

## **ADMINISTRATIVE PANEL DECISION**

Merryvale Limited v. Zhen Wang  
Case No. D2022-1701

### **1. The Parties**

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

The Respondent is Zhen Wang, China

### **2. The Domain Name and Registrar**

The disputed domain name <betway008.com> is registered with GMO Internet, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 10, 2022. On May 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 12, 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 May 24, 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 May 29, 2022.

On May 24, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On May 29, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Japanese of the Complaint, and the proceedings commenced on May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on June 21, 2022.

The Center appointed Erica Aoki as the sole panelist in this matter on July 7, 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 member of the Super Group (NYSE:SGHC), comprising, *inter alia*, the Betway Group of companies, which enjoys a pre-eminent reputation in the online gaming and sport betting fields. The Betway Group companies, and the Complainant amongst them, operate several online gaming websites under the brand name "Betway" ("Betway").

The Betway brand entered the online gaming market in 2006, via the innovative website located at <betway.com> ("http://www.betway.com") (the "Betway Website"). Since its inception, the activity under the Betway name has been at the forefront of, and has helped to shape, the online gaming industry.

The Betway Website is one of the leading gaming websites in the world with over 1.98 million unique users worldwide in 2021. Furthermore, the current monthly average number of registered and active customers accessing the Betway branded services is approximately 305,291 customers, with an annual average of 161,308 customers in 2019 and 213,452 customers in 2020, and over 500,000 customers in 2021.

The Complainant has trademark registrations for BETWAY in multiple jurisdictions, including the European Union Trade Mark No. 004832325 registered on January 26, 2007.

The disputed domain name <betway008.com> was registered on July 2, 2021. The disputed domain name is linked to a website which appear to be used for displaying pornographic and gambling content and videos.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant, as part of the Betway Group, has invested, and continues to invest, substantial sums in promoting the Betway Group's offerings under the Betway brand and trademarks around the world. In 2019, the relevant marketing budget in connection with the Betway brand was EUR 134 million, in 2020 it increased to EUR 136 million, and in 2021 to EUR 141 million.

The Betway Group has and continues to extensively advertise its Betway brand. One particular example of the promotion of the Betway brand by the Complainant is its sponsorship of the West Ham United Club with a shirt sponsorship arrangement for over GBP 60 million.

The Complainant is the proprietor of trademark registrations for the word mark BETWAY in, *inter alia*, the European Union, Russian Federation, United Kingdom, Canada, Argentina, Brazil, Mexico, South Africa, Australia, India, New Zealand, and China (together the "BETWAY Marks").

The Complainant owned and used the BETWAY Marks long before the Respondent had registered the disputed domain name and had been in existence for over fifteen (15) years, with millions of users worldwide.

The Complainant contends that the disputed domain name is identical and confusingly similar to the Complainant trademark BETWAY, as it consists only of the word "BETWAY", with the addition of the number "008" and the suffix and that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

## B. Respondent

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

## 6. Discussion and Findings

The Complainant is required to establish the requirements specified under paragraph 4(a) of the Policy:

(i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in respect of which the Complainant has rights; and

(ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) that the disputed domain name has been registered and is being used in bad faith.

### 6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Japanese. Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

However, as noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. General Energy a/k/a Edison GE GEEEEGE.COM a/k/a Edison-GE and Edison Electric Corp.*, WIPO Case No. [D2006-0334](#)).

In deciding whether to allow the proceeding to be conducted in a language other than the language of the Registration Agreement, and to require the Complainant in an appropriate case to translate the Complaint into the language of that agreement, the Panel must have regard to all “the relevant circumstances” of the case. The factors that the Panel should take into consideration include *inter alia* whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without causing injustice to the Parties.

