

Decision for dispute CAC-UDRP-106453

Case number	CAC-UDRP-106453
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Time of filing	2024-04-16 16:06:31
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Domain names	shopgenshin.com
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	miHoYo Co., Ltd
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Complainant representative

Organization	Zacco Sweden AB
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Respondent

Name	Tran Van Thanh
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a trade mark GENSHIN IMPACT for, inter alia, computer software design registered, inter alia, as:

Chinese registration no 38546704 since January 28, 2020; and

International Registration no 1635794 since August 11, 2021 including Vietnam where the Respondent is based.

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

FACTUAL BACKGROUND

The Complainant is a Chinese video game development company which was founded in 2011 and today has around 5000 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 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 early 2020, and on PlayStation 5 in 2021. The game has received positive reviews and had a gross revenue of more than \$1 billion by the end of 2022. Genshin Impact has received substantial attention in the media and has received several awards for its products and services, for an example “Genshin Impact – Visuals and Graphic Winners” by Apple.

The disputed domain name registered October 24, 2020 has been used for a website in which visitors are offered accounts or top-ups for the Genshin Impact game and other trademarked and copyrighted titles of the Complainant. The site uses silhouettes of images in which the copyright belongs to the Complainant. It also offers to sell accounts related to other commercial entities not connected with the Complainant such as Netflix.

PARTIES CONTENTIONS

Complainant

The Complainant contends that:

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

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 generic term “shop”.

It is well-established practice under the UDRP that a domain name that consists of a combination of a distinctive or well-known trademark and a descriptive and/or geographic term shall be considered to be confusingly similar to the trademark. See WIPO Case D2011-0203 concerning the domain name <buyvogue.com> and WIPO Case D2020-2930 concerning the domain name <instagramchina.com>. Similar circumstances apply in this case.

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.

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.

B. The Respondent has no rights or legitimate interest in respect of the disputed domain name

To the best of the Complainant’s knowledge, there is no information indicating that the Respondent is known by or trades under a name corresponding to the disputed domain name. Under such circumstances, the Respondent cannot claim to be commonly known by the disputed domain name or by names 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 the Complainant’s 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, regarding the website’s origin and affiliation with the Complainant.

See WIPO Case No. D2021-3213, in which the Panel held:

“The disputed domain name redirected to a website using Complainant’s name and logo and referencing the name of its “MBC Dream” television show, and to other game-related websites. More recently, the disputed domain name redirects to a website at which Respondent identifies itself as “Modern Broadcast Company LLC” and offers for sale products used in the broadcast and media industries. The Panel is satisfied that such redirection has been created with the intention of diverting Internet users seeking information about Complainant’s “Dream” television show. Such use can never confer rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.1, and cases cited thereunder.”

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.

Further, the website does not fulfil the test put forward in *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903 in connection with any allegation that the Respondent is a reseller, service provider or distributor and is making a *bona fide* offering of goods or services. 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 it 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 “© shopgenshin.com”. Under the “About us” section, there is no information. Accordingly, any visitors are likely to believe that the disputed domain name is connected to the Complainant in some way.

Furthermore, the website refers and includes links to various third-party sites which are not connected to the Complainant in any way, e.g. to Netflix.com and CGV Movie Tickets 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 rights to legitimate interest in the disputed domain name.

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

The disputed domain name was registered by the Respondent on October 24 2020. 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 which is partly copying the Complainant's own content and directly refers 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 registration of the disputed domain name.

As mentioned, the disputed domain name is currently hosting a website that contain 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 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. The Respondent is, as mentioned, also referring to other third-party commercial websites in a confusing manner.

In a similar case, WIPO Case No. D2019-1720, the Panel concluded that:

"The Respondent has established and maintains a website to which the disputed domain name resolves, which creates an impression of an association with the Complainant. There is nothing posted on the website to indicate that the Complainant has no association with the website. Furthermore, images and text posted on the Respondent's website have been taken from the Complainant's website and used without authorization. In the circumstances, this Panel finds on the balance of probabilities that, as alleged by the Complainant, the disputed domain name was registered in bad faith for the purpose of attracting Internet users to the Respondent's website in order to take unfair benefit of the Complainant's reputation and goodwill..."

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.

Once the Complainant became aware of the disputed domain name and the corresponding website, the Complainant contacted the hosting provider in an attempt to shut down the site connected to the disputed domain name. Presumably, the Respondent has received copies of such notices. Accordingly, it seems clear that the Respondent has notice of the Complainant's concerns with the use of the disputed domain name but has chosen to ignore the attempts to make contact. It has been mentioned in earlier disputes that the failure of a respondent to respond to a cease-and-desist letter, or a similar attempt of contact, has been considered relevant in a finding of bad faith, see e.g. WIPO Case No. D2011-1304.

Under these circumstances, it must be concluded that the disputed domain name was registered and is being used by the Respondent in bad faith.

Respondent

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, 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 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.

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive evidence has been adduced by Complainant to suggest the likely possibility that the Respondent is conversant and proficient in the English language including the fact that the site attached to the Domain Name is in English. After considering the circumstance of the present case, the Panel decides that the proceeding should be in English.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name is confusingly similar to the Complainant's prior trade mark GENSHIN IMPACT taking its distinctive element GENSHIN and combining it with the dictionary word 'shop' and the gTLD .com neither of which prevents said confusing similarity.

The Respondent is not authorised by the Complainant or commonly known by the disputed domain name.

The site to which the disputed domain name is connected is commercial so there is no non commercial legitimate fair use.

The Respondent is using the disputed domain name to sell accounts and top ups related to the Complainant's game using copyright images of the Complainant. It is also selling accounts relating to other commercial entitles such as Netflix without explaining that the Respondent's site is not affiliated with the Complainant which the Panel finds confusing and not compatible with a bona fide offering of goods and services.

The Respondent has not submitted a Response or rebutted the prima facie case evidenced by the Complainant.

The use of copyright images of the Complainant and reference to the Complainant's game on the Respondent's site shows that the Respondent had notice of the Complainant's rights, business and products/services at the time of registration of the disputed domain name.

Accordingly, the Panel finds that the Respondent has competed with the Complainant unfairly confusing Internet users for commercial gain and disrupting the Complainant's business and has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **shopgenshin.com**: Transferred

PANELLISTS

Name Dawn Osborne

DATE OF PANEL DECISION 2024-05-15

Publish the Decision