

## **ADMINISTRATIVE PANEL DECISION**

Evolution AB v. tom scholes

Case No. D2023-2030

### **1. The Parties**

The Complainant is Evolution AB, Sweden, represented by Zacco Sweden AB, Sweden.

The Respondent is tom scholes, Kazakhstan.

### **2. The Domain Name and Registrar**

The disputed domain name <evolutionblack.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on May 10, 2023.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on June 23, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and

Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a Swedish company which offers online casino services and has operations in more than 15 countries. It has more than 13,000 employees in Europe and the United States of America. Its trademark EVOLUTION GAMING has been widely registered internationally, including European Union Registration No 009320854, registered on August 9, 2011, and United States of America Registration No 5772462, registered on June 11, 2019.

The disputed domain name was registered on March 12, 2023, and resolves to a website, which offers services competing with those offered by the Complainant, while including expressions reminiscent of the Complainant; “Evolution”, “Evolution Casino” and “Evolution Gaming” being examples.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant alleges that the disputed domain name is confusingly similar to its EVOLUTION and EVOLUTION GAMING trademarks, containing the EVOLUTION trademark in its entirety, with the mere addition of the descriptive or non distinctive element, “black”.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that, to the best of the Complainant’s knowledge, the Respondent is not generally known by the disputed domain name, and the Complainant has never granted permission to the Respondent to use its EVOLUTION trademark in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith, in connection with the website described above.

##### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

#### **6. Discussion and Findings**

##### **A. Confusing similarity**

The Panel finds that the Complainant has rights to the trademark EVOLUTION GAMING for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain (“gTLD”) may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the “.com” gTLD to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7 states as follows: “While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

Here, the dominant feature of the Complainant's EVOLUTION GAMING trademark is clearly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant's trademark. The addition of the word "black" (a word intimately associated with the game of roulette, for example) does not detract from this finding.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain name.

## **B. Rights or Legitimate Interests**

The Panel considers that the Complainant's allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstance of the present case, in which the Panel regards it as self-evident that the Complainant's trademark was deliberately appropriated in the disputed domain name are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with the offering of services competing with those of the Complainant constitutes use of a disputed domain name in bad faith. That is clearly the case in the circumstances of the present case.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <evolutionblack.com> be transferred to the Complainant.

/George R. F. Souter/

**George R. F. Souter**

Sole Panelist

Date: July 7, 2023