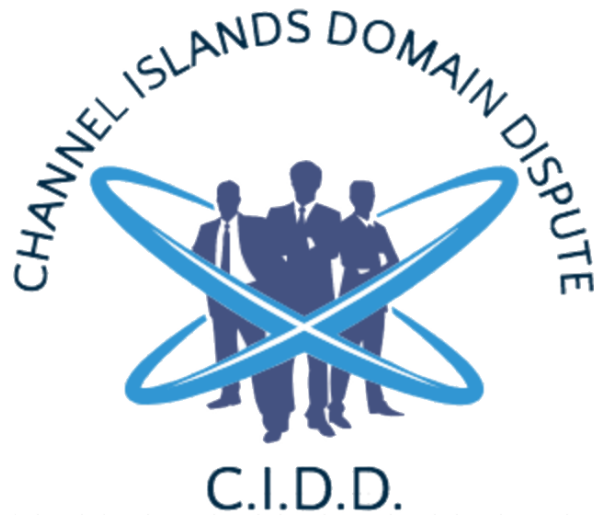




# Channel Islands Internet Domain Name Registry Dispute Resolution Procedure

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**IN THE CASE OF THE DOMAIN 2K.GG**

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**DECISION OF  
THE INDEPENDENT EXPERT**

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Adjudicator  
Nick Lockett, Barrister & Solicitor  
ADL Solicitors Ltd  
131-133 Cannon Street , London EC4N 5AX



# Channel Islands Internet Domain Name Registry Dispute Resolution Procedure

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## DECISION OF THE INDEPENDENT EXPERT

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**1. Domain Name:**

2k.gg

**2. Complainant Name:**

Take-Two Interactive Software, Inc.  
110 West 44th Street  
New York  
New York 10036  
United States of America  
(formerly of 622 Broadway, New York, New York 10012)

**3. Complainant Representative:**

Richard Hing, Fieldfisher LLP  
Riverbank House  
2 Swan Lane  
London  
EC4R 3TT  
United Kingdom

**4. Respondent:**

Jonathan Stevens  
Envests  
79 Almond Lane  
Petersburg, 5,62675  
United States of America

**5. Background to the Dispute**

5.1. The Complainant is an online video gaming supplier Take Two Interactive Software Inc., and produces a number of leading software brands including BioShock, Borderlands, Red Dead Redemption and Civilization and within the portfolio it provides a number of software titles incorporating the letters 2K such as WWE 2K and NBA 2K. 35% of which are produced for consoles and 95% of all units being provided by digital download. The Company has a net worth over \$1Bn. It claims a publishing studio under the banner 2K via 2K Games, Inc. (collectively "the Complainant"). 2K Games, Inc. was incorporated in 2004 in Delaware, the United States of America. Games published by the Complainant include the NBA 2K, WWE 2K and CIVILIZATION series

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## Channel Islands Internet Domain Name Registry Dispute Resolution Procedure

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1 5.2. The NBA 2K basketball game was first released in 1999 and is available in the  
2 United Kingdom and European Union (see **Annex A**). The series has sold more  
3 than 80 million units worldwide (see Annex B, page 3). The current version,  
4 NBA 2K19, was released in September 2018. Its predecessor, NBA 2K18, has  
5 sold more than 10 million copies worldwide (see Annex B, page 3).

6 5.3. The WWE 2K wrestling game was first released in 2000 and is available in the  
7 United Kingdom and European Union (see Annex C). The current version, WWE  
8 2K19, was released in October 2018. The Complainant's digitally distributed  
9 free-to-play game, WWE SuperCard, has been downloaded nearly 17 million  
10 times (see Annex B, page 5).

11 5.4. In May 2018, the Complainant launched the NBA 2K League in conjunction with  
12 the National Basketball Association (see Annex D). This is a professional e-  
13 sports league based on the Complainant's NBA 2K game. It is the first official e-  
14 sports competition operated by a professional sports league.

15 5.5. The Complainant has various trademarks including European word marks in  
16 classes 9, 16 and 41 and numerous domain names commencing 2k such as  
17 2k.com, 2ksports.com, and 2kgames.com.

18 5.6. The Complainant is represented by Fieldfisher LLP solicitors of London.

