

CHANNEL ISLANDS DOMAIN DISPUTES

C.I.D.D. DOMAIN DISPUTE SERVICE AND ARBITRATION
A TIMELY SERVICE

IN THE CASE OF THE DOMAIN NAME **MAGICEDEN.gg**

EUCLID LABS, INC. (t/a *MagicEden.io*)

332 Pine St., Suite 800
San Francisco, CA 94104,

Represented by Cole Schotz P.C., 25 Main Street,
Hackensack, New Jersey 07601

(Complainant)

- v -

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(Respondent)

DECISION OF THE ADJUDICATOR 16th April 2023

1. This Complaint is made in accordance with the Channel Islands Dispute Resolution Service Policy, the Terms and Conditions for Domain Name Registration (GG/JE) and the Channel Islands Domain Disputes Rules (C.I.D.D. Rules).
2. **THE COMPLAINANT**
The Complainant in this administrative proceeding is the above identified Complainant and represented by the above identified law-firm/attorneys and the Complainant utilises the domain name **MAGICEDEN.COM**
3. **THE RESPONDENT**
The Respondent in this administrative proceeding is the above stated Respondent.

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4. DISPUTED DOMAIN NAME :

The disputed domain name is **magiceden.gg**

5. GROUNDS ON WHICH A COMPLAINANT MAY SUCCEED

5.1. The rules for a successful domain dispute are set out at at
<http://disputes.gg/rules.html>.

5.2. In simple terms in order to succeed, a Complainant must show that the registration is one of the following:

- a) An Abusive Registration at the time of Registration or Acquisition meaning that the Domain Name was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights;
- b) An Abusive Registration by virtue or use meaning that has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;
- c) A Registration that is Identical or Materially Similar to Rights held by the Complainant which rights are Infringed by the Respondent's registration or use of the domain;
- d) A Registration that breaches registered or common law rights held by the Complainant in respect of a name or mark (trade mark) which is identical or similar to the Domain Name;

5.3. The Complainant must also show that

- a) the use of the Domain Name by the Respondent amounts to infringement of the Complainant's rights (on the balance of probabilities); or
- b) that the Domain Name, in the hands of the Respondent, is an Abusive Registration; or
- c) that the Domain Name has a Destabilising Use
- d) that the Respondent is using or threatening to use the Domain Name in a

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way which objectively may materially (or materially risks) damage the financial standing, security or reputation of the Island or the Channel Islands in particular.

5.4. The Rules set out a non-exhaustive list of what **may** constitute evidence of Abusive Registration which include

- a) Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name; or
- b) That the Domain Name constituted a blocking registration against a name or mark in which the Complainant has Rights; or
- c) That the Domain Name was registered or acquired for the purpose of unfairly disrupting the business of the Complainant; or
- d) That the Domain Name was registered or acquired for the purpose of improperly requiring the Complainant to license advertising or other linkage on the site.
- e) that the circumstances of use indicate **on the balance of probabilities** that the Respondent is using or threatening to use the Domain Name in a way which objectively has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant (and for these purposes the use of any statement on the website may be taken in to consideration);
- f) The Domain Name was registered as a result of a relationship or intended relationship between the Complainant and the Respondent, and the Complainant has been using the Domain Name registration exclusively, (save under written licence the circumstances or terms of which are indicative of retained ownership and use by the Respondent in the event of

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termination) and has paid (or where applicable reimbursed payment) (whether in money or other valuable consideration) for the registration and/or renewal of the Domain Name registration.

5.5. The Adjudicator can take into account any Pattern of Abuse, for example where the Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .gg or .je or otherwise) which correspond to well-known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern. The Adjudicator can also take into account any false details in registration designed to hide the identity of the Registrant or their patterns of registration.

