

ADMINISTRATIVE PANEL DECISION

Decathlon v. Milen Radumilo

Case No. D2022-4083

1. The Parties

The Complainant is Decathlon, France, represented by AARPI Scan Avocats, France.

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <btwin.pro> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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 October 31, 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 November 3, 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 25, 2022.

The Center appointed Mladen Vukmir as the sole panelist in this matter on December 5, 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 Panel has determined the following non-contested facts:

(i) The Complainant is Decathlon, a major French manufacturer, registered before the Trade and Companies Register of Lille (France) on November 16, 1984; the Complainant is a company specialized in the conception and retailing of sporting and leisure goods;

(ii) The Complainant is the holder of several BTWIN registered trademarks:

Trademark	Scope of protection	Reg. No. / Status	Date of the registration	Class(es)
BTWIN (word)	France	4269542 / registered	August 26, 2016	11
BTWIN (word)	European Union	015893464 / registered	January 17, 2017	11
BTWIN (word)	International	1325629/ registered	October 4, 2016	11

(hereinafter: "BTWIN trademarks");

(iii) The Complainant holds several domain names corresponding to or containing its registered trademarks <btwin.com>, <btwin.bike>, <btwin.club>, <btwin.eu>;

(iv) The Respondent is the holder of the disputed domain name, as disclosed by the Registrar;

(v) The disputed domain name was registered on June 24, 2022;

(vi) The disputed domain name resolves to a parking page in a relation to the products sold by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant states that it is a major French manufacturer specialized in the conception and retailing of sporting and leisure goods with 105,000 employees worldwide, annual sales of EUR 13,8 billion and operating 1,747 stores throughout the world. The Complainant further states that it designs and manufactures several lines of its own, including BTWIN which is dedicated to cycling.

The Complainant asserts that it is the owner of several BTWIN trademarks and domain names which are confusingly similar to the disputed domain name. According to the Complainant, the disputed domain name is identical to its BTWIN trademarks as it wholly incorporates the sign BTWIN without any other element added. According to the Complainant, the addition of the generic Top-Level Domain ("gTLD") ".pro" should be disregarded due to its purely technical function.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant claims that, to the best of his knowledge, the Respondent is not currently and has never been known under the name Btwin, nor is the Respondent in any way related to the Complainant's business, it is not one of the Complainant's distributors, and does not carry out any activity for or have any business with them. The Complainant also claims that it has never given any authorization or permission whatsoever to the Respondent to register or to use the disputed domain name. Furthermore, the Complainant states that the Respondent is intentionally creating confusion in order to divert consumers from the Complainant's websites to its own website, which is not used to promote a *bona fide* offering of goods or

services, nor to serve a noncommercial legitimate purpose.

The Complainant further asserts that the disputed domain name was registered and is used in bad faith. The Complainant states that BTWIN trademarks and domain names were registered long before the disputed domain name was registered. The Complainant further states that it is highly likely that the Respondent knew the Complainant and its well-known trademarks, sport related products and services when filing application for the disputed domain name. The Complainant further states that any search for term "btwin" conducted with a search engine such as Google leads in the first place to websites relating to the Complainant and its products. According to the Complainant, the Respondent illustrates a bad faith by registering a domain name using a term identical to that of the Complainant with the will to attract, for commercial gain, Internet users searching for official Btwin websites and products. The Complainant claims that the disputed domain name currently redirects to a parking page in relation with the products sold by the Complainant (VELO, VELO TRIBAN and VELO BTWIN) with the use of pay-per-click links indicating that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant's trademark. In support of its claims, the Complainant has indicated several previous UDRP decisions recognizing that the use of pay-per-click links indicates that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant's trademark:

B. Respondent

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

6. Discussion and Findings

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of the Response, the Policy, the Rules, the Supplemental Rules and other applicable legal authority pursuant to paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy sets out that the Complainant must prove, with respect to the disputed domain name, each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 holds that the disputed domain name is identical to the Complainant's BTWIN trademarks.