19 5.7. The Respondent is Jonathan Stevens, of Envests, 79 Almond Lane, Petersburg,  
20 S62675.

### 21 6. **The Complaint**

22 6.1. The Domain Name was registered on 4 February 2017 which post-dates:

- 23 (a) the registration date of the 2K Trade Marks and the 2K Domain Names;
- 24 (b) the incorporation date of the Complainant; and
- 25 (c) the first date that the Complainant started trading under the 2K name.

26 6.2. The Complainant asserts that the Domain Name is identical and/or extremely  
27 similar to the 2K Trade Marks, the 2K Games, Inc. company name and trade  
28 name, and/or the 2K Domain Names (the "2K Rights"). This is because the  
29 Domain Name is comprised of the term 2K followed by the non-distinctive  
30 extension .gg, which has become associated with the video game and e-sports  
31 industries.

32 6.3. It is also asserted that this is an Abusive Registration and that the Domain Name  
33 has been used in a manner that takes unfair advantage of and is unfairly  
34 detrimental to the Complainant's rights.

35 6.4. The Complainant first became aware of the Domain Name when it was  
36 approached directly by Mr Ranjan Shaq on 6 July 2018.



## Channel Islands Internet Domain Name Registry Dispute Resolution Procedure

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- 1 6.5. The Complainant later became aware, having reviewed the file history for the  
2 Domain Name provided by the Guernsey Registry, that the name was registered  
3 on 4 February 2017 to John Roundstone.
- 4 6.6. On 10 August 2017, the name of the registrant was changed to that of the  
5 Respondent, Jonathan Stevens.
- 6 6.7. Asserted Pattern of Abuse (3.4 of Policy)
- 7 The Complainant refers to the decision in FIFA v John Roundstone (CIDRS003) it  
8 was held that Mr Roundstone's registration of fifa.gg was abusive and improper  
9 and it was noted that Mr Roundstone had engaged in a pattern of registered .gg  
10 domains related to other famous brands such as: adidas.gg, att.gg, comcast.gg,  
11 ibm.gg, pepsi.gg, playstation.gg, sony.gg, tencent.gg, toyota.gg and others.
- 12 6.8. The Complainant also refers to the decision of the Adjudicator in IBM v Jonathan  
13 Stevens (CIDRS004) in which it was held that the Respondent's registration of  
14 ibm.gg was abusive and improper and where the tribunal found that the names  
15 Mr Roundstone and Mr Stevens are pseudonyms of the same person.
- 16 6.9. The Complainant also notes that the Respondent's email address  
17 (jon@berlin.com) is similar to that of Mr Shaq ([shaq@berlin.com](mailto:shaq@berlin.com)), although no  
18 evidence is provided as to whether berlin.com provides public email addresses.
- 19 6.10. The Complainant also asserts a breach of the prohibition on Selling or  
20 renting to the Complainant or a competitor (3.1.1 of Policy) stating that the  
21 Domain Name has clearly been registered for the purposes of selling, renting or  
22 otherwise transferring the Domain Name to the Complainant for valuable  
23 consideration. This is evident from the email chain attached at Annex J  
24 (Confidential) which shows that Mr Shaq has tried to sell the Domain Name to  
25 the Complainant, and that it is now also for sale on Sedo.com with an asking  
26 price of US\$44,000 (which is far beyond Mr Shaq's claimed out-of-pocket  
27 expenses of US\$24,999).
- 28 6.11. The Complainant also asserts that Mr Shaq is obviously aware of the  
29 Complainant's business interests, having specifically contacted the Complainant's  
30 business development team. Further, in his email dated 8 August 2018, Mr Shaq  
31 points out that the .gg extension is used in connection with the video game and  
32 e-sports industry.
- 33 6.12. The Complainant also asserts a breach of the prohibition on Blocking  
34 (3.1.2 of Policy) and asserts that the Domain Name is serving as a blocking  
35 registration since the .gg country code has become associated with video game  
36 and e-sports websites, due to the use of 'gg' as a written abbreviation common  
37 in e-sports for the phrase 'good game', the registration of the Domain Name



## Channel Islands Internet Domain Name Registry Dispute Resolution Procedure

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1 prevents the Complainant from registering such a domain for its own legitimate  
2 and established business functions.

