

ADMINISTRATIVE PANEL DECISION

Merryvale Ltd. v. Nunnapat Ekouru

Case No. D2022-1088

1. The Parties

The Complainant is Merryvale Ltd., Guernsey, represented by Herzog, Fox & Neeman, Israel.

The Respondent is Nunnapat Ekouru, Thailand.

2. The Domain Name and Registrar

The disputed domain name <betway365.vip> is registered with Go France Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 30, 2022. On March 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 1, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 2022 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 April 4, 2022.

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 April 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 28, 2022.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on May 11, 2022. 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 company active in the online gaming and sport betting sector since 2006, which operates a number of online gaming websites. The Complainant is part of the Betway Group and claims over 1.98 million unique users worldwide in 2021 on its domain name <betway.com>.

The Complainant owns several trademarks which include the term BETWAY, including:

- European Union Trade Mark BETWAY (word), registered under number 004832325 on January 26, 2007, in classes 9 and 41;
- Australian trademark BETWAY (word), registered under number 1094468 on January 13, 2006, in classes 9 and 41;
- Thai trademark BETWAY (fig.), registered under number 933520 on December 6, 2016 in class 9; and
- Indonesian trademarks BETWAY (fig.), registered under numbers IDM000637248 and IDM000694263, on December 26, 2018, and April 27, 2020, in classes 9 and 41 respectively.

The disputed domain name was registered on April 26, 2021, and resolves to a website offering gambling services.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is nearly identical and confusingly similar to its BETWAY trademarks, as it consists only of the word "betway" with the addition of a generic term "365" and the generic Top-Level Domain ("gTLD") ".vip". The Complainant claims that these additions do not detract from the identity or confusing similarity between the disputed domain name and its BETWAY trademarks, and do not create an overall different impression.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name, as the Respondent is not affiliated with the Complainant and has not acquired any license or authorization from the Complainant to use the BETWAY trademarks. Further, the Complainant asserts that the Respondent is not commonly known by the disputed domain name and has not made any preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services. On the contrary, the Complainant claims that the Respondent's behaviour precludes such *bona fide* offering – attempting to attract, for commercial gain, Internet users to the website at the disputed domain name by creating a likelihood of confusion with the BETWAY trademarks as to the source, affiliation, or endorsement of the disputed domain name.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. According to the Complainant, the Respondent knew or should have known about the Complainant's trademarks, as they benefit from worldwide reputation. The Complainant claims that the Respondent is attempting to attract, for commercial gain, Internet users to the website at the disputed domain name by creating a likelihood of confusion with the BETWAY trademarks as to the source, affiliation or endorsement of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must demonstrate that the disputed domain name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

On the basis of the evidence presented, it is established that the Complainant owns several BETWAY trademarks.

The disputed domain name reproduces the BETWAY trademarks, with the addition of the term "365". In previous decisions, UDRP panels have already held on several occasions that the addition of other words to a complainant's mark does not prevent a finding of confusing similarity when the complainant's mark is recognizable or fully incorporated in the disputed domain name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8; *Intesa Sanpaolo S.p.A. v. Rampe Purda*, WIPO Case No. [D2010-1116](#); *Société des Bains de Mer et du Cercle des Etrangers à Monaco v. Mark Bolet*, WIPO Case No. [D2006-1245](#); *Fondation Le Corbusier v. Monsieur Bernard Weber, Madame Heidi Weber*, WIPO Case No. [D2003-0251](#); *Bayerische Motoren Werke AG ("BMW") v. Registration Private, Domains By Proxy, LLC / Armands Piebalgs*, WIPO Case No. [D2017-0156](#)). In this case, the BETWAY mark is clearly recognizable and fully incorporated in the disputed domain name.

Additionally, it is well-established that the applicable gTLD, here ".vip", is typically not to be taken into account for the purpose of assessing confusing similarity under the Policy, as it is merely a standard registration requirement ([WIPO Overview 3.0](#), section 1.11).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's BETWAY trademarks and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, evidence of the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) may be established, in particular, by any of the following circumstances:

- (i) prior to becoming aware of the dispute, the Respondent has used the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services, or made serious preparations to do so;
- (ii) the Respondent is known by the disputed domain name in question, even without having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent to divert consumers for profit by creating confusion or to tarnish the trademark or service mark at issue.

Where the Complainant establishes *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production on this element shifts to the Respondent to provide relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent does not provide such relevant evidence, the Complainant is deemed to have satisfied the

second element ([WIPO Overview 3.0](#), section 2.1).

The Complainant provides *prima facie* evidence that the Respondent is not affiliated with the Complainant, has never been licensed or otherwise authorized to use the BETWAY trademarks and is not commonly known by the disputed domain name. Further, the Complainant provides *prima facie* evidence that the Respondent has not, before the original filing of the Complaint, used or made preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services. On the contrary, the disputed domain name is used to offer gaming and gambling services similar to those offered by the Complainant, which suggests that the Respondent is attempting to attract, for commercial gain, Internet users to the website at the disputed domain name, by creating a likelihood of confusion with the BETWAY trademarks as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name. Such use cannot constitute a *bona fide* offering of goods and services as it capitalizes on the reputation and goodwill of the Complainant's trademark and does not explain the lack of relationship between the Parties. Moreover, the construction of the disputed domain name, incorporating the BETWAY trademarks in their entirety, is clearly intended to, and does, play on the Complainant's trademarks.

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not exercised its right to defend itself and has not asserted the existence of any rights or legitimate interest in the disputed domain name, so the Panel concludes that the second condition of paragraph (4)(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that evidence that a disputed domain name has been registered and is being used in bad faith may be adduced for the purposes of paragraph 4(a)(iii) in particular in certain circumstances, the fourth of which is that:

(iv) by using that domain name, [the respondent has] knowingly attempted to attract, for profit, Internet users to a website or other online space [it] owns, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsor, affiliation, or endorsement of [its] website or web space or a product or service offered therein.

On the basis of these provisions, the UDRP panels have already held on several occasions that the mere registration of a domain name that is identical or confusingly similar to a well-known or widely-known trademark by an unaffiliated entity may be sufficient to create a presumption of bad faith, as the respondent knew or should have known that its registration would be identical or confusingly similar to the complainant's trademark ([WIPO Overview 3.0](#), section 3.2.2).

The disputed domain name was registered on April 26, 2021, which is subsequent to the registration of the Complainant's BETWAY marks between 2006 and 2020. In previous decisions, UDRP panels have found that the Complainant's BETWAY trademarks are well-known (see, e.g., *Merryvale Limited v. Sg Group*, WIPO Case No. [D2020-3008](#); *Merryvale Limited v. reza biabangard*, WIPO Case No. [D2021-2691](#); *Merryvale Limited v. Privacy service provided by Withheld for Privacy ehf / WorldWide 360, 360 Blogger*, WIPO Case No. [D2021-4205](#)). Accordingly, the Panel finds that the Respondent registered the disputed domain name in bad faith.

Additionally, the Complainant demonstrates that the Respondent is offering gaming and gambling services on the disputed domain name similar to those offered by the Complainant. This demonstrates an attempt by the Respondent to attract, for commercial gain, Internet users to the website at the disputed domain name, by creating a likelihood of confusion with the BETWAY trademarks as to the source, sponsorship, affiliation or endorsement of the disputed domain name. As a result, the Complainant demonstrates that the Respondent uses the domain name to capitalize on the reputation and goodwill of the Complainant's BETWAY trademarks ([WIPO Overview 3.0](#), section 3.1.4).

Accordingly, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and hence the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <betway365.vip> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: May 25, 2022