Decision for dispute CAC-UDRP-100932

Case number	CAC-UDRP-100932
Time of filing	2015-02-25 11:44:51
Domain names	gametronics.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Game Retail Limited

Complainant representative

Organization	Shoosmiths LLP

Respondent

Name	Dominic Durante

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings related to the disputed domain name

IDENTIFICATION OF RIGHTS

The complainant has registered the following trademarks:

• UK registration No. 00003046570 GAMETRONICS, registered on 15 August 2014 for goods and services in classes 9, 28, 35, 37, 41 and 42.

• Community TM No. 012562815 GAMETRONICS (fig.), registered on 20 August 2014 for goods and services in classes 9, 28, 35, 37, 41 and 42.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant has rights in the Domain name because (the following references shall have the following meanings: GAMETRONICS (the “Trade Mark”)):

a. The Trade Mark is a word which has been registered as a UK and Community trade mark under multiple Classes and is the

property of the Complainant (a copy of the Complainant's UK and European registrations for the Trade Mark are included with its submission.

b. The Trade Mark is distinctive of the Complainant and its goods and services and consumers expect goods and services provided under and by reference to the Trade Mark to be those of the Complainant or delivered by the Complainant.

c. Use of the Trade Mark is restricted to the Complainant and its approved sub-licensees.

d. The Domain name incorporates the Trade Mark. The Trade Mark is the only distinctive element of the Domain Name.

The Complainant claims that the domain name is identical to a trade mark in which it has rights for the following reason:

a. Aside from the generic prefix (www.) and suffix (.com), the Domain name is wholly made up of the word GAMETRONICS being identical to the Trade Mark in which the Complainant has rights.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the Domain name for the following reason:

a. The Complainant has not authorised, licensed or consented to the Respondent's use of the Trade Mark or the Domain Name and neither the Respondent nor CeX Ltd (hereinafter "CEX") are known by the mark GAMETRONICS or anything similar or derivative thereof.

Finally the Complainant claims that the Domain name was registered and is being used in bad faith for the following reasons:

a. The Domain Name automatically redirects to the Website https://uk.webuy.com (hereinafter "CEX Website") being a domain name owned and operated by CEX, a direct competitor of the Complainant's. Although the Domain Name is owned by the Respondent rather than by CEX, the Respondent is a former employee of CEX and, according to the Respondent's 'LinkedIn' page, he is currently in partnership with CEX in respect of a "designer handbag exchange company" (a copy of the Respondent's LinkedIn page is included with the Complainant´s submission. The connection between the Respondent and CEX is therefore beyond any doubt and consequently, it is clear that the Respondent in obtaining the Domain Name which provides a gateway to CEX's website, is acting in the interests, and/or with the authority, of CEX.

b. Given that the Trade Mark is distinctive of the Complainant, consumers would reasonably expect the Domain Name to be operated by the Complainant and not by the Respondent. By using the Domain Name as a means of redirecting consumers to the CEX Website, the Respondent is intentionally attempting to attract for his and/or CEX's commercial gain, Internet users to the CEX Website, by creating a likelihood of confusion with the Respondent's Trade Mark as to the source, sponsorship, affiliation, or endorsement of the Domain Name.

c. Since (i) the Domain Name incorporates the Trade Mark as its only distinctive element, (ii) neither the Respondent nor CEX have a legitimate interest in the Trade Mark, and (iii) the Complainant and CEX are in direct competition with each other, it is clear that the Domain Name was also registered in order to prevent the Complainant from reflecting the Trade Mark in a corresponding domain name.

d. The Complainant has been involved in a number of disputes with CEX, including around the time of the date the Domain Name was registered by the Respondent (circa December 2014). In consideration of the history between the parties, and for the reasons listed above, it is the contention of the Complainant that in registering the Domain name incorporating the Trade Mark, the Respondent's clear intention is to unfairly disrupt the Complainant's business.

e. For the reasons set out above, the Complainant contends that the Respondent has registered and used the disputed Domain name which incorporate the Trade Mark, and in which the Respondent has no legitimate interest, in a manner which amounts to bad faith.

The disputed Domain name was registered 24 April 1996.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

Regarding bad faith of the Respondent the Panel came to a conclusion that the Complainant has failed to prove that the domain name was registered in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name is confusingly similar to the Complainant's registered trademarks since it incorporates the Complainant's mark 'GAMETRONICS', merely adding the generic top level domain identifier '.COM' at the end.

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain names in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

"As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists. WIPO Case No. D2002-0273 <sachsen-anhalt>; WIPO Case No. D2002-0521 <volvovehicles.com>"

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

However, the Complainant has failed to prove that the domain name was registered in bad faith under the third element of the UDRP when registering and using the domain name. Considering the disputed domain name was registered in 1996 the Panel is of the view that one could hardly conclude that the disputed Domain name was registered in order to prevent the Complainant from reflecting the Trade Mark in a corresponding domain name. Furthermore, given that the Trade Marks of the Complainant were registered in 2014 (and the Domain Name in 1996) one could not reasonably infer that the Respondent registered the Domain Name with the intention of being confused with the the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **GAMETRONICS.COM**: Remaining with the Respondent

PANELLISTS

Name	**Mr. Luis H. de Larramendi**

DATE OF PANEL DECISION 2015-04-20

Publish the Decision