

ADMINISTRATIVE PANEL DECISION

Foundcom Limited v. Leonid Kurza, Igor Shanska and Dzianis Danilkovich
Case No. D2024-1928

1. The Parties

The Complainant is Foundcom Limited, Cyprus, represented by SIA B&B Services, Latvia.

The Respondents are Leonid Kurza, United Arab Emirates; Igor Shanska, France; Dzianis Danilkovich, Belarus.

2. The Domain Names and Registrars

The disputed domain name <brazino777-cassino.com> is registered with GoDaddy.com, LLC.

The disputed domain name <brazino777ec.com> is registered with Dynadot Inc.

The disputed domain name <777-brazino.site> is registered with NameCheap, Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 8, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. Also on May 8, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Domains By Proxy, LLC, Withheld for Privacy ehf and Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 14, 2024, 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 May 20, 2024.

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 Respondents of the Complaint, and the proceedings commenced on May 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 17, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondent's default on June 19, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on June 21, 2024. 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 provides online casino, gaming and gambling software and services, including online via the website "www.brazino777.com" since 2018.

The Complainant is the owner of several trademark registrations for BRAZINO and BRAZINO777, including the following, as per copies of the trademark registration certificates submitted as annexes 3 to the Complaint:

- European Union trademark registration No. 018731200 for BRAZINO (word mark), filed on July 11, 2022, and registered on November 9, 2022, in classes 9 and 41;
- International trademark registration No. 1691796 for BRAZINO word mark, registered on July 26, 2022, in classes 9 and 41;
- European Union trademark registration No. 018763876 for BRAZINO777 (word mark), filed on September 16, 2022, and registered on January 19, 2023, in classes 9 and 41;
- International trademark registration No. 1699932 for BRAZINO777 (word mark), registered on October 13, 2022, in classes 9 and 41.

The Complainant is also the owner of the domain name <brazino777.com>, which was registered on February 14, 2018, and is used in connection with the gaming platform run by the Complainant and its parent company Alpha Games N.V.

The disputed domain names <brazino777-cassino.com> registered on January 4, 2023, <brazino777ec.com> registered on February 7, 2024, and <777-brazino.site>, registered on November 27, 2023, currently resolve to inactive websites. According to the screenshots submitted by the Complainant – which have not been challenged by the Respondents –, prior to the present proceeding, the disputed domain names redirected to websites promoting and offering online gaming and gambling services and displaying the Complainant's trademarks.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names <brazino777-cassino.com>, <brazino777ec.com> and <777-brazino.site> are confusingly similar to the trademarks BRAZINO and BRAZINO777 in which the Complainant has rights as they reproduce the trademarks in their entirety with the mere addition of the descriptive term "cassino" (misspelt version of "casino"), the element "ec" and the generic Top Level Domains (gTLDs) ".com" and ".site", which are typically disregarded for the purposes of

the comparison made under the first element.

The Complainant submits that the Respondents have no rights or legitimate interests in the disputed domain names since: i) the disputed domain names have not been registered and used for a legitimate or fair use in view of their composition and use, as they incorporate the Complainant's trademarks and were pointed to websites promoting and offering gaming and gambling services whilst displaying the Complainant's trademarks and using the same design, appearance and content as that published by the Complainant on its own website (as well as the name of the Complainant's parent company, as far as the disputed domain name <777-brazino.site> is concerned), thus impersonating or suggesting sponsorship or endorsement by the Complainant; ii) the Respondent's registration of domain names almost identical to the Complainant's earlier domain name registrations and trademarks, whilst making use of the Complainant's trademarks to offer the same services as the Complainant, does not constitute a bona fide offering of goods or services under the Policy; iii) the Respondents are not commonly known by the disputed domain names; and iv) the Respondents were in no way permitted or authorized to apply for, or use, any domain name incorporating the Complainant's trademarks.

With reference to the circumstances evidencing bad faith, the Complainant indicates that considering i) the prior registration and use of the Complainant's trademarks and of the related domain name <brazinos777.com>; ii) the fact that the word "Brazino" is not a common dictionary word, but an invented or fanciful word, having a high degree of inherent distinctiveness; iii) the nature and contents of the websites to which the disputed domain names resolved, clearly showing a relation to the gaming and gambling industry, in direct competition with the Complainant, it is highly unlikely that the disputed domain names were chosen by the Respondents occasionally and unintentionally without seeking to create an impression of association with the Complainant and its trademarks.

