the nature of its business would have been of assistance to the Panel but is lacking in the present case.

The Complainant is the owner of registered trademarks in respect of the mark HILL CLIMB RACING. For example, the Complainant is the owner of United States of America (“United States”) Registered Trademark Number 7505622 for the word mark HILL CLIMB RACING, registered on September 17, 2024, in Class 9 (software for playing video games) and Class 41 (entertainment and online information relating to computer games and video games). Said trademark specifies a first use claim of November 5, 2012, although this first use date has not been independently evidenced in the present proceeding. The Complainant is also the owner of European Union Registered Trademark Number 12822912 for the word mark HILL CLIMB RACING, registered on March 10, 2015, in Classes 9 (computer game software and merchandise), 16 (books, stationery, etc.), 25 (clothing), 28 (trading cards, games and toys), and 41 (entertainment, including films, online computer games, events, and electronic publications).

The Complainant states that it has licensed said mark since 2012 to an authorized licensee named Fingersoft Oy, which uses the mark in connection with a video game named “Hill Climb Racing”. The said game is available for installation on various devices including on the Android platform (via Google Play Store). The Complainant includes a screenshot of (and a hyperlink to) the game on the Google Play Store. As the hyperlink is part of the record before the Panel, the Panel followed the link online, and noted that the said game has more than a billion downloads and benefits from 10.9 million reviews, with an average score of 4.2/5. The reviews that the Panel was able to read dated back at least to 2018, with some users noting that they had played the game since 2015.

The Panel noted from checking the Complainant’s said United States registered trademark on the United States Patent and Trademark Office website that the Complainant produced a similar screenshot of the Google Play Store when filing its trademark application (filing date June 29, 2023) at which point the said video game had garnered 10.7 million reviews with an average score of 4.6/5, and had received more than 500 million downloads. The Complainant’s licensed game thus has a large, growing, and predominantly very satisfied userbase of a reasonably longstanding nature. With regard to the Panel performing its own research from publicly available sources, see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 4.8<sup>1</sup>.

The disputed domain name was registered on December 26, 2024. The Respondent asserts that the disputed domain name is associated with a game entitled “Hill Climb Race” which is an independent project produced by a third party entity. The Respondent states that it operates the website associated with the disputed domain name as an authorized distributor of said game under a legitimate agreement with said third party entity.

According to a screenshot produced by the Complainant, the website associated with the disputed domain name is a computer gaming site which advertises multiple games, the centerpiece of which is a game titled “Hill Climb Race”. The screenshot of the game itself on said website shows that it has marked similarities to

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<sup>1</sup> Noting the substantial substantive similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy (“UDRP”) (except to the extent of relevant differences between the policies, such as the absence of a conjunctive requirement for bad faith), the Panel has referred to the [WIPO Overview 3.0](#) and prior UDRP cases, where appropriate (see also *Corning Incorporated v. Michael Nava*, Domain Nerdz LLC, WIPO Case No. [DIO2025-0002](#)).

the screenshot of the video game of the Complainant's licensee, notably, that each shows a cross section of a hill on which is a red car on the left, with facsimiles of vehicle controls entitled "Brake" and "Gas" on either side of an instrument panel beneath. The top surface of the hill's cross-section is (almost identically on both screenshots) a smooth grass strip interspersed with tufts of grass, above which is a blue sky, on the left hand side of which is a score panel, and on right hand side of which are gold-colored tokens with a numerical value. Beneath a central advertisement panel below the gameplay screenshot on the Respondent's website is the statement "Get ready for the longest road trip ever with Hill Climb Racing! Drive up and down the hills and upgrade your vehicles with this addictive game!" The Complainant's screenshot has highlighted the words "Hill Climb Racing" to illustrate the fact that this particular usage is not the alleged title of the game. Instead, it is identical to the Complainant's trademark.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that the disputed domain name is nearly identical in its form and meaning to the Complainant's registered trademark.

The Complainant asserts that it has not granted the Respondent a license to use its trademark in any form, adding that the Complainant is the only legitimate party that would be able to grant such a license.

The Complainant submits that it has used and licensed the HILL CLIMB RACING trademark since 2012, garnering over 2 billion downloads to video games using said trademark. The Complainant adds that the website associated with the disputed domain name contains a confusingly similar game to that of the Complainant, and its licensee's legitimate use of the Complainant's mark, contending that the Respondent has registered the disputed domain name to disrupt the Complainant's business and/or to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the said website.

