

ADMINISTRATIVE PANEL DECISION

Merryvale Limited v. k s
Case No. D2022-4679

1. The Parties

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

The Respondent is k s, Thailand.

2. The Domain Name and Registrar

The disputed domain name <betway99-thai.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2022. On December 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 18, 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 December 27, 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 December 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 20, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on January 26, 2023. 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 member of Super Group, which is listed on the New York Stock Exchange. Super Group is the holding company of global online sports betting and gaming businesses, including BETWAY, an online sports betting brand having its website at “www.betway.com” with over 1.98 million unique users worldwide in 2021. The current monthly average number of registered and active customers accessing the BETWAY branded services is approximately 489,808 customers, with an annual average of 161,308 customers in 2019 and 213,452 customers in 2020, and over 500,000 customers in 2021.

Super Group has invested and continues to invest in promoting its offerings under the BETWAY brand and trademarks around the world. In 2019, the relevant marketing budget was EUR 134 million, in 2020 it increased to EUR 136 million, and in 2021 to EUR 141 million.

The Complainant owns a number of trademark registrations in various jurisdictions for its BETWAY trademark, including for instance the European Union trademark registration No. 004832325, registered on January 26, 2007.

The disputed domain name was registered on September 3, 2021, and redirected to a website in Thai language, prominently featuring the Complainant’s trademark, offering betting and gambling services, and referring to a sports team sponsored by the Complainant, and imitating the Complainant’s website. Currently the disputed domain name redirects to a webpage with pay-per-click links.

5. Parties’ Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant’s trademark. The disputed domain name consists only of the word “betway”, with the addition of the number “99” along with a hyphen, the geographical term “thai”, and the suffix “.com”. These generic additions do not detract from the identity or confusing similarity between the disputed domain name and the Complainant’s trademark, nor create an overall different impression. The term “betway” is the dominant component of the disputed domain name.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with any of the companies within the Super Group, including the Complainant and has never been licensed or otherwise authorized to use the Complainant’s trademark. The Respondent, nor any business operated by it, is or has ever been commonly known by the disputed domain name. The Respondent has not used, or made demonstrable preparations to use, the disputed domain name or any name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. The website at the disputed domain name is fraudulent, since it uses the Complainant’s trademark while offering gaming and gambling services similar to those offered by companies within the Super Group. By using the Complainant’s trademark within the disputed domain name and the content of the website at the disputed domain name, the Respondent is attempting to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of that website. If Internet users associate the Respondent’s website with the Complainant’s brand, such mistake might damage the reputations of the Complainant’s and of other companies within the Super Group.

The disputed domain name was registered and is being used in bad faith. The Complainant owned its famous trademark long before the Respondent registered the disputed domain name, therefore, it is clear that the Respondent knew, or at the very least should have known, about the Complainant’s marks and the Super Group’s operation. The use of the disputed domain name, which is at least confusingly similar to the Complainant’s trademark, proves that the Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. The fact that the Respondent

registered the disputed domain name that consists of the Complainant's well-known trademark for online gaming and betting services, is in and of itself indicative of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)"), the applicable generic Top-Level Domain ("gTLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds, that in the present case the addition of number "99", the geographical term "thai", and a hyphen do not prevent finding confusing similarity of the disputed domain name to the Complainant's trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence does not suggest that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The disputed domain name used to redirect Internet users to a website with a logo similar to the Complainant's and designed to make the Internet users believe that they actually access the website authorized by the Complainant. Past UDRP panels confirmed that such actions prove the registrant has no rights or legitimate interests in a disputed domain name (see *Daniel C. Marino, Jr. v. Video Images Productions, et al.*, WIPO Case No. [D2000-0598](#), *Houghton Mifflin Co. v. Weatherman, Inc.*, WIPO Case No. [D2001-0211](#)). Moreover, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner and the present circumstances demonstrate that the disputed

domain name is both composed and used in a means designed to convey an affiliation to the Complainant, contrary to the fact.

According to section 2.9 of the [WIPO Overview 3.0](#), the use of a domain name to host a parked page comprising pay-per-click links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. The Panel finds this applies to the current use of the disputed domain name in the present case.

Considering the above, the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.2.2 of the [WIPO Overview 3.0](#), further factors including the nature of the domain name, the chosen Top-Level Domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark. In the present case the Respondent shortly after registration of the disputed domain name incorporating the Complainant's trademarks placed a website imitating the Complainant's website. The Panel finds that the nature of the disputed domain name and its use confirms the Respondent knew or should have known of the Complainant's prior trademark rights, which confirms the bad faith.

According to paragraph 4(b)(iv) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. In this case, the disputed domain name was resolving to a website featuring the Complainant's trademark and falsely pretended to be authorized by the Complainant to intentionally attract Internet users by creating likelihood of confusion with the Complainant's trademark as to the source of the website and its products. The Panel finds the above confirms the disputed domain name was registered and used in bad faith. Further use of the disputed domain name to host a pay-per-click parking page by the Respondent creates a likelihood of confusion with the Complainant's trademark and potentially generates revenue, which also confirms the bad faith.

The Respondent ignored its possibility to comment on the contrary and provide any good explanations to prove its good faith while registering and using the disputed domain name.

Considering the above, the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under paragraph 4(a)(iii) 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, <betway99-thai.com>, be transferred to the Complainant.

Taras Kyslyy

Taras Kyslyy

Sole Panelist

Date: February 9, 2023