

## Decision for dispute CAC-UDRP-107032

Case number **CAC-UDRP-107032**

Time of filing **2024-11-04 12:32:52**

Domain names **eruthyll.net**

### Case administrator

Name **Olga Dvořáková (Case admin)**

### Complainant

Organization **Shanghai Jiyou Information Technology Co., Ltd.**

### Complainant representative

Organization **CSC Digital Brand Services Group AB**

### Respondent

Organization **Domain Name Privacy Inc**

#### 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 the registered trademark HIGAN: ERUTHYLL, such as:

- HIGAN: ERUTHYLL (CN Reg. No. 63510076) registered on March 24, 2022;
- HIGAN: ERUTHYLL (CN Reg. No. 63512411) registered on September 14, 2022;
- HIGAN: ERUTHYLL (WIPO Reg. No. 1678332) registered on June 20, 2022.

The Complainant maintains an internet presence through the domain name <bilibili.com> registered since October 21, 2004 and <biligames.com> registered since July 2, 2016. It manages its website under the webpage <<https://eruthyll.biligames.com/>>.

#### FACTUAL BACKGROUND

The Complainant is a part of Bilibili Group, an iconic brand and a leading video community for young generations in China. Its history dates back to June 2009, when its website was first launched. The Complainant was officially named “Bilibili” in January 2010 and commenced its commercial operations in 2011. The Complainant has grown over time to become the home of diverse interests for young generations in China and the frontier to promote Chinese culture across the world.

The Complainant provides full-spectrum video content serving diverse interests, offering “All the Videos You Like” as its value

proposition. Bilibili has developed an engaging community around aspiring users, high-quality content, talented content creators and the strong emotional bond among them. In addition, the Complainant also enables broad video-based content consumption scenarios centered around professional user-generated videos, or PUGV, supplemented with live broadcasting, occupationally generated videos, or OGV, and more.

Higan: Eruthyll is a 3D real-time combat role-playing game (RPG) that brings fantasy to theatre. Planet Eruthyll is where players can use diverse tactics with dynamic instructions and enjoy the touching stories presented by fantastic cutscenes.

The RPG was developed and published by the Complainant which it manages under the webpage <<https://eruthyll.biligames.com/>>.

The Complainant's market leadership is corroborated by its strong financial performance. In the second quarter of 2024, the Complainant achieved net revenues of over RMB 6.13 billion (USD 843.1 million) and gross profit of RMB 1.83 billion (USD 252.3 million). In 2024 Q2, this translated to approximately 4.8 billion daily video views.

The Complainant's BILIBILI app is listed with the Google Play Store and the Apple App Store. Its app has been downloaded over 50 million times from the Google Play Store alone, which further demonstrates the fame and popularity of the BILIBILI brand.

SimilarWeb.com ranked the Complainant's website as the 2<sup>nd</sup> most popular website in China, and the 24<sup>th</sup> globally, with an estimated 1.2 billion individual visits in the three-month period between September and December 2023.

The disputed domain name <eruthyll.net> was registered on June 18, 2024 and redirects to a parking page. It appears that MX servers have been configured. The disputed domain name is also offered for sale at a price exceeding registration cost.

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## 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.

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## 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).

By virtue of the Complainant's trademark registration as demonstrated by the evidence adduced, it has established rights in the trademark. The Complainant's trademark registrations in China and internationally also predate the registration date of the disputed domain name.

The question is whether the disputed domain name is identical or confusingly similar to the Complainant's trademark "HIGAN: ERUTHYLL".

Whether a disputed domain name is identical or confusingly similar to a trademark can be determined by making a side-by-side comparison with the disputed domain name. See *F. Hoffmann-La Roche AG v. P Martin*, WIPO Case No. D2009-0323.

A disputed domain name is identical to a trademark when it is a character for character match. It is confusingly similar when it varies the trademark by, for example, adding generic terms to the dominant part of the trademark.

Here, a side-by-side comparison shows that the disputed domain name incorporates in its entirety the distinctive portion "ERUTHYLL" of the Complainant's trademark "HIGAN: ERUTHYLL".

The Complainant contends that the term "ERUTHYLL" is simply a shortened version of Complainant's trademark "HIGAN: ERUTHYLL". The term "ERUTHYLL" does not appear to have any widely recognised meaning or significance in standard language or common usage. It does not appear to be a term found in standard English dictionaries or specialised glossaries. The term "ERUTHYLL" is suggestive of a made-up word used by the Complainant in its gaming goods and services, and is well-known to its customers to describe the fictional planet Eruthyll. It is therefore distinctive to the Complainant.

Accordingly, the Panel finds that the term "ERUTHYLL" is a significant part of the Complainant's trademark. The primary element of the disputed domain name "ERUTHYLL" is clearly identical to the Complainant's well-known trademark. The fact that it is only a portion of the Complainant's trademark that was used does not negate a finding of it being confusingly similar.

Having reviewed the evidence adduced, the Panel accepts the Complainant's contention that the disputed domain name is confusingly similar to its trademark and the Respondent's abbreviation of the Complainant's trademark "HIGAN: ERUTHYLL" by using the portion of the trademark "ERUTHYLL" does not sufficiently distinguish the disputed domain name from the Complainant's trademark.

It is also trite to state that the addition of the gTLD ".net" does not add any distinctiveness to the disputed domain name and will be disregarded for the purposes of considering this ground.

Accordingly, the Panel considers that this ground is made out.

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#### 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).

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. See *Document Technologies, Inc. v. International Electronic Communications Inc*, WIPO Case No. D20000270.