5.6. The recent judgment in *Fortniteitems.gg* sets out in detail some of the arguments in respect of disputes.

6. GROUNDS ON WHICH A COMPLAINANT MAY NOT SUCCEED

6.1. There are also grounds upon which it is possible for the Adjudicator to determine that there was a legitimate registration of the domain and the rules set out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. These include

- a) that before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under CIDD), the Respondent has used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;
- b) that the Registrant has been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name for a significant period prior to Complaint and without notice of the existence of the Complainant and/or the Complainant's rights; or

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- c) that the Registrant has been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name for a significant period co-existently with the Complaint and without notice of the existence of the Complainant and/or the Complainant's rights, such that estoppel, acquiescence or similar defences may apply; or
- d) that the Registrant has made legitimate non-commercial or fair use of the Domain Name;
- e) that the Respondent has been known by a name reflective of the domain name for a significant time and without notice of the existence of the Complainant and/or the Complainant's rights or assertions in relation to the name and in the circumstances, the registration and use of the domain name at the date of filing of the Complaint (or where relevant at the date of first complaint by the Complainant) is reasonable;
- f) that the Domain Name is generic or descriptive and the Respondent is making fair use of it (and the adjudication may consider a phonetic equivalence of a generic term);
- g) that the Respondent's holding of the Domain Name is consistent with an express term of a written agreement entered into between the Complainant and Respondent;
- h) that the Respondent widely used the domain name, or otherwise took steps to make the Complainant aware of its use of the Domain Name in writing and the Complainant acquiesced in the use of the same for a material period of time.

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7. GROUNDS OF DISPUTE

7.1. The Complainant alleges that:

7.1.1. it is one of the world's premiere marketplaces for non-fungible tokens ("NFTs");

7.1.2. it has used the domain name MAGICEDEN.io continuously since September, 2021 in the United States;

7.1.3. it claims a common-law trade mark in MAGIC EDEN since September, 2021 in the United States in relation to NFTs.

7.1.4. it is described in the press as is "the leading Solana NFT marketplace";

7.1.5. it claims ownership of two pending U.S. trademark applications for its MAGIC EDEN trademark, namely Application Serial Nos. 97/249,494 (Class 9, Class 35, Class 42) and 97/768,882 (Class 9, Class 35, Class 38, Class 41, Class 42, Class 45). Both applications are currently pending before the United States Patent and Trademark Office and were filed on February 2, 2022 and January 26, 2023, respectively.

[It is noted by the Adjudicator that Serial No. 97/249,494 relates to Class 9, Class 35, Class 42) and 97/768,882 relates to Class 9, Class 35, Class 38, Class 41, Class 42, Class 45 and that as serial number 97/768,882 was applied for after the date of registration of disputed domain, it has no relevance on the dispute.]

7.1.6. the Disputed Domain name, magiceden.gg, contains the entirety of Complainant's valuable MAGIC EDEN brand, and is virtually identical to Complainant's registered magiceden.io domain but for the different top-level domain.

7.1.7. based on Complainant's strong common law rights in the MAGIC EDEN brand, and Complainant's well-established brand before Respondent registered the Disputed Domain, it is clear Respondent has no rights with respect to the "Magic Eden" trademark or the Disputed Domain.

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7.1.8. there exists no evidence of the Respondent's use of or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services.

7.1.9. upon information and belief, Respondent redirected traffic to the Disputed Domain Name to a phishing website.

7.1.10. the website at the Disputed Domain Name [currently] consists of a parked website with generic formatting language.

7.1.11. there exists no evidence that the Respondent has been commonly known by the Disputed Domain Name, or that Respondent has ever operated a genuine business or any activity under the "Magic Eden" name.

7.1.12. the Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name.

7.1.13. the Respondent's use of the Disputed Domain Name originally served the purpose of diverting Complainant's customers for phishing efforts,

7.1.14. the Respondent's use of the Disputed Domain Name now serves as a confusing dead-end for potential visitors to Complainant's actual website.

7.2. The Complainant requests the transfer of this disputed domain.

8. INTERROGATORY

8.1. Unusually, the Adjudicator, having noted that the Complaint failed to address the current frontpage of the disputed domain, issued the following interrogatory:

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In exercise of the power of the Adjudicator under Procedural Rule 18, the Adjudicator would ask that each of the Parties respond to the following inquisitorial question:

The front page of the website currently states:

“Hey, get in touch - we want this domain. security@magiceden[.]io - ask for Paco”

What is your explanation for this?

