

ADMINISTRATIVE PANEL DECISION

Merryvale Limited v. teeratep phoungpakdee, vzascasino
Case No. D2022-3932

1. The Parties

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

The Respondent is teeratep phoungpakdee, vzascasino, Thailand.

2. The Domain Name and Registrar

The disputed domain name <betway345.com> 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 October 20, 2022. On October 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 October 30, 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 November 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 30, 2022.

The Center appointed James Bridgeman as the sole panelist in this matter on December 9, 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.

On December 28, 2022, at the request of the Panel, the Center issued a Procedural Order No. 1, requesting the Complainant to provide the Panel with an English language translation of certain text included in a screen capture exhibited in evidence in an annex to the Complaint, directing that the translation should be provided to the Center on or before January 4, 2023, and a copy simultaneously sent directly to the Respondent, and permitting the Respondent to make responding submissions on or before January 7, 2023.

On January 2, 2023, the Complainant filed the requested translations and no timely responding submissions were received from the Respondent.

4. Factual Background

The Complainant is the holding company for a number of enterprises engaged in online sports betting and gaming businesses and owns and uses the BETWAY in providing services by itself and members of its group of companies in its gambling business including on its website at "www.betway.com".

The Complainant is also the owner of a large international portfolio of trademark and service mark registrations including:

- European Union registered trade mark BETWAY, registration number 004832325, registered on January 26, 2007 for goods and services in classes 9 and 41;
- European Union registered trade mark BETWAY, registration number 012771564, registered on September 1, 2014 for goods and services in classes 9, 41 and 42;
- United Kingdom registered trademark BETWAY, registration number UK00003234076, registered on August 18, 2017 for goods and services in classes 9 and 41;
- Indian registered trademark BETWAY, registration number 3202826, registered on March 4, 2016 for goods and services in classes 9 and 41;
- Colombian registered trademark BETWAY, registration number 51818, registered on May 22, 2015 for goods and services in classes 9, 41 and 42;
- Japanese registered trademark BETWAY, registration number 5875378, registered on August 19, 2016 for goods and services in classes 9 and 41;
- New Zealand registered trademark BETWAY, registration number 1036086, registered on July 27, 2016, for goods and services in classes 9 and 41.

The disputed domain name <betway345.com> was registered on January 19, 2022, and resolves to a website purporting to offer gambling services to consumers.

There is no information available about the Respondent except for that provided in the Complaint, the Registrar's WhoIs, and the information provided by the Registrar in response to the request by the Center for details of the registration of the disputed domain name in the course of this proceeding.

5. Parties' Contentions

A. Complainant

The Complainant claims rights in the BETWAY service mark established by its extensive use of the mark by its group of companies and submits that its website established at "www.betway.com" is one of the leading gaming websites in the world with over 1.98 million unique users worldwide in 2021.

Furthermore, the Complainant asserts that the current monthly average number of registered and active users accessing its 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. It is submitted that as a result, the BETWAY brand enjoys a substantial worldwide reputation.

In support of these assertions the Complainant has provided in the annexes to the Complaint, copies of television screen captures, print media, digital media, and street and sports stadia poster advertisements promoting its BETWAY brand, together with an online third-party article about the value of the Complainant's sponsorship of the English Premier League team with photographs showing the football team wearing BETWAY branded shirts and training wear and other information about the Complainant's group of companies.

The Complainant alleges that the disputed domain name is confusingly similar to the BETWAY mark in which it has rights arguing that the disputed domain name consists only of the Complainant's BETWAY mark, with the addition of the number "345" in combination with the generic Top-Level Domain ("gTLD") suffix ".com".

The Complainant asserts that its BETWAY mark is the dominant component of the disputed domain name and argues that the addition of the number "345" together with the gTLD extension neither detracts from the identity or confusing similarity between the disputed domain name and the BETWAY mark, nor creates an overall different impression. In this regard, the Complainant refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), which states in section 1.8 that: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

Addressing the gTLD ".com" extension in the disputed domain name, the Complainant further refers to the [WIPO Overview 3.0](#), which states in sections 1.11.1 and 1.11.2 that: "The applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. The practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to 'new gTLDs')."

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name, asserting that to the best of the Complainant's knowledge, neither the Respondent, nor any business operated by it, is, or has ever been, commonly known by the disputed domain name. Furthermore, the Complainant asserts that the Respondent is not affiliated with any of the companies within the Complainant's group and has never been licensed or otherwise authorized to use the Complainant's BETWAY mark.

Adding that the Respondent has neither used, nor made demonstrable preparations to use, the disputed domain name nor any name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services, the Complainant refers to a screen capture of the website to which the disputed domain name resolves, which has been exhibited in an annex to the Complaint.

The Complainant alleges in the Complaint that the exhibited website shows that the Respondent is purporting to use the disputed domain name as a website address to operate an online gaming and gambling services similar to those provided by the Complainant's group, while making use of the Complainant's BETWAY logo and mark. While the graphic content of the website as shown in the screen capture supported this submission, at the request of the Panel the Complainant also provided a translation of the text in the Respondent's website into the English language, which confirmed that this was correct.

In addition, the Complainant submits that the exhibited website, displays the Complainant's own logo and the "look and feel" of the Complainant's own website, and furthermore displays the logo of an internationally known football team, which is sponsored by the Complainant.

The Complainant argues that by displaying the content of the exhibited website without the consent of the Complainant, or any other entity within its group of companies, the Respondent is engaged in fraudulent activity intending to make an unlawful gain, adding that there is a risk that Internet users might associate the Respondent's exhibited website, with the Complainant's BETWAY brand and damage the Complainant's reputation.

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith arguing that the Complainant's rights in the BETWAY mark long predate the registration of the confusingly similar disputed domain name.