If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd*, WIPO Case No. D2003-0455.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts as follows:

- The disputed domain name has been set up by the Respondent with an email enabling MX records.
- The Respondent is not sponsored by or affiliated with the Complainant, nor has the Complainant licensed, authorised, or permitted the Respondent to use its trademark in any manner, including the disputed domain name.
- The Respondent uses a privacy service.
- The disputed domain name website displays pay-per-click links.
- The disputed domain name is offered for sale in an amount that far exceeds the Respondent's out-of-pocket expenses in registering the disputed domain name.

For each of the assertions, the Complainant adduced evidence in support which the Panel accepts as prima facie showing that the Respondent lacks rights or legitimate interests.

The inference to be drawn from the alleged conduct of the Respondent is that it is attempting to take advantage of internet users of the Complainant's well-known trademark which evidences its lack of rights or legitimate interests in the disputed domain name.

The Panel accepts the uncontradicted assertions put forward by the Complainant that the Respondent is not related in any way with the Complainant, nor has the Complainant licensed or authorised the Respondent to use its trademark.

There is also no evidence that the Respondent is commonly known by the disputed domain name. Further, the Respondent is offering for sale the disputed domain name, which the Panel considers, in the circumstances, as irrefragable evidence of the Respondent's lack of rights or legitimate interests.

The Respondent has clearly not seized on the opportunity in this proceeding to provide any evidence of legitimate non-commercial or fair use of the disputed domain name to discharge the burden it carries upon the Panel's satisfaction that the Complainant has made out a prima case.

The Panel accepts and finds that the Respondent has no rights or legitimate interests to the disputed domain name.

Accordingly, the Panel considers that this ground is made out.

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#### 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).

The Complainant must demonstrate that the disputed domain name was registered and is being used in bad faith.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith for the following reasons:

Registration of the disputed domain name occurred after the Complainant's trademark was established.

- The Respondent use of a privacy service to conceal identity.
- The Respondent is offering the disputed domain for sale at a price exceeding out-of-pocket costs.
- The Respondent is likely intending to confuse internet users and capitalise on the Complainant's trademark reputation for commercial gain.

The Panel accepts the uncontradicted evidence of the Complainant's well-known brand, its international trademark registration, its global presence, and reputation.

From the evidence adduced, the Panel makes the following findings:

- The disputed domain name was created quite recently, i.e., June 18, 2024.
- The Complainant was already extensively using its trademark worldwide well before the registration date of the disputed domain name.
- The Complainant's trademark has a well-known reputation in China and internationally and has a long-standing worldwide operating website under <<https://eruthyll.biligames.com/>> and as such the Respondent would obviously know of the prior rights and wide use of the Complainant's trademark.
- The use of the distinctive portion "ERUTHYLL" of the Complainant's trademark was intentionally designed to be confusingly similar with the Complainant's trademark, and this action evidence bad faith.
- The disputed domain name redirects to a parking page, and as such has not demonstrated any activity in respect of the disputed domain name.
- There is no plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate. On the contrary, the disputed domain name is being offered for sale, which suggests that the Respondent is seeking to profit from the use of the disputed domain name.
- The disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.
- The incorporation of the distinctive portion "ERUTHYLL" of the Complainant's trademark into the disputed domain name coupled with an inactive website, the offer for sale, the use of MX records, are evidence of bad faith registration and use.

Accordingly, the Panel is prepared to infer that the Respondent has been fully aware of the Complainant and its trademark when registering the disputed domain name.

The Panel is also prepared to draw the adverse inference that the Respondent registered the disputed domain name incorporating in its entirety the distinctive portion "ERUTHYLL" of the Complainant's trademark intentionally to take advantage of the Complainant's reputation and business goodwill.

The Respondent having failed to file any administratively compliant response, the Panel finds that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services.

Accordingly, the Panel accepts that the disputed domain name was registered by the Respondent and used in bad faith.

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#### PROCEDURAL FACTORS

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieve actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On December 3, 2024 the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

"Written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. The CAC is therefore unaware whether the written notice was received by the Respondent or not.

The e-mail notice was sent to <[whois@domainnameprivacyinc.com](mailto:whois@domainnameprivacyinc.com)>, and to <[postmaster@eruthyll.net](mailto:postmaster@eruthyll.net)> but we never received any proof of delivery or notification of undelivery.

No further e-mail address could be found on the disputed site."

The Respondent never accessed the online platform nor provided any further responses.

Given the reasonable measures employed by CAC as set out in the above non-standard communication, 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.

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#### PRINCIPAL REASONS FOR THE DECISION

The Complainant owns the trademark "HIGAN: ERUTHYLL" and several domain names associated with its trademark, including <<https://eruthyll.biligames.com/>> which are used in connection with its goods or services.

The Respondent registered the disputed domain name <[eruthyll.net](https://eruthyll.net)> on June 18, 2024, incorporating in its entirety the distinctive portion "ERUTHYLL" of the Complainant's trademark.

The disputed domain name was registered after the Complainant's trademark and after the domain names owned by the Complainant.

The Complainant challenges the registration of the disputed domain name under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy and seeks relief that the disputed domain name be transferred to the Complainant.

The Respondent failed to file any administratively compliant response.

For the reasons articulated in the Panel’s reasons above, the Complainant has satisfied the Panel of the following:

- (a) The disputed domain name is confusingly similar to the Complainant’s widely known trademark.
- (b) The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- (c) The disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **eruthyll.net**: Transferred

PANELLISTS

Name	William Lye OAM KC
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DATE OF PANEL DECISION 2024-12-04

Publish the Decision