8.2. The Complainant via their representatives responded:

As referenced in the Complaint, the Disputed Domain Name was previously used to redirect traffic to a phishing website. That phishing website was hosted on a Saas provider called Vercel. At some point that phishing website was deactivated by Vercel, presumably because of abuse. The DNS for the Disputed Domain Name still pointed to Vercel, although there was no active account for that domain on Vercel because of the deactivation. In an attempt to communicate with the Respondent, a representative of Complainant created an account on Vercel that would respond to requests for “magiceden.gg” and display the request from Complainant that now appears. Unfortunately, Complainant has not received any communication from Respondent in response to the message. The message that now appears on the website accessed through the magiceden.gg domain was part of an attempt by the Complainant to resolve the dispute with the Respondent before the formal UDRP process.

8.3. The Respondent did not respond to the interrogatory.

RESPONDENT RESPONSE

9. The Respondent did not respond. This means that the Claimant must prove the case on a prima-facie basis and, if appropriate, relying on presumptions of bad faith against the Respondent.

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10. ADJUDICATOR CONSIDERATIONS

10.1. As Adjudicator, I will deal with the first matter arising, namely the website at the disputed domain name.

10.1.1. The nameservers for magiceden.gg point to are

dns1.registrar-servers.com and

dns1.registrar-servers.com.

These in turn direct web enquiries to Vercel servers.

10.1.2. At some point, it would appear that the Respondent opened an account at Vercel and that Vercel was subsequently used to host the Complainant's data on the Respondent's site. (This is evident from the fact that the facilities at Vercel provide a resolution to the new data provided on Vercel by the Complainant. They would only do so if they had previously resolved the Respondent's account at Vercel.

10.1.3. At some point it would appear that subsequently, for reasons not readily available, the account at Vercel ceased to publish the Respondent's content whatever that may have been on magiceden.gg webpages.

10.1.4. There is no evidence whatsoever provided about the reason for the Respondent's account at Vercel ceasing to operate. Although the Complainant asserts that "*At some point that phishing website was deactivated by Vercel, presumably because of abuse*", there is no evidence of cancellation of abuse nor of previous use as a phishing site. (It is also noted that this claim of a Respondent phishing site is the only claim caveated by the term "upon information and belief", a vague term in pleadings meaning "I am only stating what I have been told" and that the statement does not identify the source of that information or provide a witness statement from the source. Accordingly, the Adjudicator takes the view that this claim is unsustainable as not backed by evidence).

10.1.5. At some point, it would also appear that the Complainant identified the facts set out at 10.1.1 and 10.1.2.

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- 10.1.6. It would appear that the Complainant on or before 21st February 2023, the Complainant then opened an account at Vercel.
- 10.1.7. By their own account, the Complainant then set up a website on Vercel's facilities to respond to traffic for the www.magiceden.gg web address, knowing that the nameservers paid for by the Respondent (and operated by Respondent's registrar NAMECHEAP) would likely deliver web traffic to it. In so doing, the Claimant (again on their own submission) appears to have known that the display of the Complainant's data in response to web traffic to the www.magiceden.gg host name was without the authority of the Registrant of magiceden.gg and effectively created an unauthorised webpage on www.magiceden.gg.
- 10.1.8. The above display continues at the date of this decision.
- 10.1.9. The steps at 10.1.7 may also amount to obtaining a pecuniary advantage by deception (i.e. hijacking the domain name magiceden.gg to display a website without paying for the registration and without authorisation).
- 10.2. The Guernsey Computer Misuse Act identically mirrors the UK Computer Misuse Act 1990 and makes it a criminal offence if a person
- (a) *causes a computer to perform any function* (i.e. the resolution of magiceden.gg and the display of data on that internet URL address) *with intent to secure access to any program or data held in any computer* (i.e. the Complainant's data at Vercel), *or to enable any such access to be secured;*
 - (b) *the access he intends to secure, or to enable to be secured, is unauthorised* (i.e. the access and display of the data on the URL magiceden.gg is not authorised by the Registrant of magiceden.gg, the only person entitled to authorise the display of data on the URL magiceden.gg);
- and
- (c) *he knows at the time when he causes the computer to perform the function that that is the case.* (As owner of the domain magiceden.io and pursuant to the filing of the Complaint, the Complainant knows that this is the case).

