Decision for dispute CAC-UDRP-106452

Case number	CAC-UDRP-106452
Time of filing	2024-04-16 16:05:39
Domain names	genshinreroll.com

Case administrator

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

Complainant

Organization	miHoYo Co., Ltd.

Complainant representative

Organization	Zacco Sweden AB

Respondent

Name	Kieu Phong Nguyen

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 holder of several trademarks including the following:
- GENSHIN IMPACT, international figurative mark No.1635794, registered on August 11, 2021.
- GENSHIN IMPACT, Chinese word mark No. 38546704, registered on January, 28, 2020.

FACTUAL BACKGROUND

The Complainant is a Chinese video game development company 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 in 2020. 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 fame and the value of GENSHIN IMPACT trademark determines to be considered well-known for UDRP purposes.

The Complainant owns a portfolio of domain names incorporating the GENSHIN IMPACT trademark including <genshinimpact.com>, registered on June 7, 2019.

The disputed domain name resolved to a website showing the “Genshin Impact” word, and another Complainant game name “Honkai Star Rail”. The disputed domain name also showed pictures and characters from the Complainant´s official games. Currently the access to the website to which the disputed domain name directs is automatically blocked and is therefore considered as inactive.

The disputed domain name was registered on December 22, 2022.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

In particular, 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.

The Respondent´s purpose in registering the disputed domain names was solely 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.

RESPONDENT

No administratively compliant Response was 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.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or Confusingly Similar

The Complainant has shown rights in respect of GENSHIN IMPACT trademark for the purposes of the Policy. The Panel finds the mark is recognizable within the disputed domain name <genshinreroll.com>. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. Further, the addition of a generic term to a trademark, namely “reroll”, does not avoid a finding of confusingly similarity.

The applicable Top Level Domain (‘TLD’) in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

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

2. Rights or Legitimate Interest

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the disputed domain name. However, while the burden of proof in UDRP proceedings rests on the complainant, panels have recognized that proving a respondent lack or rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative". Accordingly, panels have established, since the inception of the UDRP, that it is sufficient to raise a prima facie case against the respondent and then the evidential burden of production shifts to the respondent. See Block.one v. See PrivacyGuardian.org / Burstein-Applebee, Jerry K. Chasteen, WIPO Case No. D2021-1516.

The Panel finds that the circumstances referred in paragraph 4(c) do not apply for the Respondent. Indeed, there is no evidence in the records in favor the Respondent to be commonly known by the disputed domain name.

The Panel has checked the submitted evidence reproducing Respondent´s website and finds that he is impersonating or at very least falsely suggesting affiliation with the Complainant when there is no authorization or license to use the Complainant's trademark in any manner. Namely, by reproducing the Complainant's trademark in the disputed domain name and by reproducing its copyrights in the corresponding website, the Respondent is giving the false impression of being the Complainant or someone affiliated.

The Panel finds that the Respondent has targeted the Complainant and is using the Complainant's trademark rights to misleadingly divert Internet users to its website. Therefore, there is no bona fide offering of services. To this regard, the Panel notes that the disputed domain name resolves to a website offering the Complainant's services and the Respondent might be considered a reseller. However, the Respondent does not meet the criteria established in Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, that said, and by way of example, the site does not accurately and prominently disclose the Respondent's relationship with the trademark holder.

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

3. Register and Used in Bad Faith

Noting that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark, the Panel now looks at the third requirement of the test.

By registering the disputed domain name that includes Complainant's trademark, the Respondent gives clues that he was aware of the Complainant. Since GENSHIN IMPACT is a coined and well-known term, the records provide no indicia of why the Respondent would register the disputed domain name but to target the Complainant. Indeed, the website to which the disputed domain name redirects refers to the services provided by the Complainant with its mark. Under these circumstances, the Panel finds that the Respondent knew or should have known about the Complainant and its trademarks when registering the disputed domain name. Therefore, in bad faith.

Further, the Panel the Respondent is an unaffiliated to the Complainant and the business developed in the Respondent's site support a finding that he had registered the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's marks. In other words, to bait Internet user looking for the Complainant into the Respondent´s site. Therefore, the circumstances of the case match with paragraph 4(b)(iv) of the Policy.

Besides, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding.

The Panel finds that the Complainant has established the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **genshinreroll.com**: Transferred

PANELLISTS

Name	**Manuel Moreno-Torres**

DATE OF PANEL DECISION 2024-05-16