



Asian Domain Name Dispute Resolution Centre

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1901230
Complainant:	Sony Interactive Entertainment Inc.
Respondent:	Whois Privacy Corp.
Disputed Domain Name(s):	<psngames.org>

1. The Parties and Contested Domain Name

1. The Complainant is Sony Interactive Entertainment Inc, of 1-7-1 Konan, Minato-ku, Tokyo, Japan.
2. The Respondent is Whois Privacy Corp., of Ocean Centre, Montagu Foreshore, East Bay Street, Nassau, New Providence, The Bahamas.
3. The domain name at issue is <psngames.org>, registered by Respondent with Internet Domain Service BS Corp, of Ocean Centre, Montagu Foreshore, East Bay Street, Nassau, The Bahamas.

2. Procedural History

4. The Complainant filed this complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 07 March 2019.
5. A copy of the Complaint was sent to the Respondent on 14 March 2019.
6. The Respondent failed to respond within 20 calendar days as required under paragraph 5 of the UDRP Rules and on 09 April 2019 was held as being in default.
7. On 25 April 2019, after confirming that he was able to act independently and impartially between the parties, the ADNDRC appointed David Allison as the sole Panelist in this matter.

3. Factual background

8. The Complainant is a group company of the Sony Corporation, a Japanese multinational conglomerate corporation. It is well-known worldwide for being the

company responsible for launching the video game console 'PlayStation' in Japan in 1994. PlayStation has subsequently been launched world-wide.

9. The Complainant launched the 'PlayStation Network Service', or "PSN" for short, at around the same time as its third generation console, "PlayStation 3", in 2006.
10. The Complainant has registered numerous "PSN" trademarks all over the world, the earliest of which date to 2012 in Japan. The evidence submitted by the Complainant clearly demonstrates that the Complainant has extensive and long standing trademark rights in "PSN" and numerous variations of the same. The Complainant is very well known to consumers throughout the world.
11. The Respondent failed to file a Response within the deadline. A short, unsolicited email, was submitted out of time and that email is addressed below. Nevertheless, very little is known about the Respondent.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to the "PSN" trademarks owned by the Complainant.
- ii. The Respondent has not been authorized by the Complainant and has no rights to the PSN trademarks.
- iii. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the Complainant states that the Respondent has been offering sale of PlayStation Network Accounts in violation of the express terms of the relevant Terms of Service and User Agreement which applies to all such accounts.
- iv. The Respondent is not commonly known by the name PSN and is using the disputed domain name for the purpose of misleading and diverting consumers from the Complainant.

B. Respondent

The Respondent did not file a submission within the deadline. It subsequently filed a short unsolicited email and that is dealt with below.

Procedural Issues – Submissions out of time

12. On 08 May 2019, the Respondent sent an unsolicited, out of time email to the Panel claiming that:
 - i. it had failed to file a response within time due to communications from the ADNDRC being sent to its email 'spam box';
 - ii. It has ceased all commercial operations as from the first week of March 2019 and that now the disputed domain name was being used as a blog only; and
 - iii. It intends to co-operate with the Complainant in relation to disputes regarding their trademarks.

13. While the Panel has a discretion to admit additional evidence in accordance with paragraph 10(d) of the Rules, Panels are generally reluctant to do so after expiry of the relevant deadline and only except in exceptional circumstances. This reluctance stems in part from the operation of paragraph 10(c) of the Rules which requires the Panel to handle the matter “*with due expedition*”.
14. In this case, the Panel has taken note of the additional arguments submitted by the Respondent but for the reasons outlined below find that these additional arguments are largely irrelevant for the purposes of its findings.

5. Findings

15. The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:
 - iv. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
 - v. Respondent has no rights or legitimate interests in respect of the domain name; and
 - vi. Respondent’s domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

16. When assessing the disputed domain name in respect of confusing similarity, it is a well-accepted principle that TDL suffixes such as “.com”, “.net” or “.org” are to be ignored. Likewise, non-distinctive elements, such as “*games*” can also be disregarded.
17. Accordingly, the dominant or distinctive element of the disputed domain name to be assessed is the element “PSN”. This element is identical to the many registered trademarks owned by the Complainant and registered worldwide, the earliest of which dates back to 2012 in Japan. Accordingly, the first element is satisfied.

