

## **ADMINISTRATIVE PANEL DECISION**

Tipico Group Ltd v. Alex Till  
Case No. D2022-3601

### **1. The Parties**

The Complainant is Tipico Group Ltd, Malta, represented by Boehmert & Boehmert, Germany.

The Respondent is Alex Till, Germany.

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

The disputed domain name <tiperio.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2022. On September 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 30, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming it is the Registrar for the disputed domain name;
- (b) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint;
- (c) stating the registration agreement is in English;
- (d) confirming that the registration agreement included an acknowledgement that the disputed domain name was registered subject to the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”).

The Center sent an email communication to the Complainant on October 5, 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 amendment to the Complaint on October 5, 2022.

The Center verified that the Complaint together with the amendment to the 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 October 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 30, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on November 4, 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 an international provider of sports betting services and casino games, headquartered in St Julian’s, Malta.

The Complainant was founded in 2004. According to the Complaint, the Complainant is a market leader for Sports betting in the German market with over 1,200 betting shops throughout the country. It also has branches in, Austria, Croatia, Gibraltar, United Kingdom, Colombia and Malta. The Complainant has more than 6,000 employees in the Tipico Group as a whole and its associated franchise network.

The Complainant states that it is licensed by the appropriate authorities in Germany, Austria and Malta to conduct betting operations online and from physical outlets.

The Complaint claims that the Complainant has invested in substantial marketing efforts to promote its brand. These efforts include sponsorships of both FC Bayern Munich and the German Football League itself.

The Complainant’s online operations are conducted through a website at “www.tipico-group.com”. Some images from the website are included in the Complaint which is otherwise inaccessible from locations outside the jurisdictions where the Complainant is licensed. Notable features of the website are the use of a black and red, or a largely red and white, colour scheme. The brand name “tipico” also appears at the top in italics and a lower-case sans serif font.

The Complainant is the owner of at least four registered trademarks:

- (a) International Registration No. 863984, TIPICO, registered on May 25, 2005 in respect of betting services in International Class 41 and designating the European Union, Switzerland, Turkey and the United States of America (“United States”);
- (b) European Union Trademark No. 003939998, TIPICO, registered on September 23, 2005 in respect of betting services in International Class 41;
- (c) International Registration No. 1040604, TIPICO, registered on April 29, 2010 in respect of a range of goods and services in International Classes 9, 28, 35 and 41 and designating Antigua and Barbuda, Albania, Bosnia and Herzegovina, Switzerland, Curaçao, Croatia, Montenegro, North Macedonia, Norway, Serbia, the Russian Federation, Sint Maarten, Türkiye, Ukraine and the United States; and

(d) European Union Trademark No 011339835, TIPICO, registered on May 3, 2013 in respect of a range of goods and services in International Classes 3, 7, 9, 14, 16, 25, 28, 32, 33, 34, 35, 36, 38, 41, 42, 43 and 45.

The disputed domain name was registered on August 22, 2021.

It resolves to a website offering betting and wagering services like the Complainant's website. The get-up of the website itself uses the same red and black, or red and white, colours as the Complainant's website arranged to give a very similar appearance. The word "Tiperio" appears on the website in the same positions as "tipico" appears on the Complainant's website and in a similar sans serif, italicised font to that used by the Complainant (albeit in capital letters, not all lower case).

The Respondent's website does not appear to identify who is operating it. Nor does it include any information suggesting it has the appropriate regulatory licences required in at least some jurisdictions it is accessible from.

## **5. Discussion and Findings**

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. The courier attempting delivery of the Written Notice was unable to complete delivery. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct WhoIs details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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 first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks for TIPICO identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.com” gTLD, the Complainant contends that the disputed domain name is a confusingly similar approximation to the Complainant’s trademark pointing out that both start with “tip” and end with “o”. The Complainant further contends that the “tiperio” component of the disputed domain name is almost the same length as the trademark and makes a very similar sound.

It has long been recognised that a misspelling of a trademark can qualify as confusingly similar for the purposes of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.9: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. ....”

[WIPO Overview 3.0](#) section 1.9 gives as examples of such situations “(i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers.”

The Panel accepts that there is a degree of resemblance between the Complainant’s trademark and the disputed domain name. As the Complainant points out, both start with “tip” and end with “o” and have a “middle” component. The substitution of “er” for the “c” might arguably be seen as an addition or interspersing of other terms or characters. For a touch typist, the letter “e” is also typed with the same finger as the letter “c” on a QWERTY keyboard and the letter “r” is next to the letter “e”.

To the extent that there is doubt about the issue, that is removed in the present case upon reference to the website to which the disputed domain name resolves. Usually, the determination of confusing similarity is made by comparison of the trademark and the disputed domain name alone. In cases of doubt, however, panels have accepted that reference to the website may be appropriate and, where it appears that the respondent is targeting a trademark, a finding of confusing similarity is reinforced. See e.g. [WIPO Overview 3.0](#), section 1.15.

In the present case, it does appear that the Respondent’s website is targeting the Complainant and its trademark. As mentioned in section 4 above, the Respondent’s website is directed to the very same subject matter as the Complainant’s own service. Moreover, the Respondent’s website uses the same colours, red and black, or red and white, in a similar get-up. In addition, the Respondent has portrayed the word “tiperio” in the same positions and the same or a very similar italicized, sans serif font as the Complainant portrays its trademark on its website. It is true that the Respondent depicts its sign in all capitals rather than all lower case like the Complainant. However, that is likely to be seen as a matter of very fine detail unlikely to dispel the overall resemblance of the two sites, and does not affect the conclusion that the Respondent is targeting the Complainant’s trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

## B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name after the Complainant began using its trademark (and had been doing so on an apparently extensive scale in Germany where the Respondent appears to be based) and also after the Complainant had registered its trademarks.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived.

As the Respondent appears to be using the disputed domain name in connection with a betting and wagering service, paragraph 4(c)(iii) is not applicable. On the other hand, use of a confusingly similar disputed domain name to provide services which appear to be in direct competition with the Complainant's trademark rights does not constitute an offer of goods or services in good faith under the Policy.

Pointing to the absence of any identification of the operator of the service on the website or any statements identifying the regulatory licences, if any, that the Respondent holds to provide betting services in at least some of the countries the website is accessible from, the Complainant also contends that the service is operating illegally in those countries such as Germany and potentially means that gamblers have no assurance that they will be paid any winnings they may generate.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

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

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In the present case, the resemblance of the disputed domain name to the Complainant's trademark coupled with the close similarity of the get-up of the Respondent's website to the get-up used by the Complainant lead, as the Complainant contends, to a strong inference that the Respondent was well aware of the Complainant and its trademark when registering the disputed domain name. That is especially the case where the Complainant's trademark has been used for so many years in Germany on an extensive scale before the Respondent registered the disputed domain name.

In those circumstances, the registration of the confusingly similar disputed domain name without the Complainant's permission for use in connection with directly competing betting and wagering services constitutes registration in bad faith.

Subsequent use of the disputed domain name for that purpose also constitutes use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

### **6. 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, <tiperio.com>, be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: November 17, 2022