

## PROCEDURAL ORDER NO 1

### Rubis Energie v. Privacy Administrator, Anonymize, Inc. Case No. DCO2019-0033

**WHEREAS** the Panel has reviewed the case file and, without prejudice to any subsequent findings of fact or law or any decision on the interpretation of any aspect of the Uniform Dispute Resolution Policy (the “Policy” or “UDRP”) or the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) or the World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”), provisionally notes and comments as follows:

- (i) The registrar for the disputed domain name in these proceedings <vitogaz.co> (the “Domain Name”) is Epik.com (the “Registrar”).
- (ii) On August 30 2019, WIPO (the UDRP “Provider” in this case) sent a verification request to the Registrar by email and as part of this request asked the Registrar to provide, inter alia, the following:

“(4) ... the full contact details (i.e., postal address(es), telephone number(s), facsimile number(s), email address(es)) in your WHOIS database for the domain name Registrant, technical contact, administrative contact and billing contact, for the [Domain Name]”
- (iii) In accordance with paragraph 4(b) of the UDRP Rules, the Registrar was required to provide the Provider with confirmation that a “Lock” had been applied to the Domain name and to provide the information requested in Provider’s verification request within two business days of that request.
- (iv) The Registrar failed to comply with its obligation under paragraph 4(b) of the UDRP Rules within 2 business days of 30 August 2019.
- (v) On September 8, 2019 an email appears to have been sent from the email address under the control of the Registrar; i.e. [support@epik.com](mailto:support@epik.com), to the Complainant’s lawyers. That email stated as follows:

“Hello,  
Rob”

Shall we settle this one for \$500 today?

Regards,

- (vi) That offer was rejected by the Complainant’s lawyers and a further email appears to have been sent from the [support@epik.com](mailto:support@epik.com) address to the Complainant’s lawyers on September 9, 2019. That email stated as follows:

“Hello [Name of Complainant’s lawyer], The ICANN fee of \$1500 is refunded before the panel is appointed. So either: 1. He is stupid. OR 2. You like to generate legal fees. For \$500, the domain is delivered today. Is there some other price needed? Regards, Rob”

- (vii) On September 11, 2019, the Registrar had still not responded to the Provider’s verification request and the Provider asked for the relevant information by email once again. In that email the Provider stated:

“Please note that it may become necessary to inform ICANN Compliance should we fail to receive a timely response from you in this regard.”

- (viii) Still no response had been received by the Registrar by September 23, 2019. As a consequence, the Provider sent a further email to the Registrar stating that unless the information requested was provided by 25 September 2019, the proceedings might need to proceed without the relevant information. It also informed the Registrar that ICANN Compliance had been notified.

- (ix) This email from the Provider elicited an email response the same day from a Mr. Robert Monster who described himself as the “Founder and CEO” of the Registrar. In that email he stated:

“The registrant abandoned the domain. It is no-contest. Can we have a fast-track solution? Nobody besides lawyers on the meter have time for this nonsense.”

- (x) On September 24, 2019, a further email was received from by the Provider from someone identifying themselves as the “Director Client Services” of the Registrar. In that email that person stated as follows:

“Per your request, the [Domain Name} currently has a Registrar Lock enabled on it.

Here is the Whois information for Registrant, Admin, Tech, and Billing:

Organization Name: Anonymize, Inc.  
Name: Privacy Administrator Email: [info@anonymize.com](mailto:info@anonymize.com)  
Address: 704 228th Ave NE,  
City: Sammamish  
State: WA  
Zip Code: 98074 Country:  
United States Phone: +1.4253668810”

- (xi) It appears to the Panel that the name address, and the phone number provided are of the Registrar’s own privacy service rather than that of the underlying registrant of the Domain Name (see for example the printout from the Anonymize.com website accompanying this Procedural Order and which describes Anonymize.com. as “A service of Epik.com”).
- (xii) A failure to provide the details of the underlying registrant of a domain name to a UDRP provider in response to a verification request involves a potential threat to the integrity an operation of the UDRP. As was stated in *Four Seasons Hotels Limited v. Internet bs Corporation/ Private Whois Service*, WIPO Case No. D2009-1657:

