

ADMINISTRATIVE PANEL DECISION

Tipico Group Ltd. v. betsapi ltd
Case No. D2023-2279

1. The Parties

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

The Respondent is betsapi ltd, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <100tipico.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 2023. On May 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 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 for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 30, 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 on May 30, 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 sent notification to the Respondent of the Complaint, and the proceedings commenced on June 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 26, 2023. The Respondent did not submit any response. Accordingly, the Center sent notification of the Respondent’s default on June 29, 2023.

The Center appointed Petra Pecar as the sole panelist in this matter on July 5, 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, Tipico Group Ltd., is an internationally recognized provider of sports betting services and casino games, established in 2004 and headquartered in St. Julian's, Malta. As a market leader for sports betting in Germany, it maintains over 1,200 betting shops countrywide and employs over 6,000 people throughout its franchise network. With branches in several countries in Europe, the Complainant holds licenses to conduct betting business in Germany, Austria, and Malta, adhering to their strict gambling regulations. The Complainant is well-known, not just for its market share but also for its substantial marketing initiatives such as sponsorship of FC Bayern Munich and the German Football League. The Complainant holds a portfolio of TIPICO registered marks, including the following:

- European Union word mark TIPICO, Registration No. 003939998, registered on September 23, 2005 in class 41;
- International word mark TIPICO, Registration No. 863984, registered on May 25, 2005, in class 41, designating, among others, European Union and Türkiye;
- International word mark TIPICO, Registration No. 1040604, registered on April 29, 2010, in classes 9, 28, 35 and 41, designating, among others, Albania, Antigua and Barbuda, Bosnia and Herzegovina, Switzerland, Norway, Croatia, Montenegro, North Macedonia, Serbia, Russian Federation, Türkiye, United States of America, and Ukraine;
- European Union figurative mark , Registration No. 011339835, registered on May 3, 2013 in classes 3, 7, 9, 14, 16, 25, 28, 32, 33, 34, 35, 36, 38, 41, 42, 43 and 45; and
- European Union figurative mark , Registration No. 017913149, registered on May 16, 2019 in classes 9, 14, 16, 25, 28, 32, 34, 35, 36, 38, 41, 42, 43 and 45.

The disputed domain name was registered on May 1, 2023. Currently, it directs to a webpage prominently displaying the Complainant's trademark and a login form.

5. Parties' Contentions

A. Complainant

The Complainant is the holder of the TIPICO mark in several jurisdictions, including the European Union. The Complainant argues that the disputed domain name is confusingly similar to the TIPICO mark. This potential confusion arises from a comparison between the TIPICO mark and the disputed domain name, where the mark is readily recognizable.

The Complainant asserts that the disputed domain name essentially adopts the Complainant's TIPICO mark and simply appends the number 100, ensuring the mark remains a prominent part of the disputed domain name.

Further, the Complainant argues that the design of the Respondent's website associated with the disputed domain name displays the Complainant registered figurative mark . The Respondent uses the Complainant's registered TIPICO logo, which imitates their red and white color scheme, and the overall appearance of their official site, suggesting intentional targeting of the TIPICO mark.

The Complainant deems the Top Level Domain ("TLD") ".com" as a standard registration requirement, with no substantial impact on the similarity assessment. Consequently, the Complainant concludes that the disputed domain name fulfills the requirements of confusing similarity to its mark, thereby satisfying the first element in the domain name dispute resolution process.

The Complainant asserts that the Respondent does not have legitimate rights or interests in the disputed domain name, based on the fact that the Respondent has not received any authorization or permission to use any of the Complainant's TIPICO mark or to register a domain name which includes the Complainant's TIPICO mark.

The Complainant further claims that the Respondent's use of the disputed domain name does not qualify as a legitimate noncommercial or fair use. Instead, the Complainant believes the Respondent is trying to secure an unjust commercial benefit, potentially misleading consumers and tarnishing the Complainant's TIPICO mark.

Moreover, the Complainant argues that the website under the disputed domain name does not fulfill the requirements for a *bona fide* offering of goods or services. The Complainant emphasizes that the Respondent's website and the disputed domain name are misleadingly constructed to create the false impression of a commercial relationship with the Complainant and suggest a false affiliation with the Complainant and its TIPICO mark.

The Complainant indicates that the design of the website, which mirrors the Complainant's official website and prominently uses the Complainant's registered TIPICO mark, further reinforces this false impression. Moreover, the website does not provide any information about the entity running it, which, according to the Complainant, is a clear indication of an intentional attempt to mislead visitors into believing there is an affiliation with the Complainant and its TIPICO mark.

The Complainant states that such use of the disputed domain name cannot be considered a *bona fide* offering of goods or services, and therefore it cannot establish a legitimate interest for the Respondent.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. This assertion is based on evidence that the Respondent was aware of the Complainant's TIPICO mark during the registration of the disputed domain name, given that the Respondent's disputed domain name is identical to the widely recognized TIPICO mark. Additionally, the Complainant's website design has been copied by the Respondent, further supporting the assertion of the Respondent's awareness of the TIPICO mark.

The Complainant maintains that TIPICO is a leading brand for betting services within Europe. It is therefore highly unlikely that the Respondent was unaware of it during the disputed domain name registration in May 2023.

The Complainant further suggests that the Respondent intended to attract internet users for commercial gain by creating confusion with the TIPICO mark. This intention manifests in the Respondent's website, which could easily be mistaken as having an affiliation, sponsorship, or endorsement with the TIPICO mark.

