

ADMINISTRATIVE PANEL DECISION

YSolution Limited v. Ibrahim Ghazali, Yegara HOST Case No. D2023-1625

1. The Parties

The Complainant is YSolution Limited, Hong Kong, China, represented by Murgitroyd & Company, United Kingdom.

The Respondent is Ibrahim Ghazali, Yegara HOST, Ethiopia.

2. The Domain Name and Registrar

The disputed domain name <marathonbetet.com> (the “Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Dynadot Privacy Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 the same day.

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 April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 12, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on May 17, 2023. 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 following facts are undisputed.

The Complainant is the proprietor of the intellectual property portfolio of the online betting company Marathonbet. Marathonbet was founded in 1997 and has since offered different kinds of gambling services. The gambling services are closely associated with soccer (football), whereas Marathonbet has partnered up with many famous soccer clubs in various European countries, including the United Kingdom. The gambling services are currently being offered to customers in, *inter alia*, Eastern Europe, Spain, Italy, Nigeria and Latin America. For its official website, the Complainant makes use of the domain name <marathonbet.com>.

The Complainant is the owner of several trademark registrations comprising of the word element "marathonbet", including but not limited to, the European Union Trade Mark MARATHONBET (word mark), with registration no. 011861093 and registration date of October 25, 2013, for goods and services in classes 9, 16, 35, 36, and 41, and the United Kingdom trademark MARATHONBET (word mark), with registration no. UK00911861093 and registration date of October 25, 2013, for goods and services in classes 9, 16, 35, 36, and 41. The aforementioned trademark registrations will hereinafter also jointly be referred to in singular as the "Trademark".

The Domain Name was registered on November 27, 2022, and resolved to a website that offers gambling services related to sports, such as soccer (the "Website"). Moreover, the Website displayed the Trademark, as well as the Complainant's logo.

5. Parties' Contentions

A. Complainant

Insofar as relevant for deciding the matter, the Complainant contends the following.

The Domain Name is identical or at least confusingly similar to the Trademark, whereas the Domain Name is comprised of the Trademark in its entirety. The Registrant solely added the geographical term "et" for Ethiopia to the Domain Name. The Trademark is, therefore, the dominant element of the Domain Name and is also recognizable as such.

The Respondent cannot have any rights or legitimate interests in regard to the Domain Name. The Respondent simply copied the Trademark in which the Complainant has rights and is not licensed, authorized or otherwise permitted to do so. The Respondent is also not commonly known by the Domain Name nor is the Respondent sponsored by or affiliated with the Complainant. In addition to this, the Domain Name resolves to the Website which impersonates the Complainant. Such use cannot constitute a *bona fide* offering of goods and services.

Furthermore, the Domain Name has been registered and used in bad faith. The Respondent registered the Domain Name with prior knowledge of the Trademark. This is because, the Website impersonates the Complainant, by displaying the Trademark and the Complainant's logo. Thus, the Respondent is intentionally using the Domain Name to attract Internet users to the Website by creating a likelihood of confusion that derives from the false impression of an association with the Complainant. By doing so the Respondent will most likely disrupt the business of the Complainant under the Trademark.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3: "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (*e.g.*, from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. However, in accordance with paragraph 14(b) of the UDRP Rules, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to the mark.

The Complainant has shown that it has rights in the Trademark.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the Trademark involves a relatively straightforward comparison.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the Trademark. The Domain Name <marathonbetet.com> is comprised of the MARATHONBET Trademark in its entirety followed by the letters "et", which could serve as the abbreviation for Ethiopia.

The Trademark is the dominant element of the Domain Name and is also clearly recognizable as such. As set out in the [WIPO Overview 3.0](#), section 1.8, the addition of other terms, such as geographical and/or descriptive term, would not prevent a finding that a domain name is confusingly similar to the relevant mark for purposes of the first element.

Therefore, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making 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.

First of all, there is no evidence that “marathonbetet” is the Respondent’s name or that the Respondent is commonly known under the aforementioned name. Moreover, the Complainant has asserted that the Respondent is not affiliated with the Complainant in any way. More specifically, the Respondent has not been licensed or otherwise permitted by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating the Trademark.

Furthermore, the Complainant’s assertions have not been rebutted by the Respondent to indicate whether it has any rights or legitimate interests in the Domain Name. There was also no evidence put forward by the Respondent to indicate that the Respondent was licensed or authorized by the Complainant to use the Trademark.

Further adding to this, the Respondent has failed to put forward any evidence that would support the claim that the Respondent has used or made 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. To the contrary, the Respondent uses the Domain Name to operate the Website through which it seems to offer gambling services. On the Website to which the Domain Name resolves the Trademark is also being used as well as the Complainant’s logo.

Certainly lacking a Response, the Panel finds that the Website creates the impression of being a website affiliated to the Complainant. The Website can even be regarded as an impersonation of the Complainant. The use of the Domain Name cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. All the more so, because in any event the Respondent is using the Website to offer gambling services, if genuine, that are in direct competition with the services of the Complainant.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following.

It is beyond any doubt that the Respondent had prior knowledge of the Complainant and its activities at the time of registering the Domain Name. Moreover, the Respondent must have clearly had the Complainant in mind when registering and using the Domain Name. The Panel takes into account that the Website prominently displays the Trademark. Therefore, the Website seems to offer or purport to offer services that clearly relate to the Complainant and its activities.

As such, the Respondent has registered and is using the Domain Name to intentionally attract Internet users for commercial gain to the Website by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation or endorsement of the Website or the services that are being offered on the Website.

Furthermore, the Panel takes into consideration that the Respondent has been hiding behind a privacy shield. In accordance with section 3.6 of the [WIPO Overview 3.0](#) this also supports a finding of registration and or use in bad faith.

Finally, although the lack of a formal or substantive response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, the cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the registration and use of the Domain Name by the Respondent is in bad faith.

Therefore, the Panel is satisfied that the third element of the Policy is met.

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 Domain Name, <marathonbetet.com>, be transferred to the Complainant.

/Willem J.H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: May 30, 2023