

## **ADMINISTRATIVE PANEL DECISION**

nopixel Studios PTY LTD v. XXXX XXXX, XXXX  
Case No. D2024-0537

### **1. The Parties**

The Complainant is nopixel Studios PTY LTD, Australia, represented by Morrison Cooper LLP, United States of America.

The Respondent is XXXX XXXX, XXXX, Germany.

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

The disputed domain name <nopixel-server.com> is registered with CloudFlare, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 6, 2024. On February 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 12, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 12, 2024, 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 amended Complaint on the same day.

The Center verified that the Complaint together with the amended 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 February 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2024. The Center received email communications from a third party email address on February 12 and 13, 2024.

The Center appointed Jeremy Speres as the sole Panelist in this matter on March 8, 2024. 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 has, since 2016, operated a server under the NOPIXEL mark for the popular video game Grand Theft Auto V, enabling multiplayer roleplaying game play. The Complainant's NOPIXEL mark is registered in Australia under Registration No. 2098007 in classes 9, and 41, having a registration date of February 3, 2021. The Complainant also owns the domain name <nopixel.net>, registered on May 20, 2016, from which the Complainant operates its primary website.

The disputed domain name was registered on February 8, 2023, and currently resolves to the Registrar' page stating, "Invalid SSL certificate". The Complainant's evidence establishes that the disputed domain name previously resolved to a website entitled "NoPixel Server", ostensibly for a roleplaying server, featuring the Complainant's logo, and text stating "Don't pay for Whitelist on Nopixel.net – Its a scam", amongst other things.

#### **5. Parties' Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that the disputed domain name was registered and used in bad faith in order to impersonate the Complainant with a view to disrupting the Complainant's business and to attract consumers to the Respondent's website for the Respondent's commercial gain.

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

The Respondent did not reply to the Complainant's contentions. An unknown third party, using an email address and name different to those of the Respondent (per the Whois record for the disputed domain name), contacted the Center claiming to be the registrant of the disputed domain name and offering to transfer the disputed domain name. When asked by the Center to identify themselves and explain their relationship with the Respondent, the third party confirmed it was the domain-holder of the disputed domain name, without providing any evidence of its allegations. The third party also stated that its identity was not important, and that it did not intend to act in bad faith, nor to violate any trademarks. Thus, not having any clear indication that this third party is authorised to represent the Respondent, the Panel will not consider the third party's submissions.

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

##### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, a hyphen and “server”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy.

[WIPO Overview 3.0](#), section 1.8.

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

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. As discussed below, it is clear that the disputed domain name was registered and used in order to impersonate the Complainant.

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

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant’s evidence establishes that its NOPIXEL mark is well known within the online gaming industry. UDRP panels have consistently found that the registration of a domain name that is confusingly similar to a well-known trademark (as in this case) can by itself create a presumption of bad faith.

[WIPO Overview 3.0](#) at section 3.1.4.

Panels have held that the use of a domain name for illegal activity, here, impersonation, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Considering the indicators of impersonation apparent on the Respondent’s website, highlighted in the Factual Background section above, it is clear that the Respondent intended to impersonate the Complainant. The composition of the disputed domain name, including the Complainant’s trademark in its entirety featuring a term – “server” – that is descriptive of the Complainant’s business, strengthens this conclusion. [WIPO Overview 3.0](#) at section 3.2.1. Paragraph 4(b)(iv) of the Policy is thus eminently applicable.

The Complainant has presented evidence of actual confusion in the form of a user complaining about being deceived by the Respondent's website, thinking that it was associated with the Complainant. Actual confusion is an indicator of targeting. [WIPO Overview 3.0](#) at section 3.1.4.

It is self-evident, from the Whois record, that the Respondent provided false contact details, which is an indicator of bad faith. [WIPO Overview 3.0](#) at section 3.6.

The Panel finds that the Complainant has established the third element 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 <nopixel-server.com> be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: March 15, 2024