Arguing that the Complainant's website had been accessed by millions of users over the period of 15 years prior to the registration of the disputed domain name, the Complainant submits that it is clear that the Respondent knew, or at the very least should have known, about the Complainant's marks and the businesses when the disputed domain name was chosen and registered. See *Merryvale Limited v. Sg Group*, WIPO Case No. [D2020-3008](#), where the panel held that: "The trademark BETWAY is such a famous mark that it would be inconceivable that the Respondent – using it for the same area of commerce – might have registered the mark without knowing of it."

The Complainant adds that that the Respondent's use of the disputed domain name, which is at least confusingly similar to the Complainant's BETWAY mark, is clear evidence that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to the website to which the disputed domain name resolves, by creating a likelihood of confusion with the BETWAY mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The Complainant adds that having regard to the foregoing and to the considerable worldwide reputation of the BETWAY mark, Internet users would inevitably be confused into thinking that the disputed domain name is connected with the Complainant. See *Intesa Sanpaolo S.p.A. v. ROSPOT SRL / Silviu Tatut*, WIPO Case No. [DRO2013-0004](#) where the panel held that: "The fact that the disputed domain name wholly incorporates the Complainant's well-known trademark BANCA INTESA (see, for example, *Banca Intesa S.p.A., v. Fahri Dogan Bato*, WIPO Case No. [D2006-0509](#)), which is used in the Complainant's line of business, indicates not only that the Respondent was aware of the Complainant's business but also that it registered the disputed domain name to mislead Internet users into thinking it is some way connected, sponsored, endorsed by or affiliated with the Complainant's services".

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy, requires the Complainant carries the burden of proving, on the balance of probabilities, each of the following three elements:

- (i) that the disputed domain name identical or confusingly similar to a trademark or service mark in which the Complainant holds rights;
- (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 by the Respondent.

A. Identical or Confusingly Similar

The Complainant has provided convincing, uncontested evidence that it has rights in the BETWAY trademark service mark, established by its ownership of the international portfolio of trademark registrations described above and the goodwill and reputation that it has established in the mark by its long-established use of the mark on its gaming platform on its website at “www.betway.com”.

The disputed domain name consists of the Complainant’s BETWAY mark in its entirety, followed by the term “345” and followed by the gTLD extension “.com”.

The Complainant’s BETWAY mark is clearly identifiable within the disputed domain name as the dominant and only distinctive element. The addition of the element, being the number “345”, does not prevent a finding of confusing similarity. Furthermore, in the context of this Complaint, the gTLD “.com” extension would be considered a necessary technical requirement for a domain name registration. Neither the number “345” nor the gTLD element therefore prevents a finding that the disputed domain name is confusingly similar to the Complainant’s mark.

This Panel finds therefore that the disputed domain name is confusingly similar to the BETWAY mark in which the Complainant has rights and the Complainant has therefore succeeded in the first element of the test in Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, arguing that:

- to the best of the Complainant’s knowledge, neither the Respondent, nor any business operated by it, is, or has ever been, commonly known by the disputed domain name;
- the Respondent is not affiliated with any of the companies within the Complainant’s group and has never been licensed or otherwise authorized to use the Complainant’s BETWAY mark;
- the Respondent has neither used, nor made demonstrable preparations to use, the disputed domain name nor any name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services;
- the screen capture of the website to which the disputed domain name resolves, which has been exhibited in an annex to the Complaint, shows that the Respondent is purporting to use the disputed domain name as a website address to provide online gaming and gambling services similar to those provided by the Complainant’s group, while making use of the Complainant’s BETWAY logo and mark;

- the exhibited website, displays the Complainant's own logo and the "look and feel" of the Complainant's own website, and furthermore displays the logo of an internationally known football team, which is sponsored by the Complainant;
- by displaying the content of the exhibited website without the consent of the Complainant, or any other entity within its group of companies, the Respondent is engaged in fraudulent activity intending to make an unlawful gain; and
- there is a risk that Internet users might associate the Respondent's exhibited website, with the Complainant's BETWAY brand and damage the Complainant's reputation.

It is well established that once a complainant makes out a *prima facie* case that a respondent has no rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore succeeded in the second element of the test in Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

BETWAY is a distinctive mark and the evidence shows that the Complainant has established a strong and substantial reputation and goodwill in the mark with registered trademark and service mark rights in jurisdictions across the world.

The uncontested submissions are that the Complainant's website at "www.betway.com" has currently an average of 489,808 monthly registered and active users.

It is improbable that the disputed domain name, which is composed of a combination of the Complainant's mark and the term "345" was chosen and registered without any knowledge of the Complainant, its name, the BETWAY mark, its rights in the mark, and its website at "www.betway.com".

This Panel finds therefore that on the balance of probabilities the disputed domain name was chosen and registered in bad faith, with the Complainant, its BETWAY mark, and its gambling platform at "www.betway.com" in mind, with the intention of taking predatory advantage of the Complainant's reputation and goodwill.

This finding is supported by the uncontested evidence that the Respondent is using the disputed domain name as the address of a website that purports to offer gaming and gambling services, which compete with those offered by the Complainant.

Because the disputed domain name is confusingly similar to the Complainant's mark and the competing use to which the website resolves, this Panel finds on the balance of probabilities, that the Respondent is using the disputed domain name in bad faith with the intention of attracting, confusing and misleading Internet users and diverting Internet traffic to the Respondent's competing website.

This Panel finds that on the balance of probabilities, by using the disputed domain name in this manner, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website to which the disputed domain name resolves by creating a likelihood of confusion with the Complainant's mark BETWAY as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has succeeded in the third element of the test in 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, <betway345.com>, be transferred to the Complainant.

/James Bridgeman/

James Bridgeman

Sole Panelist

Date: January 13, 2023