3 6.13. Disruption (3.1.3 of Policy)

4 The Complainant considers that any domain name incorporating the 2K Trade  
5 Marks will cause significant confusion and disruption to its business because  
6 resource is required to monitor the Domain Name for risks including whether an  
7 active website is launched with content which further infringes the Complainant's  
8 rights and the adjudicator notes no evidence on this is provided and does not  
9 consider that merely monitoring for infringement, a normal part of brand  
10 activities, amounts to material disruption within the definition.

11 6.14. Confusion (3.2 of Policy)

12 Given the identity and similarity between the Domain Name and the 2K Rights,  
13 the use of the .gg extension in the video game and e-sports industries, and the  
14 enormous global reputation of the 2K brand, the complainant asserts that the  
15 Domain Name will be understood by internet users as referring to a website  
16 and/or goods and/or services offered by the Complainant and that internet users  
17 will be led to believe that the Domain Name is owned and/or operated by the  
18 Complainant, or authorised and/or approved and/or endorsed by it. This is not  
19 accepted by the adjudicator on the evidence supplied.

20 6.15. The Complainant refers to the High Court judgment of Global Projects  
21 Management Ltd v. Citigroup and others [2005] EWHC 2663 in which it was held  
22 that the mere registration and maintenance of a domain name which may lead  
23 people to believe that there is a connection between the holder of the domain  
24 name and the owner of a brand is sufficient to make such domain names  
25 potential "instruments of fraud" amounting to passing off and also refers to  
26 Yoyo.email Ltd v Royal Bank of Scotland Group Plc and others [2015] EWHC  
27 3509 (Ch), where the High Court held that mere registration of a domain name  
28 containing trade-marks belonging to the Royal Bank of Scotland, gave rise to a  
29 misrepresentation to members of the public that the registrant was associated  
30 with the goodwill in the name, making the claimant liable for passing off.

31 6.16. The Complainant also refers to Seiko UK Limited v Designer Time  
32 (Nominet, DRS248), where the Independent Expert held that if a domain name  
33 makes, or is liable to be perceived as making, a representation that there is  
34 something approved or official about the website, that constituted unfair  
35 advantage being taken by the domain name registrant or unfair detriment to the  
36 trade mark owner and to Dell Inc v PC Warehouse (Nominet, D00001805) where  
37 the domain delloutlet.co.uk was transferred to the Complainant. This was



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1 because there was no evidence that the Respondent had any legitimate rights in  
2 the name "Dell Outlet"; was not known as a business by that name and the  
3 website was not exclusively for the sale of Dell products.

4 6.17. Although argued by the Complainant, the adjudicator does not accept that  
5 merely linking a domain name to .gg creates a closely associated link with the  
6 video game and e-sports industries or gives the Domain Name gives the  
7 impression of being approved by the Complainant or being official and therefore  
8 cannot accept the assertion that this constitutes an unfair advantage and also a  
9 detriment to the Complainant.

10 6.18. Although the Complainant states that there is nothing to suggest that the  
11 activities of the Respondent would show that the Domain Name is not an abusive  
12 registration, the Adjudicator considers that mere registration of the domain  
13 where it has a generic aspect does not amount to an abusive registration

14 6.19. The Complainant concludes that that the Respondent has registered the  
15 Domain Name for the primary purpose of selling it to the Complainant as  
16 demonstrated by the persistent approaches made by the Respondent to the  
17 Complainant regarding such a sale. The Complainant has however failed to show  
18 that Mr Shaq is the Respondent or that Mr Shaq is authorised by Respondent.

### 19 **7. The Respondent**

20 **7.1.** Although the Respondent has acknowledged service, the Respondent has not  
21 made a formal statement. The Respondent has informally advised the Registry  
22 that he is not linked to Mr Ranjan Shaq and that Mr Ranjan Shaq was acting  
23 without authority of the Respondent and claimed fraud by Mr Ranjan Shaq.

24 7.2. The Registry advised the Respondent that it should consider filing an FBI fraud  
25 complaint and file a copy of this formally under this CIDD Procedure together  
26 with the denial of authorised representation and other relevant matters

27 7.3. The Respondent failed to file any response.

28 7.4. As there is no document from the Respondent which contains a Statement of  
29 Truth, the adjudicator cannot take the informal communications with the  
30 Registry into account.

