Decision for dispute CAC-UDRP-106456

Case number	CAC-UDRP-106456
Time of filing	2024-04-16 15:45:25
Domain names	genshinviet.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	miHoYo Co., Ltd.

Complainant representative

Organization	Zacco Sweden AB

Respondent

Organization	GMO-Z.com RUNSYSTEM

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns the international trademark on the “GENSHIN IMPACT” trademark since August 11, 2021.

The Complainant owns trademark rights in China for “GENSHIN IMPACT” since January 28, 2020.

FACTUAL BACKGROUND

The Complainant is a Chinese video game development company which was founded in 2011 and today have around 5,000 employees. In addition to game products such as “Genshin Impact”, Honkai Impact 3rd, Tears of Themis, Honkai: Star Rail, and Zenless Zone Zero, the Complainant and its subsidiaries also launched the dynamic desktop software N0va Desktop and created a variety of products such as animations, comics, music, novels, and merchandise around its original creative concepts.

“Genshin Impact” is an action role-playing game launched by the Complainant and its affiliates. It was released for Android, iOS, PlayStation 4, and Windows in 2020, and on PlaySation 5 in 2021. The game features an anime-style open-world environment and an action-based battle system using elemental magic and character-switching. Development of Genshin Impact began in 2017. The game has received positive reviews and, across all platforms, the game had a gross revenue of more than $1 billion by the end of 2022.

The Complainant owns many domain names incorporating the “GENSHIN IMPACT” trademark, including <genshinimpact.com>, which was registered on June 7, 2019.

The disputed domain name was registered on October 7, 2022.

PARTIES CONTENTIONS

COMPLAINANT:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant claims that the disputed domain name is confusingly similar to the “GENSHIN IMPACT” trademark in which the Complainant has rights. The “GENSHIN” part of the trademark, which is the most distinctive part of the “GENSHIN IMPACT” trademark since it has no particular meaning, is included in its entirety in the disputed domain name. Said use is combined with the terms “viet”, presumably short for Vietnam.

The addition of the generic Top-Level Domain (“gTLD”) “.com” does not have any impact on the overall impression of the dominant part of the disputed domain name and is therefore irrelevant when determining the confusing similarity between the “GENSHIN IMPACT” trademark and the disputed domain name.

There is a considerable risk that the target public will perceive the disputed domain name either as a domain name owned by the Complainant, or that there exists a business relationship between the Complainant and the Respondent. By using the “GENSHIN IMPACT” trademark as the main part of the disputed domain name, the Respondent exploits the goodwill and the image of the Complainant’s trademark, which may result in dilution and other damage to the trademark.

With reference to the above, the disputed domain name must be considered confusingly similar to the “GENSHIN IMPACT” trademark in which the Complainant has rights.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Once the Complainant became aware of the disputed domain name and their corresponding websites, the Complainant contacted the hosting provider in an attempt to shut down the sites connected to the disputed domain name (even though the ISP did not respond to such complaints). Presumably, the Respondent has received copies of such notices. Accordingly, it seems clear that the Respondent has noticed the Complainant’s concerns with the use of the disputed domain name but has chosen to ignore the attempts of contacts made.

To the best of the Complainant’s knowledge, there is no information indicating that the Respondent is known for or trades under a name corresponding to the disputed domain name. The Respondent is operating a website in which visitors are offered to buy accounts or top-ups for the “Genshin Impact” game. Furthermore, the website uses several of the Complainant’s own copyright protected images. Under such circumstances, the Respondent cannot claim to be commonly known by the disputed domain name or by a name corresponding to the disputed domain name.

The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services. Instead, the Respondent has intentionally chosen the disputed domain name based on another trademark in order to generate traffic and income through a commercial website which, via the use of the Complainant’s own content, is implying a connection with the Complainant and its mark. The Complainant submits that the Respondent’s action results in a great risk of confusing Internet users, who search for the “Genshin Impact” game, about the website’s origin and affiliation with the Complainant.

No license or authorization of any other kind has been given by the Complainant to the Respondent to use the “GENSHIN IMPACT” trademark. Furthermore, the Respondent is not an authorized dealer of the Complainant’s products or services and has never had a business relationship with the Complainant. As no evidence has been found indicating that the Respondent is using the name “GENSHIN IMPACT”, or similar, as a company name or that it has any other legal rights in the name, it is quite clear that the Respondent is simply trying to sponge off the Complainant’s trademarks for its own commercial benefit.

The Complainant argues that the Respondent’s non-existing relationship with the Complainant is not being made clear on the website connected to the disputed domain name. To the contrary, the Respondent has prominently included the Complainant’s images in order to create the impression that the disputed domain name is somehow connected to the Complainant. Nor does the website include any disclaimer or statement clarifying that the Respondent is not affiliated with the Complainant in any way. Rather, at the bottom of the site it is merely indicated “Copyright by © GenshinViet.com 2022”. Under the “About us” section, there is no information clarifying who is actually operating the site. Accordingly, any visitors are likely to believe that the disputed domain name is connected to the Complainant in some way. Such use does not give rise to a legitimate interest in the disputed domain name.

