Decision for dispute CAC-UDRP-106636

Case number	CAC-UDRP-106636
Time of filing	2024-06-21 11:25:52
Domain names	genshindrop.com

Case administrator

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

Complainant

Organization	miHoYo Co., Ltd.

Complainant representative

Organization	Zacco Sweden AB

Respondent

Name	Kirill Ozhigov

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 owns several trademark registrations containing the word “Genshin”, including the international trademark registration n. 1652156 “Genshin Impact” (word), registered on August 11, 2021, for numerous goods and services in classes 9, 14, 16, 20, 25, 35, 38, 41, 42, and 45. This international trademark registration is protected in several countries, including Russia.

The disputed domain name was registered on February 5, 2022, i.e., the Complainant’s trademark registration cited above predates the registration of the disputed domain name.

FACTUAL BACKGROUND

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

The Complainant is a Chinese video game development company which was founded in 2011. Among the various video games produced and marketed by the Complainant is an action role-playing game called “Genshin Impact”. It was released for Android, iOS, PlayStation 4, and Windows in 2020, and for PlayStation 5 in 2021. The game features an anime-style open-world environment and an action-based battle system using elemental magic and character switching. The game has received positive reviews, and the game has generated more than US$1 billion in gross revenue across all platforms by the end of 2022.

The Respondent uses the disputed domain name to operate a website where visitors are offered to purchase accounts or upgrades for the game Genshin Impact (and for other trademarked and copyrighted titles of the Complainant). The Respondent's website uses several of the Complainant's own copyrighted images for this purpose. At least in the past, the name of the game "Genshin Impact" (in Cyrillic script) was also explicitly used on the website.

The Complainant contends that the Respondent is not affiliated with or authorized by the Complainant in any way. The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. No license or authorization has been granted to the Respondent to use the Complainant's trademark and copyrighted materials or to apply for registration of the disputed domain name.

The Respondent's website at the disputed domain name contains no statement explaining the Respondent's relationship with the Complainant (or, as the Complainant contends, lack thereof).

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
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.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name is confusingly similar to the Complainant's trademark "Genshin Impact". The "Genshin" part of the trademark, which is its most distinctive element because unlike "Impact" it has no particular meaning, is included in its entirety in the disputed domain name. This use of the distinctive element "Genshin" is combined with the generic term "drop". There is a substantial risk that the targeted public will either perceive the disputed domain name as a domain name owned by the Complainant or assume that there is a business relationship between the Complainant and the Respondent. See the decision CAC-UDRP-106463 for another panel's similar reasoning regarding the Complainant's trademark "Genshin Impact" and the domain name <shopaccgenshin24h.com>.

The Panel also finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain name, nor is the Respondent commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent.

It is generally possible that resellers, distributors, or service providers use domain names such as the disputed domain name for a bona fide offering of goods and services (within the meaning of paragraph 4(c)(i) of the Policy), and thus have a legitimate interest

in such domain name. However, under the well-established “Oki Data test” (see Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, <okidataparts.com>; section 2.8 of the WIPO Jurisprudential Overview 3.0), the following cumulative requirements must be met in such cases:

(i) the Respondent must actually be offering the goods or services at issue;

(ii) the Respondent must use the site to sell only the trademarked goods or services;

(iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and

(iv) the Respondent must not try to “corner the market” in domain names that reflect the trademark.

The Respondent does not satisfy condition (iii) and therefore fails the Oki Data test. The Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

Given the Respondent’s use of the disputed domain name it is evident that the Respondent had the Complainant’s trademark in mind when registering the disputed domain name. In the absence of a Response, the Panel infers that by using the disputed domain name as described above, the Respondent has intentionally attempted to attract, for commercial gain, internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of this website and the Respondent’s services offered on it (within the meaning of paragraph 4(b)(iv) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **genshindrop.com**: Transferred

PANELLISTS

Name	**Dr. Thomas Schafft**

DATE OF PANEL DECISION 2024-07-30

Publish the Decision