

## **ADMINISTRATIVE PANEL DECISION**

Optibet SIA v. Forrest Bailey

Case No. D2023-1840

### **1. The Parties**

The Complainant is Optibet SIA, Latvia, represented by Ports Group AB, Sweden.

The Respondent is Forrest Bailey, United States of America.

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

The disputed domain name <optibet.xyz> is registered with Sav.com, LLC - 6 (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 25, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 25, 2023, 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 (Redacted, Privacy Protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 26, 2023, 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, informing the Center of its wish to add the disclosed registrant to the Complaint on April 27, 2023.

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 May 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 31, 2023.

The Center appointed Theda König Horowicz as the sole panelist in this matter on June 7, 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 Complainant is active in casino games and online betting.

The Complainant is the holder of several trademarks including OPTIBET, for example International Trademark registration No. 1038387, registered on March 15, 2010.

The Complainant also owns the domain name <optibet.com> registered on January 16, 2001, which is used for its online casino and betting activities.

The disputed domain name was registered on January 14, 2023. At the time of the filing of the complaint, the disputed domain name resolved to a webpage indicating that it was blocked due to malware

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant alleges to have registered trademark rights in OPTIBET. The disputed domain name contains its OPTIBET trademark in its entirety and is therefore identical or highly similar to the Complainant's mark, thus confusingly similar.

The Complainant also alleges that the Respondent has no rights or legitimate interests in the disputed domain name: he has no rights over the OPTIBET trademark and the Complainant did not give him a licence to use it. It is used for a page distributing malware, which cannot be considered as legitimate. Additionally, the Respondent is not known by the disputed domain name and the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant states to be known and exposed through its marketing channels, its official website and through media exposure. Its trademark predates the registration of the disputed domain name. Furthermore, the Respondent has used a privacy service to register the disputed domain name, which may constitute a factor of bad faith. Passive holding is another indicator of bad faith use considering (i) the highly distinctive character of the Complainant's trademark, (ii) the Respondent is concealing his identity, (iii) there are no indications of good faith use of the disputed domain name. The Respondent intends to seek advantage of the Complainant's business by creating a high risk of confusion for the public.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

### **A. Identical or Confusingly Similar**

The Complainant has shown to have obtained trademark rights in OPTIBET in several jurisdictions.

According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable 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.

The Panel finds that the disputed domain name is identical or confusingly similar to the Complainant's registered trademark OPTIBET since it contains this mark in entirety.

The generic Top-Level Domain ("gTLD") ".xyz" is viewed as a standard registration requirement, and as such is typically disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has made sufficient statements in order to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

In particular, the Complainant has not licensed or otherwise permitted the Respondent to use its trademarks. There is no evidence showing that the Respondent would be commonly known by the disputed domain name or that a legitimate business would be run by the Respondent under the disputed domain name.

The Panel therefore finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent who has chosen not to reply.

The Respondent has not rebutted the Complainant's *prima facie* case, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings.

As already stated before, nothing is contained in the case file which would show that the disputed domain name has been legitimately noncommercial or fairly used by the Respondent or that the Respondent would have any rights or legitimate interests in the disputed domain name.

The fact that the disputed domain name has been blocked being categorized as malware rather shows the non-legitimate character of registration and use of the disputed domain name by the Respondent. In addition, according to the Whois evidence provided by the Complainant, the disputed domain name is also listed for sale for USD 1,450 on a third-party website.

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation to the disputed domain name.

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

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

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

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name was registered and is being used in bad faith.

Given the circumstances of the case, including the fact that the disputed domain name identically reproduces the Complainant's OPTIBET trademark, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainant's trademark and business. The Panel therefore finds that the disputed domain name was registered in bad faith.

The bad faith use condition is also fulfilled as the disputed domain name resolves to a webpage being categorized as malware which is an indication that it has been or has been intended to be used in bad faith.

Moreover, the case file shows that the disputed domain name was listed for sale for USD 1,450 on a third-party website. Therefore, it is more likely than not that the Respondent has respectively had the intention to sell the disputed domain name for his commercial gain.

The silence of the Respondent in these proceedings is an additional evidence of bad faith in these circumstances.

The Panel therefore finds that the conditions in paragraph 4(a)(iii) of the Policy is fulfilled in relation to the disputed domain name.

## **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 <optibet.xyz> be transferred to the Complainant.

*/Theda König Horowicz/*

**Theda König Horowicz**

Sole Panelist

Date: June 28, 2023