31

### 32 **8. Lacunae in Complainant Evidence**

#### 33 **8.1.** Generic usage

34 The adjudicator is of the opinion that the complained about domain "2K" has the  
35 potential to be generic and particularly notes the frequency of 2k sites at the  
36 millennium following the concern about Y2K issues and the generic use of 2k to  
37 mean 2000 and the Complainant has not addressed the question of the



## Channel Islands Internet Domain Name Registry Dispute Resolution Procedure

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1 potentially generic use of the domain. The Adjudicator comments that if the  
2 Respondent had filed a formal response that the 2k.gg was a generic domain, it  
3 is likely that the adjudicator would have found the Claimant had not adequately  
4 rebutted this, (although the Complainant may have filed additional rebuttal  
5 evidence in a right of Reply).

### 6 **8.2..gg implies gaming**

7 The adjudicator does not consider the use of the cctlid stem .gg to be indicative  
8 of gaming although the adjudicator acknowledges that there are many "good  
9 game" uses of the .gg domain stem.

10 **8.3.**The domain name(s) was/were registered and is/are being used in bad faith by  
11 offer of sale on behalf of Respondent by a linked person. The Complainant  
12 sought to persuade the adjudicator that the negotiations for sale by a third party  
13 established or provided evidence that the domain name(s) was registered and/or  
14 is being used in bad faith. The Complainant failed to provide any evidence that  
15 the Respondent and Mr Shaq were one and the same person.

### 16 **8.4.**Advertising for sale on Sedo

17 The Complainant claimed that the offering for sale of the domain on Sedo was  
18 evidence that the Respondent must have known about the offer for sale,  
19 however the Complainant failed to provide any evidence whatsoever that only  
20 the Respondent could have listed the domain for sale on the SEDO site. It would,  
21 in the adjudicator's opinion have been useful to have a statement direct from  
22 SEDO that only a domain registrant can list a domain for sale (or from  
23 FieldFisher as solicitors that they had made enquiries of SEDO who had  
24 confirmed the same).

### 25 **8.5.**Linkage to Mr Shaq via berlin.com email addresses

26 Similarly the Complainant has failed to provide any evidence about the use of  
27 the email addresses at berlin.com and merely asked the adjudicator to assume  
28 that because the Respondent and Mr Shaq have email addresses at @berlin.com,  
29 the adjudicator should draw an adverse inference of linkage. Without further  
30 evidence, the adjudicator is not inclined to do so. A simple request for  
31 confirmation of agency from the Registrant during negotiations would have been  
32 adequate evidence.

### 33 **8.6.**Unsubstantiated Out of pocket expenses of £24,999

34 Although the Complainant referred correspondence about what appears prima-  
35 facie to be excessive and/or Unsubstantiated Out of pocket expenses of \$24,999  
36 and claimed \$850 renewal fees to the Arbitrator, it has not provided comment on



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1           this.

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3   **9.** This was a most unsatisfactory complaint for one produced by a firm of solicitors in  
4   that it relied almost exclusively on an overwhelming amount of registered and  
5   unregistered trademark rights, together with correspondence from a third-party  
6   purporting to represent the Registrant. The assumption appearing to be that the  
7   Complainant's rights are so extensive that all other matters and burdens of showing  
8   additional elements should be ignored or overlooked. This is particularly concerning  
9   given the potentially generic nature of the Domain Name.

10

11   **10.**The Respondent's failure to file a response was therefore of material importance in  
12   the decision (especially as communication with the Respondent was established by  
13   the Registry).

14

15   **11.**The adjudicator has noted the findings in *IBM v Jonathan Stevens (CIDRS004)* and  
16   *FIFA v John Roundstone (CIDRS003)* and the very recent date of registration.

17

18   **12.**On the basis of the lacunae detailed above, the Complainant has failed to meet the  
19   burden of proof in relation to s3.1.1. of the Policy, namely that the registration was  
20   made with the intention of selling or renting the domain to the Complainant or a  
21   competitor.

22

23   **13.**On the basis of the lacunae detailed above, and the potentially generic nature of "2K"  
24   the Complainant has failed to meet the burden of proof in relation to s3.1.2. of the  
25   Policy, namely that the registration was made with a blocking intention.