B) Rights and Legitimate Interests

18. The Complainant argues that the Respondent has never been authorized by the Complainant to use its trademarks. This is despite the fact that the evidence supplied by the Complainant shows that the website of the disputed domain name prominently uses the Complainant’s trademarks. The evidence submitted also shows offers of sale and re-sale of the Complainant’s video game products. This suggests to users of the website that it is somehow associated with or authorized by the Complainant.
19. The Panel notes that the Respondent has recently made changes to its website and that the amended website does not currently appear to feature the Complainant’s “PSN” trademarks within the body of the website (it is of course, still the dominant element of the disputed domain name). In the Respondent’s unsolicited and out-of-time submission, it claims that the website is now a “*non-commercial blog with regular updates on the video games industry*”.
20. Despite such changes to the website, the information provided by the Respondent is insufficient to establish that it has rights or legitimate interests in the disputed domain

name or to displace the *prima facie* case advanced by the Complainant. The further information provided by the Respondent merely shows that it has changed the content of its website – presumably in a last minute response to the Complaint/ attempt to avoid liability – but does not explain how its use of the disputed domain name prior to filing the Complaint was legitimate use or that it had any rights to the disputed domain name.

21. Indeed, the email submitted by the Respondent suggests that it is well aware that the Complainant has superior rights in the PSN trademarks and may well have violated them. Thus the Respondents' statement that: "*we also do cooperate with Sony Corporation with regards to any requests they have in regards to use of their trademarks.*"
22. Further, the Panel also notes that the disputed domain name appears to have no discernable relationship to the Respondent's name, nor is the Respondent's name to be found anywhere on the website. Indeed, there is no indication whatsoever of the Respondent's identity or business nor is there anything to suggest that the website is an authorized "PSN" website.
23. While the overall burden of proving this element rests with the Complainant, it also recognizes the well-established principle that once the Complainant establishes a *prima facie* case that the Respondent lacks sufficient legitimate rights and interests, then the burden shifts to the Respondent. The out of time email from the Respondent provides no information or evidence to show that it had rights or legitimate interests in the disputed domain name.
24. In this case, the Panel finds that the Complainant has adduced a sufficient *prima facie* case whereas the Respondent has failed to adduce any evidence to establish that it has any rights or legitimate interests in this disputed domain name. Therefore, the Panel finds that the second element of UDRP paragraph 4(a) is made out.

C) Bad Faith

25. To establish the third element, the Complainant must establish that the Respondent both registered and used the disputed domain name in bad faith. Bad faith may be established through examination of all of the circumstances of a case to see whether the Respondent takes unfair advantage of or otherwise abuses a Complainant's trademark. In addition, the circumstances outlined at paragraph 4(b) of the UDRP may be taken into account.
26. In this case, the Complainant has adduced evidence to show that at the time of filing the Complaint, the Respondent was offering a large number of the Complainant's video game products for sale, including PlayStation Network accounts. This is despite the fact that sale/ re-sale of such accounts is expressly prohibited by the PlayStation Terms of Service and User Agreement.
27. Further, the website of the disputed domain name (prior to its recent metamorphosis) prominently used the Respondent's trademarks in the body of the site and had established a look and feel which suggests that there may be some relationship or authorization from the Complainant. In such a case, the clear conclusion is that the

Respondent has established the disputed domain name and used the website for the purpose of confusing consumers and to attract business away from legitimate and authorized sites.

28. When taken together with the fact that the Respondent is not commonly known by the name 'PSN' and has no rights or legitimate interest in such a name, the Panel finds that UDRP paragraph 4(b)(iv) is satisfied, namely that "... *by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website ...by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site ...or a product or service on your website*".
29. Accordingly, the Panel finds that the Respondent intentionally used the disputed domain name as a means to confuse and attract consumers to its site. Such use satisfies the definition of bad faith as described in UDRP paragraph 4(b)(iv).

6. Decision

30. The Panel finds that the Complainant has satisfied all three elements of UDRP paragraph 4(a). Accordingly, the Panel orders that the disputed domain name <psngames.org> be transferred to the Complainant.



David Allison
Panelist

Dated: 09 May 2019