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- 10.3. A further offence under s2 of *Unauthorised access with intent to commit or facilitate commission of further offences* may also arise.
- 10.4. It is not within the jurisdiction of the Adjudicator to determine whether the actions breached the Computer Misuse Act or whether criminal offences arise, although prima-facie there would appear to be a breach. If they did then the actions are a criminal offence under Guernsey Law, the Complainant having availed itself of the jurisdiction of Guernsey pursuant to the filing of the complaint.
- 10.5. In passing it is noted that both New Jersey and California Computer Misuse laws are similar as is 18 U.S. Code § 1030 (and particularly given the 6-3 Supreme Court Decision in *Nathan Van Buren v. United States* (docket 19-783, Citation 593 US). There is likely similar breaches of these laws by the Complainant by their actions in hijacking the website.
- 10.6. It is most unsatisfactory that a professionally drafted complaint described the current website as a “confusing dead-end” and did not disclose the Complainant’s actions in creating that current site and that the answer at 8.2 had to be extracted by interrogatory.
- 10.7. The Adjudicator would have expected any representative drafting a complaint which stated that the current website was a “confusing dead-end” to have at least looked at the website. The Adjudicator would then have expected any representative having seen the website to have asked detailed questions about the origin of the message on the disputed website. This is because even a cursory look at the current site would have highlighted that the Complainant had apparently uploaded onto the Respondent website a message seemingly written by the Complainant – a most extraordinary event, especially in light of the fact that the Complainant asserts that it has not managed to contact the Respondent. The current website should have put any diligent representative on notice of further enquiry.
- 10.8. As the steps described in 10.1 were not fully disclosed in the complaint until after the interrogatory from the Adjudicator, it is likely that the Complainant’s Representatives either (i) knew that of the improper steps

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taken by the Complainant and chose to draft the complaint in order to paint a misleading picture to the tribunal or (ii) failed to take the diligent actions and further enquiries to check facts expected of professional representatives and thereby presented a misleading set of facts to the Tribunal. This is of particular importance because Tribunals assume that the relevant Rules of Professional Conduct have been strictly complied with and that the facts pleaded have been at least properly checked by the professional representative.

10.9. Of particular concern is

(i) the original claim of the Claimant, as filed by the Representatives, stated that

“Now the website at the Disputed Domain Name consists of a parked website with generic formatting language”

[Complaint paragraph 23]

but failed to disclose that the Complainant had provided that data and the circumstances set out in 10.1.7 and

(ii) the original claim of the Claimant, as filed by the Representatives, stated that

*“The Respondent’s use of the Disputed Domain Name
.....now serves as a confusing dead-end for potential visitors to
Complainant’s actual website”*

[Paragraph 26]

again without disclosing that the Complainant had provided that data and the circumstances set out in 10.1.7.

11. Use by the Respondent of email

11.1. Whilst there is no evidence of the Registrant having used the domain for a web page, there is evidence that the Registrant made preparations to use the domain MAGICEDEN.GG for email as suggested by the following Mail Exchanger (MX) DNS records.

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magiceden.gg.	1800	IN	MX	20	eforward5.registrar-servers.com.
magiceden.gg.	1800	IN	MX	15	eforward4.registrar-servers.com.
magiceden.gg.	1800	IN	MX	10	eforward1.registrar-servers.com.
magiceden.gg.	1800	IN	MX	10	eforward2.registrar-servers.com.
magiceden.gg.	1800	IN	MX	10	eforward3.registrar-servers.com.

11.2. This was not addressed in the Complaint.

12. MagicEden.io Gaming

12.1.1. It has been repeatedly observed in recent CIDD cases that .gg is a very popular gaming domain stem amounting to “good game” (“gg”).

12.1.2. The popularity of the .gg domain ccTLD in the gaming community this is something that would be likely known to the Complainant, and in particular, their Chief Gaming Officer.

12.1.3. It is therefore also of great concern that MagicEden.io, the Complainant, in or about December 2022 announced entry into the gaming sector, but that this was also not disclosed in the complaint.

12.1.4. The announcement stated:

SAN FRANCISCO, Dec. 8, 2022 /PRNewswire/ -- Today, Magic Eden ("The Company"), the leading cross-chain NFT platform, announced the hiring of Chris Akhavan as its first Chief Gaming Officer. In his new role, Chris will be responsible for driving the growth of Magic Eden's gaming partnerships and supporting the development of enhanced game creator and collector experiences on the platform. Magic Eden believes Web3 gaming will grow into a multi-billion dollar per year industry by placing digital asset and gamer identity ownership in the hands of players, and will open up its massive Web3 audience reach to game developers to make this a reality

12.2. Accordingly, the Adjudicator takes the view that this is a material motive for the failure of open and full disclosure of material facts to the CIDD tribunal.