### **B. Respondent**

The Respondent submits that the Complaint should be denied.

The Respondent contends that "hill climb" refers to a well-established genre of video games involving vehicles navigating challenging terrains, predating the Complainant's trademark, and widely used by numerous developers globally, adding that the term "race" further distinguishes the disputed domain name from the Complainant's mark because it reflects a common descriptive term rather than an attempt to mimic or confuse. The Respondent notes that it is prepared to request the producer of "Hill Climb Race" to include copyright information in the game's settings menu, in order to affirm its ownership and to distinguish this game from "Hill Climb Racing" for Internet users. The Respondent states that the Complainant's mark does not grant exclusive rights over the "hill climb" genre or any associated descriptive terms, meaning that the disputed domain name does not create a likelihood of confusion with the Complainant's mark in the minds of Internet users.

The Respondent asserts that it has a legitimate interest in the disputed domain name as an authorized distributor of an independently developed game, adding that the Respondent's use of the disputed domain name is directly tied to the promotion and distribution of this distinct product rather than to exploit the Complainant's trademark. The Respondent notes that said game operates within the "hill climb" genre but does not replicate the specific content, design, or branding of the Complainant's game, thus demonstrating a bona fide offering of goods and services. The Respondent offers to provide proof that it is lawfully distributing the game concerned, should this be required.

The Respondent states that it registered the disputed domain name in good faith to support the distribution of “Hill Climb Race”, which is a game released by a third party entity in late 2024, adding that there is no evidence to suggest that the disputed domain name was registered with the intent to target or disrupt the Complainant’s business. The Respondent asserts that the “hill climb” genre is a broad and competitive field with many developers creating similar games, of which the Complainant’s is but one such title, and that the Complainant does not hold a monopoly over it, adding that the Respondent’s use of the disputed domain name aligns with industry practice and does not seek to capitalize on the Complainant’s goodwill or reputation, and that the presence of advertisements on the associated website is standard monetization practice for game distribution platforms. The Respondent states that it has no intention to confuse Internet users or suggest any affiliation with the Complainant as the game and branding on the website associated with the disputed domain name are distinct. The Respondent contends that the Complainant’s assertion of bad faith relies on an assumption of exclusivity over the “hill climb” concept, which is not supported by trademark law or industry norms, adding that it has not engaged in any conduct outlined in paragraph 4(b) of the Policy.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has shown rights in respect of its HILL CLIMB RACING trademark for the purposes of the Policy.

The Panel finds that the Complainant’s trademark is alphanumerically, conceptually and linguistically recognizable in the disputed domain name. Indeed, the only difference between the two, apart from the absence of spaces, which are not permitted in a domain name for technical reasons, is the fact that the disputed domain name uses the verb “race” (or its related noun) while the Complainant’s trademark uses the participle form of the same verb, “racing”. Accordingly, the Panel is able to recognize a dominant feature of the mark in the disputed domain name.

The applicable Top Level Domain in a domain name is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), 1.11.1.

Issues such as the strength of the Complainant’s mark or the Respondent’s intent to provide its own legitimate offering of goods or services without trading off the Complainant’s reputation, are decided under the second and third elements. [WIPO Overview 3.0](#), section 1.7.

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

### **B. Rights or Legitimate Interests**

Panels under the Policy have recognized that where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests in the domain name concerned, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in such 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, and *Corning Incorporated v. Michael Nava, Domain Nerdz LLC*, supra).

While the submissions in the Complaint on this element are so brief as to be somewhat perfunctory, the Panel finds that the Complainant has nevertheless established a prima facie case, via the Complaint taken as a whole, that the Respondent lacks rights or legitimate interests in the disputed domain name. Notably, the Complainant asserts that it has not licensed its HILL CLIMB RACING mark to the Respondent. The evidence shows that this mark has a significant repute in the gaming world, based not least upon a very substantial volume of downloads and likewise large numbers of positive reviews of the game produced under the Complainant’s license, both of which date from well before the disputed domain name was registered.