26

27   **14.**No evidence of disruption was provided and the mere assumption that .gg implies  
28   gaming was inadequate and the Complainant has failed to meet the burden of proof  
29   in relation to s3.1.3. of the Policy, namely Disruption.

30

31   **15.**No evidence of confusion was provided and given the generic nature of the 2k  
32   domain, Complainant has failed to meet the burden of proof in relation to s3.2. of the  
33   Policy, namely Confusion, particularly in light of the failure to provide evidence about  
34   Sedo practice and whether only a registrant can list a domain for sale.

35

36   **16.**The adjudicator rejects parallels of *Global Projects Management Ltd v Citigroup*  
37   (2005) as the Citigroup name is in an entirely different category of well-known





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1 brands to the 2k name and the registration of the domain does not amount to  
2 instrument of fraud as defined in "Citigroup" or "One in a Million".

3  
4 **17.** Nor does the domain registration or usage amount to passing off on the evidence  
5 provided.

6  
7 **18.** There was no evidence provided that there was anything implying a representation of  
8 approval or official sanction by 2K on the site under either Seiko UK Ltd (DRS248) or  
9 L'Oreal principles.

10  
11 **19.** The adjudicator notes that the citing of a strong case within caselaw, does not  
12 strengthen a weak case on evidence.

13  
14 **20.** The adjudicator must therefore consider whether he can imply from the previous  
15 behaviour of the Registrant and the course of dealings alone amounts to grounds on  
16 which the domain should be transferred. The Respondent (whether under name  
17 Roundstone or Stevens) has numerous domains of well-known brands registered.  
18 The manner of dealing and, having the advantage of sight of correspondence from  
19 the FIFA and IBM cases, the adjudicator notes that the correspondence at annex J  
20 evidences a remarkable similarity to writing style and lack of coherence to the  
21 correspondence in FIFA and IBM cases referred to. On the slimmest of balance of  
22 probability, put at 51%, it is likely that Mr Shaq and Mr Roundstone might be the  
23 same person.

24  
25 **21.** In particular consideration was the complete failure of the Respondent to provide a  
26 formal response. A simply denial of authority and filing of a fraud complaint and  
27 other steps set out above would have resulted in the Complainant being adjudicated  
28 not to have met the burden and accordingly there are no grounds on which a bona-  
29 fide registrant is likely not to respond; however the poor quality of the evidence is  
30 also of concern and the Adjudicator is not prepared to state that this is a third strike  
31 under the domain dispute policy given the lack of certainty and poor quality of  
32 evidence provided.

### 33 34 **22. Decision**

35 The adjudicator is disappointed that the Complainant has seemingly relied on a  
36 preponderance of trademark rights and not sought to deal with the various other  
37 issues for consideration under the Domain Dispute policy and has relied on a tidal  
38 wave of trademark rights and mere assertions loosely based around previous  
39 decisions carrying it over the threshold, rather than addressing and fully arguing the



## Channel Islands Internet Domain Name Registry Dispute Resolution Procedure

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1 other factors. "The Complainant holds rights" being a very low hurdle which is over-  
2 focussed on repeatedly in many complaints.  
3 Under normal circumstances, and in particular if a response had been received from  
4 the Respondent, this case would have failed, and by the smallest of possible margins,  
5 the adjudicator considers on the balance of probability ( by about 1%) that due to  
6 the matters set out in paragraphs 20 and 21, there was an authorised attempt to  
7 register and sell the domain name to the Complainants at a sum in excess of bona-  
8 fide out-of-pocket expenses and accordingly the domain registration criteria is  
9 breached.

10

11 **23.** Accordingly, the Independent Expert:

12 (i) considers that the Domain Name should be transferred after the Appeal period to  
13 the Complainant;

14 (ii) considers that the evidence is unsafe for the ruling to be regarded as a third  
15 strike under the CIDD policy.

16

17 *Nick Lockett*

18 Nick Lockett

19 Independent Expert

20 Solicitor and Barrister\*

21 14<sup>th</sup> January 2018

22

23 \*Nick Lockett is a commercial and IP solicitor, having formerly been qualified/practising as a commercial, contract and intellectual property  
24 barrister. He was the first European author to publish on Internet Law and advisor in the first domain dispute in the UK and has been  
25 advising on intellectual property and internet law since 1992. He practices with adllegal.com.