13. Merits of the Complainant's case

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- 13.1. The Adjudicator therefore finds that the actions of the Claimant as set out in paragraphs 10.1.6 to 10.1.8, and 10.1.6 are:
- (i) actions in bad faith; and
 - (ii) amounted to actual Domain Name Hijacking and further amounted to the Claimant displaying its data on the Respondent's website by deception.
- 13.2. As a result of the matters set out above, the Complainant having acted in bad faith, comes to the Tribunal with unclean hands and accordingly is not entitled to rely upon bare presumptions of bad faith in respect of the Respondent, the quasi-equitable remedy being barred for any party who has engaged in inequitable behaviour (unconscionability or **bad faith actions**) related to the subject matter of that party's claim.
- 13.3. Accordingly, having come to the Tribunal with unclean hands, it is for the Complainant to prove every element of its case that it wished to rely upon.
- 13.4. Proving the Complainant's case, had the case been adequately prepared, would not have been a difficult burden as the Claimant could have easily provided a sworn affidavit from a relevant Officer, together with appropriate evidence. It would undoubtedly have resulted in the admission of improper action by the Complainant and an apology for such action. Proper preparation and production of evidence would have had the potential to provide adequate evidence to support a transfer of the domain name, even with the reprehensible behaviour set out above. Unfortunately, only a bare complaint was filed and the supporting evidence was almost entirely missing.
- 13.5. This failure to provide relevant evidence on key points of the complaint is something that previous CIDD Adjudications to date have highlighted and the fact that the Complainant's Representatives did not even approach the Registry for details of the Respondent prior to filing highlights the inadequate way in which this complaint was prepared.
- 13.6. This case is one of the most egregious cases of a lack of appropriate evidence that has come before the CIDD Tribunal. If the appropriate evidence had been considered and filed, particularly given professional

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representation and if due diligence has occurred in the preparation and completion of the complaint, the Adjudicator considers that the failings and misguiding elements of the pleadings would probably have been identified and corrected.

13.7. Appropriate evidence being filed may have resulted in a different outcome.

13.8. Normally the addition of the country code Top-Level Domain (“ccTLD”) suffix “.gg” or “.link” would be ignored and would not be considered to distinguish the relevant domain.

13.9. The domain name is made up of 2 words, both of which on their own are generic, “magic” and “eden”. Eden is however a common name associated with beautiful places. As such “magic eden” is a name potentially available to garden centres and places of entertainment without infringing the Claimant’s trade mark. The make-up of the mark from two generic names also arises in relation to Facebook or Paypal and therefore the Adjudicator has considered whether the domain name is generic as a whole and concluded that this is not the case, but that the strength of the common law trade mark is weak.

13.10. The use of a common law trademark rather than a registered trademark further weakens the strength of the mark.

13.11. The common law trademark right claimed by the Claimant is limited to the provision of NFTs and their associated cryptological techniques.

13.12. Trademarks, even if registered are protective of the class of goods that the trademark is registered for and within that class, for the particular goods registered, unless the trademark is a household “famous name”. Even so, there is still the question of trademark is that there is a question of whether the public believes that the name on their merchandise is an “indication of origin” (the trademark function) or whether they are showing support or allegiance to the person or group on the merchandise when they choose to buy goods bearing the image of the famous person; although for domain names, these usually function as badges of origin. (see *Elvis Presley [1997]*)

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R.P.C. 543 and Linkin Park [2006] E.T.M.R. 74 and Arsenal Football Club vs. Matthew Reed.)

13.13. To the extent that the Claimant asserts that it is entitled to famous status and therefore wider protection than would occur in relation to its strict trademark rights, the Adjudicator finds that, unlike Facebook or Paypal, the Claimant has failed to produce adequate evidence and failed to meet the standard necessary under the TRIPS and the Paris Convention to obtain famous status. Although the Adjudicator does not need to address this due to the paucity of evidence, it is also unlikely that it meets the requirement under the U.S. Lanham Act to prove “famous status”.

13.14. The Claimant’s mark “magiceden” is not, in the opinion of the Adjudicator a “famous” or “household” name and no evidence was presented to support the assessment of magiceden as a “famous” or “household” name.