“From a practical perspective it is important that those who offer Whois privacy services operate in this way [i.e. disclose the underlying registrant to the UDRP provider in response to a verification request]. A refusal by a registrar to disclose to a requesting Policy provider the underlying owner or holder of a domain name (and their contact details) hidden behind a “privacy service” in proceedings under the Policy, involves a potential threat to the operational integrity of the Policy. Registrars who operates in this fashion potentially provide a tool that enable cybersquatters to conduct their activities in secrecy and to help them avoid the extent of

their abusive activities becoming public; thereby depriving complainants, potential complainants and panels with information that is potentially highly relevant to the assessment of abusive behaviour. For a registrar to participate in facilitating or aiding these activities risks undermining the operation of the Policy. For the reasons already given, the Panel considers this to be contrary to the provisions of the Policy. It is undoubtedly contrary to its spirit.

- (xiii) Further, it would appear that by reason of the delay in responding to the Provider's verification request, and by reason of the emails identified in (v), (vi) and (ix) above, the Registrar and possibly the CEO of the Registrar, has deliberately engaged in conduct seeking to obstruct the operation of the UDRP.
- (xiv) Further, the content of the emails identified in (v), (vi) and (ix) above are consistent with the Registrar, and possibly the CEO of the Registrar, deliberately seeking to engage in or facilitate a business model of cybersquatting and then gaming the UDRP by offering the Domain Name for transfer at a cost that is less than the costs of filing a complaint. For a Registrar deliberately to engage in or facilitate such a business model, would be a serious matter.
- (xv) Although the Panel has no power to order a Registrar to file a submission in UDRP proceedings, it may publically criticise the Registrar's conduct in its decision and invite the Provider to report the Registrar to the relevant authorities with a view to those authorities investigating and taking action in relation to the Registrar's conduct. Given this, it is appropriate to give the Registrar an opportunity to file a submission addressing that conduct. Further, should the Registrar fail to file any such submission, the Panel may draw an adverse inference from that failure. (For a detailed analysis of panel practice and powers in this respect, see *LEGO Juris A/S v. Whois Privacy Protection Service, Inc. / Domains Secured, LLC* WIPO Case No. D2011-1857.)

The Panel, pursuant to paragraphs 10 and 12 of the Rules **HEREBY MAKES THE FOLLOWING ORDER:**

- (1) The **Registrar** is requested to file by email (copied to the parties) by no later than 5:00 pm Central European Time on Wednesday November 13, 2019 a submission providing the following information and addressing the following issues:
  - (i) Whether and to what extent Anonymize, Inc is the privacy service of the Registrar and/or is otherwise connected with the Registrar.
  - (ii) Providing (a) the name of the underlying registrant of the Domain Name (b) all geographical addresses, phone numbers, and email addresses for the underlying registrant of the Domain Name.
  - (iii) Why the Registrar delayed in providing, and as at the date of this Procedural Order has still failed to provide, the information requested at 1(ii) above.
  - (iv) Disclosing the identity of "Rob", who sent the emails identified in paragraphs (v) and (vi) of the Recitals to this Procedural Order, and whether "Rob" is Robert Monster, the CEO of the Registrar.
  - (v) Confirming whether, and explaining why, the Registrar sent the emails identified in paragraphs (v), (vi) and (ix) of the Recitals to this Procedural Order.
  - (vi) Otherwise addressing any of the issues set out in the Recitals to this Procedural Order.
- (2) Each of the parties may (but are not required) to file by email (copied to the other party) by no later than 5:00 pm Central European Time on Wednesday November 13, 2019 a further submission (annexing any evidence relied upon) limited to addressing the same matters.

Matthew S. Harris

Sole Panelist

Date: November 7, 2019