

ADMINISTRATIVE PANEL DECISION

Merryvale Ltd. v. Contact Privacy Inc. Customer 12410192528 / Wichai
Case No. D2022-0109

1. The Parties

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

The Respondent is Contact Privacy Inc. Customer 12410192528, Canada / Wichai, Thailand.

2. The Domain Name and Registrar

The disputed domain name <royalbetway.info> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2022. On January 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 13, 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 January 17, 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 in English on January 31, 2022.

The Center sent an email communication in English and Thai to the parties on February 10, 2022, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Thai. The Complainant submitted a request for English to be the language of the proceeding in an amended Complaint on February 13, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended Complaints 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 February 21, 2022. In accordance with the Rules,

paragraph 5, the due date for Response was March 13, 2022. The Response was filed with the Center on February 24, 2022. The Center sent a possible settlement email to the Parties on February 25, 2022. The Complainant did not request a suspension of the proceeding for settlement discussion. The Center informed the Parties of its commencement of Panel appointment process on March 14, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on March 18, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

4. Factual Background

The Complainant is Merryvale Ltd., a member of the Betway Group, operating in the online gaming and spot betting fields and owning several trademark registrations for BETWAY, among which:

- European Union Trade Mark No. 004832325 for BETWAY, registered on January 26, 2007;
- European Union Trade Mark No. 012771564 for BETWAY and design, registered on September 1, 2014; and
- Thailand Trademark Registration No. 933520 for BETWAY and design, registered on December 6, 2016.

The Complainant operates on the Internet at the main website “www.betway.com”, as well as with many other generic Top-Level Domains (“gTLDs”) and country code Top-Level Domains (“ccTLDs”) including the trademark BETWAY.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on May 13, 2021, and when the Complaint was filed the disputed domain name redirected to a website displaying the Complainant’s figurative trademark and offering online gaming and gambling services in the Thai language.

On June 14, and 15, 2021, the Complainant’s legal representatives wrote a cease-and-desist letter to both the Registrar and the content hosting services provider of the disputed domain name, without obtaining any result.

5. Parties’ Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its trademark BETWAY, as the disputed domain name wholly contains the Complainant’s trademark with the addition of the generic term “royal”.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark BETWAY is distinctive and internationally known in the fields of online gaming and sport betting. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name with the purpose of intentionally attempting to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement, qualifies as bad faith registration and use.

B. Respondent

The Respondent states that it did not know that there was a copyright infringement and that the data and server have been deleted.

6. Discussion and Findings

6.1 Language of Proceeding

According to paragraph 11(a) of the Rules, the Panel decides that the language of the proceeding will be English. The language of the Registration Agreement of the disputed domain name is Thai. The Complainant has requested English to be the language of the proceeding since the disputed domain name consists of English characters and on the website at the disputed domain name the Complainant's figurative trademark is reproduced in Latin characters. The Panel finds that it would be not only unnecessary but also unfair, both economically and timewise, to request the Complainant to translate the Complaint. Furthermore, the Respondent did not comment to the Complainant's request to use English and submitted a reply in English. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1.

6.2 Substantive Issues

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant is the owner of the trademark BETWAY both by registration and acquired reputation and that the disputed domain name is confusingly similar to the trademark BETWAY.

Regarding the addition of the term "royal", the Panel notes that it is now well established that the addition of terms or letters to a domain name does not prevent a finding of confusing similarity between the disputed domain name and the trademark (see, e.g., *Aventis Pharma SA., Aventis Pharma Deutschland GmbH v. Jonathan Valicenti*, WIPO Case No. [D2005-0037](#); *Red Bull GmbH v. Chai Larbthanasub*, WIPO Case No. [D2003-0709](#); and *America Online, Inc. v. Dolphin@Heart*, WIPO Case No. [D2000-0713](#)). The addition of the term "royal" does not therefore prevent the disputed domain name from being confusingly similar to the Complainant's trademark. See [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a gTLD, in this case “.info”, is ignored when assessing the similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is confusingly similar to the Complainant’s trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is always more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent is not currently associated with the Complainant in any way, is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name: the Respondent, in the website at the disputed domain name, was displaying the Complainant’s figurative trademark and offering online gaming and gambling services, an activity capitalizing on the Complainant’s trademark and reputation.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not rebutted the Complainant’s *prima facie* case. The Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that “[...] for the purposes of paragraph 4(a)(iii) 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:

(i) circumstances indicating that [the Respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [the Respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent has] engaged in a pattern of such conduct; or

(iii) that [the Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent’s] 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 [the Respondent’s] website or location or of a product or service on [the Respondent’s] website or location”.

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant’s trademark BETWAY in the fields of online gaming and sport betting is clearly established and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the disputed domain name, especially because the disputed domain name resolved to a website where the Complainant’s figurative trademark was reproduced and explicit reference to the Complainant’s field of activity was made.

The Panel further notes that the disputed domain name is also used in bad faith since on the relevant website the Complainant’s figurative trademark was displayed and very similar services as the Complainant’s ones were offered, with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant’s trademark as to the disputed domain name’s source, sponsorship, affiliation or endorsement.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order to create confusion with the Complainant’s trademark and attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith. Moreover, despite participating in this proceeding, the Respondent has not provided any credible explanation for the Respondent’s choice, or use, of the disputed domain name.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

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 <royalbetway.info> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: March 29, 2022