The Complainant has submitted sufficient evidence that it is the holder of several BTWIN trademarks, which are duly registered before the competent trademark authorities.

It is well established that the threshold test for confusing similarity under the UDRP involves a reasoned but relatively straightforward comparison between the textual components of the relevant trademark and the disputed domain name. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

After performing a visual comparison of the disputed domain name with the Complainant's BTWIN trademarks, it is evident to this Panel that the disputed domain name incorporates the BTWIN trademark in its entirety. The Complainant's BTWIN trademarks are clearly recognizable in the disputed domain name.

Regarding the gTLD, ".pro" in the disputed domain name, as a standard registration requirement, it may generally be disregarded under the confusing similarity test (section 1.11 of [WIPO Overview 3.0](#)).

The Panel finds that the Complainant has satisfied the requirement set forth in paragraph 4(a)(i) of the Policy, *i.e.* has proven that the disputed domain name is identical to its registered trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a number of circumstances which, without limitation, could have been effective for the Respondent to demonstrate that it has rights to, or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy.

As noted by the previous UDRP panels on the onus of proof under paragraph 4(a)(ii) of the Policy, and as summarized in section 2.1 of the [WIPO Overview 3.0](#): "[...] While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

In the present case, the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, with the Respondent failing to provide any substantive response to the Complaint which would prove his rights or legitimate interests in the disputed domain name.

In this Panel's view, the Complainant has established that it is the holder of several BTWIN trademarks in various jurisdictions, as well as that it has used the same trademarks widely on the market. The Complainant filed sufficient evidence proving extensive and long lasting use of its BTWIN trademarks and their well-known character.

The Panel observes that there is neither any relation, disclosed to the Panel, nor otherwise apparent from the records, between the Respondent and the Complainant, nor does it arise that the Complainant has ever authorized or permitted the Respondent to use its BTWIN trademarks or to apply for or use any domain name incorporating the same trademarks.

In absence of a response from the Respondent, the Panel accepts the Complainant's statement that it is very likely that the Respondent knew it had no legitimate interests over the disputed domain name at the time of registering the disputed domain name

As that there is no evidence that the Respondent is in any way permitted by the Complainant to use the BTWIN trademarks, nor is there any evidence that the Respondent has made any *bona fide*, fair or otherwise legitimate use of the disputed domain name, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name which includes the Complainant's BTWIN trademarks.

The Panel finds that the disputed domain name being identical to the Complainant's trademark carry a high risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1.)

Under these circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b) of the Policy, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has filed sufficient evidence to prove that it is the holder of several BTWIN trademarks registered before the disputed domain name was registered. The Respondent, on the other hand, did not provide any evidence of its rights and/or legitimate interests in a disputed domain name, nor did it present evidence for good faith registration and use of the disputed domain name.

Based on evidence filed with the Complaint proving the existence and use of the Complainant's BTWIN trademarks and domain names worldwide, as well as the Complainant's market presence, the Panel finds it highly unlikely that the Respondent was unaware of the Complainant and its BTWIN trademarks when registering the disputed domain name.

The webpage created under the disputed domain name contains links related to the Complainant's field of business (in French "velo" and in English "bicycle"), it contains link comprising the Complainant's BTWIN trademark (Velo Btwin) and it links to a page containing products usually sold by the Complainant under its BTWIN trademark. The Panel observes that the use of link containing trademarks of the Complainant illustrates bad faith, since it is used to confuse consumers as to an affiliation or connection with the Complainant's business for commercial gain (section 3.1.4 of [WIPO Overview 3.0](#)).

Further, previous UDRP panels have found that the incorporation of a well-known trademark in a domain name having no plausible explanation for doing so is in itself an indication of bad faith (see *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)).

Given the above, the Panel hereby concludes that the disputed domain name has been registered and is being used in bad faith and confirms that the Complainant has fulfilled the third element under paragraph 4(a)(iii) of the Policy.

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 <btwin.pro> be transferred to the Complainant.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: December 19, 2022