The mark is nearly identical to the disputed domain name, and the website associated with the disputed domain name features a game of very similar appearance to the game produced by the Complainant's licensee. Furthermore, the game on the Respondent's website is described with the words "Get ready for the longest road trip ever with Hill Climb Racing!", i.e., making direct, nominative reference to the Complainant's trademark (demonstrated both by the sentence structure, and by the use of capitalized words on "Hill Climb Racing") and not using the alternate verb form "race" as found in the disputed domain name or the alleged third party game title. The Respondent's choice of words here seems to betray its true purpose, which does not indicate a descriptive use referring to racing up a hill as the general thrust of the Response suggests.

The essence of the Respondent's case in rebuttal is that it has a legitimate interest in the disputed domain name because it is an authorized distributor of an independently developed game in the "hill climb" genre, being a bona fide offering of goods and services. The Respondent submits that this genre is a broad and competitive field, with many similar games being developed, adding that some "hill climb" games predate the Complainant's mark. Crucially, however, the Respondent produces absolutely no evidence whatsoever to support these claims, and in particular provides no evidence to support the notion that the term "Hill Climb Race" in the gaming world is descriptive of the game or genre rather than being a linguistic variant of the Complainant's mark. Absent any such evidence, the evidence before the Panel on the present record consists principally of the screenshot of the Complainant's game page on the Google Play Store, and the screenshot of the website associated with the disputed domain name. As noted above, there are substantial similarities in the Parties' gameplay screenshots. Of more significance, however, is the fact that the game promoted by the Respondent is described beneath such screenshot by direct reference to the Complainant's trademark rather than by the allegedly descriptive term. This was put to the Respondent directly in the Complaint, and it appears from the fact that it is not specifically addressed in the Response that the Respondent has no answer to it.

It is clear that the game licensed and published under the Complainant's trademark has received very substantial downloads and positive reviews dating from well before the disputed domain name was registered. A person in the gaming industry such as the Respondent could not have overlooked this, or the fact that any subsequent use of an alternate verb form, such as that in the term "hill climb race", to promote a similar game would be likely to be seen as a reference to the Complainant's mark rather than merely descriptive of a game in the "hill climb genre" (assuming such genre exists, which, as previously noted, the Respondent asserted but did not evidence). In all of these circumstances, the Panel finds that the reference to "hillclimbace" in the disputed domain name and "Hill Climb Racing" on the associated website, on the balance of probabilities, is intended to reference the Complainant's mark, and, as such, cannot constitute a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy, as contended by the Respondent. The Respondent has therefore failed to rebut the Complainant's prima facie case that it has no rights or legitimate interests in the disputed domain name.

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

### **C. Registered or Used in Bad Faith**

In the third element assessment, the Policy does not require a conjunctive finding of registration and use in bad faith to be made out. Either registration in bad faith or use in bad faith, if found by the Panel, are sufficient for the third element to be established.

The terms of the third element assessment in this case largely follow the assessment in the preceding section. As noted there, the Complainant's trademark appears to have generated a considerable following in the online gaming world, with over 500 million downloads by 2023 and over one billion by the time that the Complaint was filed, with substantial volumes of positive reviews in the millions. The Respondent is avowedly a person operating in the game distribution field, and the Panel is of the view that the Respondent must have been aware of the Complainant's trademark (and its relative fame based upon its licensee's success in that field) before it registered the disputed domain name. The Respondent would have been aware that using a very linguistically similar term in the disputed domain name to the Complainant's mark (and an identical term on the associated website) would be likely to cause confusion among Internet users.

The fact that the Respondent used the exact wording in the Complainant's trademark on the website associated with the disputed domain name to describe the game that it is promoting affirms the Panel's view that the disputed domain name was registered with knowledge of and intent to target the Complainant's mark, and that the alleged descriptive use in the disputed domain name created by amending the participle in the Complainant's mark to another verb form is a mere smokescreen.

The Respondent asserts that there can be no Internet user confusion due to the breadth of the "hill climb genre" predating the Complainant's mark, which it says features numerous similar games. However, the Respondent does not provide any evidence of the genre, of the alleged similar games, or, crucially, of the extent to which these games go by allegedly descriptive names similar to that said to be found in the composition of the disputed domain name.

The Panel finds that by using the disputed domain name, the 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 such website or of a product on such website.

In all of the above circumstances, the Panel finds both that the disputed domain name was registered and has been used in bad faith.

The Panel finds 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 that the disputed domain name <hillclimbrace.io> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: April 30, 2025