

ADMINISTRATIVE PANEL DECISION

Merryvale Limited v. Whois Agent, Domain Protection Services, Inc. / k s
Case No. D2022-3094

1. The Parties

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

The Respondent is Whois Agent, Domain Protection Services, Inc., United States of America / k s, Thailand.

2. The Domain Name and Registrar

The disputed domain name <betway88-thai.com> (“the Domain Name”) 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 August 22, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 August 23, 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 August 25, 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 August 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 15, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on September 16, 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

Complainant is a member of Super Group, which is listed on the New York Stock Exchange. Super Group is the holding company of leading global online sports betting and gaming businesses. Companies included in the Super Group operate a number of online gaming websites under the brand name BETWAY.

The BETWAY brand entered the online gaming market in 2006, via the website “www.betway.com” (the “Betway Website”). The Betway Website is, per Complaint, 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 489,808 customers, with an annual average of 161,308 customers in 2019, 213,452 customers in 2020, and over 500,000 customers in 2021. 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.

Complainant is the proprietor of numerous trademark registrations for BETWAY around the world, including the European Union Trademark Registration no 4832325, BETWAY (word), filed on January 12, 2006, and registered on January 26, 2007, for goods and services in international classes 9 and 41.

The Domain Name was registered on November 1, 2021, and leads to a website (the “Website”) mimicking that of Complainant, purportedly offering online gaming and gambling services similar to those provided by Complainant’s group while making use of Complainant’s mark. In addition, the Website contains the logo of the West Ham United football team, sponsored by companies within the Super Group, and pictures showing the club’s players wearing BETWAY branded apparel.

5. Parties’ Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The Domain Name incorporates Complainant's BETWAY trademark in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#)).

The addition of the number "88" along with the geographical term "thai" and a hyphen, does not prevent a finding of confusing similarity as the BETWAY trademark remains clearly recognizable within the Domain Name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8).

The generic Top-Level Domain ("gTLD") ".com" is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

The Panel finds that the Domain Name is confusingly similar to Complainant's BETWAY trademark.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent's 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) Respondent (as an individual, business, or other organization) has been commonly known by the Domain Name, even if it has acquired no trademark or service mark rights; or
- (iii) Respondent is 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.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name is used to host the Website to impersonate Complainant and attempt to mislead Internet users into thinking that the services purportedly offered on the Website originate from Complainant. Such use demonstrates neither a *bona fide* offering of goods nor a right or legitimate interest of Respondent (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#)).

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) that 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that 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, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Because the BETWAY trademark had been widely used and registered by Complainant before the Domain Name registration and enjoyed reputation in the relevant business sector (*Merryvale Limited v. Sg Group*, WIPO Case No. [D2020-3008](#)), the Panel finds it more likely than not that Respondent had Complainant’s mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

Respondent should have known about Complainant’s rights, as such knowledge is readily obtainable through a simple browser search and also due to Complainant’s nature of business, provided also online (see *Caesars World, Inc. v. Forum LLC.*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

Furthermore, the content of the Website gives the impression that it originates from Complainant, prominently displaying BETWAY signs on the Website and mimicking the website of Complainant, thereby giving the false impression that the Website emanates from Complainant and is its main website. This further supports registration in bad faith reinforcing the likelihood of confusion with Complainant’s trademark and business, as Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4 and 3.2.1).

The above further supports the finding that Respondent likely knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc*, WIPO Case No. [D2015-0403](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name was employed to host the Website, which appeared falsely to be that of Complainant.

Furthermore, the use of the Domain Name to resolve to a website passing itself off as the website of Complainant, whether for phishing of sensitive data from Internet users, or otherwise seeking to take unfair advantage of Complainant’s mark, supports a finding of bad faith in these circumstances (See section 3.4 of the [WIPO Overview 3.0](#)).

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Name in bad faith.

Complainant has established 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, <betway88-thai.com>, be transferred to the Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: September 29, 2022