Furthermore, the Complainant underscores that the Respondent concealed the identity of the website provider and employed a privacy or proxy service to postpone the disclosure of the actual registrant's identity. This obstruction prevents the Complainant from taking direct legal measures against the infringing use of the TIPICO mark.

B. Respondent

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

6. Discussion and Findings

Even if the Respondent did not file a Response to the Complainant's contentions, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

“A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”, as indicated in paragraph 15(a) of the Rules.

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. A trademark registration provides a clear indication that the rights in the trademark belong to the complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.2.1).

The Panel finds that in the matter at hand, the Complainant has convincingly established its rights in the TIPICO mark, affirmed by its prior European Union and global registrations, which have been in effect for at least 18 years before the disputed domain name was registered.

The disputed domain name consists of the Complainant’s TIPICO mark, supplemented with the number 100 and the generic TLD suffix “.com”. The Complainant’s TIPICO mark is recognizable within the disputed domain name, leading the Panel to determine that the addition of these extra elements does not prevent a finding of confusing similarity.

In observing the stipulations set forth in the [WIPO Overview 3.0](#), section 1.8, the Panel acknowledges its assertion: “Where the relevant mark is recognizable within the disputed domain name, the addition of other terms...does not prevent a finding of confusing similarity under the first element”. Moreover, the Panel notes that the TLD “.com”, as per the established practices of previous UDRP panels, is generally disregarded in confusing similarity test.

In conclusion, the Panel determines that the combination of the Complainant’s TIPICO mark with the number 100 and the TLD suffix “.com” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s TIPICO mark. The mark remains clearly recognizable within the disputed domain name. Therefore, the first element of the UDRP is met.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence to rebut that presumption. If the respondent fails to do so, a complainant is generally deemed to have satisfied the second element, as set out in paragraph 4(a)(ii) of the Policy (see also [WIPO Overview 3.0](#), section 2.1).

In this case, the disputed domain name implies an association with the Complainant and its TIPICO mark. Moreover, the website - in imitating the design of the Complainant's official website and prominently featuring the Complainant's registered TIPICO mark at the top-left of the page - bolsters this false impression of a business connection with the Complainant. Notably, the website omits any information about the identity of the website provider, which indicates a deliberate attempt to foster the misconception of an affiliation with the Complainant and its TIPICO marks.

The Respondent's use of the disputed domain name does not align with any recognized standard for a legitimate noncommercial or fair use. Instead, it is characterized by an evident intention to achieve unfair commercial advantage. This is apparent in its endeavors to mislead consumers and tarnish the Complainant's TIPICO mark, a tactic that aims to deceive consumers into believing that there's an affiliation or endorsement by the Complainant.

The Respondent did not provide a response to the Complainant's allegations. The Complainant has effectively demonstrated that the Respondent lacks any rights or legitimate interests in the disputed domain name. The Respondent has not been authorized by the Complainant to either use any of its marks or register a domain name that incorporates the Complainant's TIPICO mark.

Given these circumstances, the use of the disputed domain name cannot be categorized as a *bona fide* offering of goods and does not establish any rights or legitimate interests on the part of the Respondent.

Therefore, considering all of the evidence and circumstances at hand, the Panel determines that the Respondent has not demonstrated any rights or legitimate interests in the disputed domain name, thus meeting the second element of paragraph 4(a)(ii) of the Policy as claimed by the Complainant.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires a complainant to demonstrate that the respondent registered and is using the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1, states that "bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark".

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or 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 respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent 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 respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on its website or location.

The Respondent's actions during the registration process clearly demonstrate its awareness of the Complainant's TIPICO mark. Given the substantial prominence of the TIPICO brand within Europe's betting industry, it's highly unlikely that the Respondent was unaware of TIPICO mark when the disputed domain name was registered in May 2023. The Panel believes that the Respondent intentionally selected a domain name that is confusingly similar to the well-known TIPICO mark. Moreover, the Respondent chose to feature the TIPICO logo prominently in the website title and designed the website to imitate the Complainant's official site's appearance, including its distinctive color scheme. These calculated actions suggest an intent to exploit the well-established reputation of the TIPICO mark, pointing towards registration in bad faith.

As for the use of the disputed domain name, the Respondent's approach implies a clear intention to generate confusion among Internet users, potentially for commercial gains. The confusion could be related to the source of the website, its sponsorship, affiliation, or endorsement, which might lead users to mistakenly believe they are dealing with services or products associated with the Complainant's TIPICO mark. Such deceptive tactics indicate use in bad faith, as articulated in paragraph 4(b)(iv) of the Policy.

The level of the Respondent's bad faith is further heightened by the intentional hiding of the website provider's identity. By using a privacy or proxy service, the Respondent knowingly obscures the identity of the actual registrant, effectively hindering the Complainant from taking direct legal action against the misuse of the TIPICO mark as part of the disputed domain name. Moreover, the Written Notice was not able to be delivered to the Respondent by courier due to incomplete or false address. This strategy provides another strong indication of the Respondent's persistent bad faith use of the disputed domain name.

The Panel concludes that the disputed domain name was registered and used in bad faith and that consequently, the Complainant has satisfied the requirement 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 <100tipico.com> be transferred to the Complainant.

/Petra Pecar/

Petra Pecar

Sole Panelist

Date: July 19, 2023