Accordingly, for the foregoing reasons, the Complainant argues that the Respondent has no legitimate interest in the disputed domain name.

3. The disputed domain name was registered and is being used in bad faith

The Complainant holds registrations of the trademark “GENSHIN IMPACT” in many countries, including in China and in Vietnam.

The disputed domain name was registered by the Respondent on October 7, 2022. This date is subsequent to when the Complainant launched its game and after it obtained registered trademark rights for the “GENSHIN IMPACT” mark. It is evident that it is the fame and value of the “GENSHIN IMPACT” trademark that has motivated the Respondent to register the disputed domain name. The fact that the disputed domain name refers to a website partly copying the Complainant’s own content and directly referring to the Complainant’s products and services makes it obvious that the Respondent was fully aware of the Complainant and its trademark at the time of the disputed domain name's registration.

As mentioned, the disputed domain name is currently hosting a website that contains the Complainant’s own content such as design and images, in an attempt to target and deceive consumers into believing that the disputed domain name is operated by the Complainant. The Complainant can only presume that the Respondent is intentionally creating the false impression of affiliation to or endorsement by the Complainant, thereby disrupting the Complainant’s business. The exact purpose with doing so is presumably in an attempt to obtain money by selling “Genshin Impact” gaming accounts or top-ups to third parties who may then receive benefits by taking over an account which have obtained upgrades and other benefits for the player. In any event, it is clear that potential visitors would be highly likely to assume that the disputed domain name is operated by or connected to the Complainant in some way.

Consequently, it is the Complainant’s view that the Respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its own web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site.

Under these circumstances the Complainant claims that the disputed domain name was registered and is being used by the Respondent in bad faith.

RESPONDENT

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

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

BAD FAITH

To the satisfaction of the Panel, the Complainant has shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Complainant filed the dispute on April 16, 2024, concerning two domain names, namely, <genshinviet.com> aka the disputed domain name, and <shopaccgenshin24h.com>. After the Registrar provided the information concerning the identity of the Registrants on April 17, 2024, the Complainant submitted an Amended Complaint on April 18, 2024, with the sole disputed domain name.

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

1. Identical or Confusingly Similar

Regarding the first step under this element, and as per evidence on record, the Complainant owns several trademarks containing the term “GENSHIN IMPACT” since at least 2020. Therefore, based on this, the Panel is satisfied that the Complainant has shown its trademark rights in "GENSHIN IMPACT".

Turning now to the second step under this element, namely, assessing the confusing similarity between the disputed domain name and the trademarks, the Panel notes that the disputed domain name reproduces the dominant feature of the trademark, namely "GENSHIN, which is recognizable in the disputed domain name. In addition to this, the disputed domain name contains an additional element, namely “viet”, which as per the Complainant is likely a reference to Vietnam. Nevertheless, this slight difference due to the addition is ultimately immaterial in assessing confusing similarity under the Policy, as per the persuasive paragraph 1.7 of the WIPO 3.0 Overview.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

2. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not related to the Complainant; b) the Respondent has no license or authorization to use the trademarks; c) there is no evidence that the Respondent has acquired any rights in a trademark; d) the Respondent is not known as the disputed domain name; e) the Respondent did not respond to the communications from the Complainant and d) the Respondent uses copyrighted material by the Complainant in the website associated to the disputed domain name.

In the Panel's view, these assertions and the evidence attached are enough to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name (see 2.1 of WIPO 3.0 Overview).

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant's contentions, the Respondent has consequently not rebutted the prima facie case, as described in paragraph 2.1 of WIPO 3.0 Overview.

The above fact pattern on the balance of probabilities, and in conjunction with the use of the distinct and fanciful trademark in the disputed domain name, namely "genshin", along with copyrighted material by the Complainant, indicates, if nothing else, a likely intention of confusing Internet users with a likely implied association with the Complainant. However, this will be subject to further analysis under the element below.

The evidence on record leads the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

3. Registered and Used in Bad Faith

Per the record and evidence, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that the “GENSHIN”, a fanciful term, is reproduced in the disputed domain name, and the website associated with the disputed domain name contains copyrighted material by the Complainant, which indicates that the Respondent more than likely knew about the Complainant's rights when registering the disputed domain name.

All in all, and on the balance of probabilities, the conduct by the Respondent appears to be an active effort by the Respondent to appear to have some sort of association with the Complainant and Complainant’s trademark “GENSHIN IMPACT” aimed at the Vietnamese market, due to the content in Vietnamese. Without further explanation from the Respondent, this appears to misrepresent a link between the disputed domain name and the Complainant. In this case, as the record supports, the Respondent appears to have targeted the Complainant on the balance of probabilities.

The preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

4. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **genshinviet.com**: Transferred

PANELLISTS

Name	**Rodolfo Rivas Rea**

DATE OF PANEL DECISION 2024-05-12

Publish the Decision