13.15. The Complainant filed no evidence of the historic use of the domain by the Respondent and no evidence of any webpage provided by the Registrant via magiceden.gg, despite asserting (without filing supporting evidence or explaining the absence of evidence) that the domain name originally served as a phishing site. The mere assertion of a previous phishing site in the claim without proof of the same is inadequate for the purposes of CIDD, even without the bad faith shown in the complaint .

13.16. The Complainant filed no evidence of current use of the domain by the Respondent. . The current use of the website is an unlawful and unauthorised use of the disputed domain by the Complainant following what amounts to a sophisticated hijack relying on the Respondent’s vestigial DNS nameserver configuration with the Respondent’s registrar or “hacking” of the disputed domain.

13.17. In passing, it is however noted by the Adjudicator that the FAQ of MagicEden.io states:

ALWAYS make sure you're on the right website. Magic Eden has the **magiceden.io** domain. If you are on a website that uses anything else, you're on a scam site.

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Leave immediately! Some examples of a phishing domain:

magiceden-io.io

magic-eden.io

mint.magiceden-io.io

giveaway.magic-eden.io", etc...

It is noted in passing that none of those sites were accessible to the Adjudicator nor are they listed in the Internet Archive as active at any time and accordingly, it is unclear whether these were ever phishing sites.

13.18. There is no recorded use of the site at magiceden.gg as a phishing site in the Internet Archive.

13.19. There is no infringement of having a parked site, the infringement offence for the purposes of CIDD is that of creating a blocking site. The Claimant has not provided any evidence that the site constitutes a blocking site.

13.20. The Claimant has not provided any evidence that the Registrant was offering the domain for sale. The Claimant has not provided any evidence that the site was ever offered to the Claimant or any other party for sale.

13.21. The Claimant has claimed that the Respondent website infringes the Claimant's unregistered or common law trademarks. There was no evidence placed before the Tribunal that the site ever offered NFTs or crypto-offerings. Therefore, as the Claimant must show that any infringement was an infringement of the common law rights that exist in relation to NFTs. There was no evidence presented therefore that the Respondent website ever infringed the Claimant's unregistered or common law trademarks.

13.22. For example, if the site at magiceden.gg was a photographic promotion site or a gardening site or an entertainment venue, then this would not infringe the common law trademarks and probably would not infringe those applied for by the Complainant and would therefore not found a valid claim under CIDD.

13.23. In relation to the Claimant's claim that the "*website at the Disputed Domain Name consists of a parked website with generic formatting*

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language”, the Adjudicator further comments that the evidence of the website is contaminated by the Claimant’s activities and inadmissible.

13.24. Accordingly, even if evidence about the prior use of the website had been filed, the Adjudicator would have dismissed this because the Claimant’s actions would have made any website evidence inadmissible (I.e. as the Claimant can clearly manipulate the website at the Disputed Domain Name, any evidence of activity at the Respondent website would be tainted.

13.25. It was also open to the Complainant to admit that the steps were improper and should not have been taken and to provide appropriate evidence as set out above. Instead, the complaint concealed the actions and potential motives in the original complaint.

13.26. The Adjudicator would also comment that this was contemptuous in respect of the Tribunal.

13.27. The Complainant states that there is a “*Respondent’s improper and unlawful use of the domain name*” identified as www.magiceden.gg but does not expand on this, nor is any evidence in support provided. The only apparent *improper, unauthorised and unlawful use of the domain name* was by the Complainant.

13.28. The Complainant’s statement that the registration of the disputed domain name is not a coincidence and must be halted is neither explained nor any point applicable to UDRP is developed and amounts to mere rhetoric. In light of the bad-faith, and in the absence of evidence “proof of a lack in coincidence”, this point is simply unsustainable.

13.29. The Claimant’s case clearly misunderstands in many points, the arguments necessary before a UDRP. The mere registration of a domain name (outside the realm of “household status” does not infringe any rights and the common law trademark rights of the Complainant magiceden.io would only be infringed if the site at magiceden.gg provided NTFs.

13.30. Similarly, the Respondent’s assertion that “it is clear Respondent has no rights with respect to the “Magic Eden” trademark or the Disputed

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Domain” is something that is has not established either by evidence nor by demonstrating any grounds in law for this.