In view of the use of the disputed domain names, the Complainant submits that the Respondents intended to disrupt the business of the Complainant and that they intentionally attempted to attract, for commercial gain, internet users to their websites by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of their websites, taking unfair advantage from the reputation and notoriety of the Complainant's trademarks or to tarnish them.

B. Respondents

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

6. Discussion and Findings

6.1 Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the Complainant asserted that the disputed domain names, although registered in the name of different entities, are under common control since:

- i) the Respondents have used the same naming in all the disputed domain names, as they consist of combinations of the same wording;
- ii) all the disputed domain names have been registered using privacy services;
- iii) all the disputed domain names are registered with registrars based in the United States of America;
- iv) all the disputed domain names use the same name (host) servers;
- v) the registrant contact details indicated in the Whois records are false since they include fake names and addresses.

The Panel notes that the disputed domain names all incorporate the Complainant's trademarks BRAZINO and BRAZINO777 and, according to the records, have been used in connection with websites featuring the Complainant's trademarks where gaming and gambling services under the Complainant's trademarks were promoted. The Amended Complaint has been duly notified to the Respondents, which have all failed to file a Response.

As regards fairness and equity, the Panel therefore sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondents") in a single proceeding.

6.2. Substantive Issues

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademarks or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Indeed, the Complainant has provided evidence of ownership of trademark registrations for BRAZINO and BRAZINO777 in several countries.

The Panel finds that both the Complainant's trademarks are recognizable within the three disputed domain names, despite the inversion of the number "777" and term "brazino" in the disputed domain name <777-brazino.site>. Accordingly, the disputed domain names are confusingly similar to the Complainant's marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the addition of the term "cassino" (clear misspelling of "casino"), the two letters "ec" and/or hyphens does not prevent a finding of confusing similarity between the disputed domain names and the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

According to the evidence on record, there is no relationship between the Complainant and the Respondents, and the Complainant has not authorized the Respondents to register or use its trademarks or the disputed domain names.

Moreover, there is no element from which the Panel could infer that the Respondents have rights over the disputed domain names, or that the Respondents might be commonly known by the disputed domain names.

The Panel also finds that the Respondents’ use of the disputed domain names does not amount to a bona fide offering of goods or services, or a legitimate, non-commercial or fair use. Indeed, according to the evidence on record, the disputed domain names, currently resolving to inactive websites, were pointed prior to the start of this proceeding to websites displaying the Complainant’s trademarks and promoting online gambling and gaming services, reproducing the Complainant’s trademarks and without displaying any clear and accurate disclaimer of non-affiliation with the Complainant.

In addition, the disputed domain names, incorporating the Complainant’s registered trademarks BRAZINO and BRAZINO777 in combination with the term “cassino” (misspelled version of “casino”), the two letters “ec” and/or mere hyphens, undoubtedly suggest sponsorship or endorsement by the Complainant. Even where a domain name consists of a trademark plus additional terms, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds that, in view of the prior registration and use of the trademarks BRAZINO and BRAZINO777 in connection with the Complainant’s gaming and gambling services, including online via the Complainant’s website at “www.brazino777.com” since 2018, the Respondents were or could have been aware of the Complainant and its trademarks BRAZINO and BRAZINO777 at the time of registration of the disputed domain names.

The Panel also notes that, considering the disputed domain names entirely incorporate the Complainant’s trademarks, which are coined marks with no dictionary meaning, and in light of the prior use of the disputed domain names in connection with websites promoting gaming and gambling services under the Complainant’s trademarks, the Respondents were indeed aware of the Complainant’s trademarks and

intended to target the Complainant and its marks. [WIPO Overview 3.0](#), section 3.2.2.

The Panel also finds that, by pointing the disputed domain names to the websites described above, offering online gaming and gambling services in direct competition with the Complainant's services and publishing the Complainant's marks without publishing any disclaimer apt to inform users of the lack of affiliation of the Respondents' websites with the Complainant, the Respondents have intentionally attempted to attract Internet users to their websites for commercial gain, by creating a likelihood of confusion with the Complainants' trademarks BRAZINO and BRAZINO777 as to the source, sponsorship, affiliation or endorsement of their websites and the services offered therein according to paragraph 4(b)(iv) of the Policy.

Lastly, though all the disputed domain names pointed to active websites prior to the start of the proceeding, at the time of drafting the present decision, they resolve to inactive websites. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondents concealing their identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's trademarks and the composition of the disputed domain names and finds that, in the circumstances of this case, the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

Therefore, the Panel finds that the Complainant has also established the third element 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 names <brazino777-cassino.com>, <brazino777ec.com>, and <777-brazino.site> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: July 5, 2024