According to section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), prior UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain name registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain name, the use of a particular language agreement for some (but not all) of the disputed domain name, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

The Complainant has submitted a request that the language of the proceeding be English. The Complainant contends that would have to retain specialized translation services in order to proceed in Japanese, which would impose an extra burden on the Complainant and unnecessarily delay the proceeding. Further, the

Complainant argues that the disputed domain name consists of Latin script, not Japanese characters and that the Respondent was involved in another WIPO UDRP Decision proceeding, *Amundi S.A. v. WangZhen Guang*, WIPO Case No. [D2019-1051](#), in which the Panel ruled that the language of the proceeding shall be English.

The Panel notes that the Center notified the Respondent in Japanese and English regarding the language of the proceeding and the Respondent was invited to present its objection to the proceeding being held in English and if the Center did not hear from the Respondent by the specified due date, the Center would proceed on the basis that the Respondent had no objection to the Complainant's request that English be the language of the proceeding. The Respondent had the opportunity to raise objections or make known its preference but did not do so. The Panel further notes that the Center notified the Respondent in Japanese and English regarding the commencement of the proceeding, and the Respondent was informed that it could file a Response either in Japanese or English, but the Respondent did not submit any response. The Respondent is located in China, where Japanese is not a common language.

In addition, the disputed domain name is in Latin characters. The Panel also finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Japanese.

Taking all these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

## **6.2 Substantive Issues**

### **A. Identical or Confusingly Similar**

Based on the facts presented by the Complainant, this Panel finds that the disputed domain name is confusingly similar to a mark in which the Complainant has rights under Policy, paragraph 4(a)(i). The Complainant has established its rights in BETWAY through registration and use. The Panel finds that there is no doubt that the disputed domain name is confusingly similar to the Complainant's registered trademark, as the disputed domain name includes the Complainant's marks in full, with only the addition of the number "008", which does not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#)).

### **B. Rights or Legitimate Interests**

The Panel finds the following on record in this proceeding under the Policy:

The Respondent is in default and thus has made no affirmative attempt to show any rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy indicates that a registrant may have rights or legitimate interests in a domain name if it uses the domain name in connection with a *bona fide* offering of goods or services prior to notice of the dispute. In this regard, the Complainant contends that the Respondent is in no way connected with the Complainant and has no authorization to use any of the Complainant's trademarks. The disputed domain name was used to direct to a website which appear to be used for displaying pornographic and gambling content and videos, which cannot constitute a noncommercial nor *bona fide* offering of goods and services. There is no evidence on record that the Respondent is or was commonly known by the disputed domain name as an individual, business, or other organization.

There is no evidence on record that the Respondent is using the disputed domain name in connection with *bona fide* offering goods or services or making a legitimate noncommercial or fair use of the disputed domain name.

Thus, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Panel therefore finds that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, under the Policy, paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith.

Previous UDRP panels have found that registration of a domain name that is identical or confusingly similar (particularly domain name incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4). The Complainant's BETWAY trademarks was registered long before the registration of the disputed domain name. The Complainant has extensively promoted its products and services under the BETWAY trademarks. Also, considering the fame and distinctiveness of the Complainant's BETWAY trademarks and the Complainant's prior registration of the domain name, the Panel finds that it is most likely that the Respondent was aware of the Complainant's rights to BETWAY trademarks at the time the disputed domain name was registered, indicating that such registration was made in bad faith.

The disputed domain name is used to direct to a website which appear to be used for displaying pornographic and gambling content and videos.

It is noted by the Panel that: (i) the BETWAY trademarks are distinctive and well-known throughout the world; (ii) the Respondent failed to file a Response; and (iii) there is not any plausible good faith use to which the disputed domain name may be put.

Based on the evidence presented, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to an 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 other online location, and this constitutes evidence of bad faith under Policy, paragraph 4(b)(iv).

Accordingly, and as also supported by the Panel's findings above under the second element of the Policy, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith under Policy, paragraph 4(a)(iii).

### **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 <betway008.com> be transferred to the Complainant.

/Erica Aoki/

**Erica Aoki**

Sole Panelist

Date: July 21, 2022.