13.31. The Claimant has not been in communication with the Respondent.

13.32. The Claimant’s claim that “*there exists no evidence of the Respondent’s use of or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services*” is also not made out by any evidence (and if evidence of a website use were made this would likely be inadmissible due to the Claimant’s hijacking actions as set out at paragraph 10.1.7.).

13.33. It is also noted in passing that shortly before the Complainant hijacked the Respondent’s website as set out above, the Complainant’s site was also defaced in a third-party compromise which has echos of the third party Vercel compromise used by the Claimant. (See <https://cryptopotato.com/magic-eden-blames-unsavory-pics-on-third-party-breach/>).

14. Summary and Decision

14.1. This was a particularly poorly prepared complaint, lacking entirely in evidence and also (either deliberately or inadvertently by nature of the poor preparation, inadequate enquiry and lack of due diligence) misleading to the Tribunal.

14.2. The Complainant has actually hijacked the Respondent’s web-address and web-traffic and unlawfully amended the Respondent’s website and has deceptively failed to disclose this in the complaint, only being forced to do so after the issue of an Adjudicator’s interrogatory.

14.3. The Claimant also announced shortly before commencing the CIDD dispute that it was entering the web3 gaming arena under the name Magic Eden Gaming and accordingly, as .gg is often associated with gaming, there are grounds for concern as this was not mentioned in the complaint. The Complainant deceptively failed to disclose that it was entering the gaming sector and, in light of .gg being a popular gaming domain stem and therefore

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that magiceden.gg was commercially desirable. This amounted to hiding of a relevant motive for hijacking.

- 14.4. Accordingly, as well as finding actual hijacking of the Respondent's website, the Adjudicator is of the opinion that the complaint amounted in the circumstances to **actual Reverse Domain Name Hijacking**.
- 14.5. The Adjudicator finds that the Complainant's assertion that the Respondent's Disputed Domain Name originally served the purpose of diverting Complainant's customers for phishing efforts is unsupported by any evidence from the Claimant and unproven;
- 14.6. The Adjudicator finds that the Complainant's assertion that the Respondent's Disputed Domain Name now serves as a confusing dead-end for potential visitors to Complainant's actual website is unsupported by any evidence from the Claimant and false and asserted in bad faith. The confusing dead-end of the dispute domain name is something that arises as a direct result of the bad faith actions of the Complainant.
- 14.7. In all the circumstances, the filing was a bad faith filing.
- 14.8. The Complainant's actions further are likely to amount to a Computer Misuse Offence in the jurisdiction of the Tribunal, and certain US (state and Federal) jurisdictions although the Adjudicator does not also need to determine any criminal matters.
- 14.9. This is a case where there was a complete lack of evidence filed by the Complainant as well as deceptive pleadings.
- 14.10. Accordingly the Adjudicator finds as of fact that there is no evidence that the Disputed Domain Name was used in bad faith by the Respondent as having acquired &/or registered the domain name
- (i) primarily for the purpose of selling, renting, or otherwise transferring the domain name registration for valuable consideration in excess of out-of-pocket costs,
 - (ii) to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name,
 - (iii) for the purpose of disrupting the business of a competitor;

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(iv) for the purpose of causing or creating a likelihood of confusion as to the Complainant's mark, source, sponsorship, affiliation, or endorsement

or that

(v) the Respondent has intentionally attempted to attract, for commercial gain, users of the Complainant's web site.

AND

The Adjudicator

(i) finds that the Claimant's case is entirely unproven and that recommends that the Registry should take no action in relation to the domain MagicEden.gg save to remove any suspension thereof;

(ii) finds that the Claimant's case amounted to Reverse Domain Name Hijacking and was brought in bad faith;

(ii) finds that the Claimant was guilty of Actual Domain Name Hijacking

And

(iv) whilst this finding is without prejudice to the Complainant filing future CIDD domain complaints, the Adjudicator recommends that the Registry considers the matters at clause 10 and considers refusing to accept CIDD UDRP filings from the Complainant's representatives in the future in relation to .je or .gg. domain names for an appropriate period.

This finding is without prejudice to any subsequent filing based on appropriate and admissible evidence after the date hereof.

Accordingly, the Adjudicator recommends no action in this matter.

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Adjudicator C.I.D.D.

Nick Lockett

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Sitting as Adjudicator C.I.D.D.

Dated *22nd April 2023*