

ADMINISTRATIVE PANEL DECISION

Merryvale Limited v. tao tao
Case No. D2023-2542

1. The Parties

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

The Respondent is tao tao, China.

2. The Domain Name and Registrar

The disputed domain name <wwbetway.com> is registered with Gname 048 Inc (the "Registrar").

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 13, 2023. On June 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 16, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 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 amended Complaint in English on June 19, 2023.

On June 16, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on June 19, 2023. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on June 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2023. The Respondent did not submit a response. Accordingly, the Center notified the Respondent's default on July 19, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on July 21, 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, Merryvale Limited, is a member of Super Group, which is listed on the New York Stock Exchange and is the holding company of leading global online sports betting and gaming businesses which enjoy strong reputations in their fields.

The Complainant has an extensive global portfolio of the BETWAY trade mark, including the following:

- China Trade Mark Registration No. 14428000 for BETWAY in Class 9 registered on May 28, 2015;
- China Trade Mark Registration No. 14427999 for BETWAY in Class 41 registered on May 28, 2015; and
- European Union Trade Mark Registration No. 004832325 for BETWAY in Classes 9 and 41 registered on January 26, 2007.

The disputed domain name <wwbetway.com> was registered on April 9, 2023.

The Complainant's evidence indicates that at the time of filing of the Complaint, the disputed domain name did not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has prior rights in the BETWAY trade mark and that it has acquired a strong reputation in its field of business.

The Complainant further notes that the disputed domain name registered by the Respondent is confusingly similar to the Complainant's BETWAY trade mark.

The Complainant asserts that it has not authorized the Respondent to use its BETWAY trade mark, and there is no evidence to suggest that the Respondent has used or undertaken any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant further asserts that, considering the evidence, it is implausible that the Respondent registered the disputed domain name in good faith, and that any use of the disputed domain name must be in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

“[...] the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should be Chinese.

However, the Complainant filed the Complaint in English and requested that English be the language of the proceeding for the following main reasons:

- The disputed domain name consists of Latin characters only and does not carry any specific meaning in the Chinese language;
- In addition, the disputed domain name is made up of letters in Ascii-Script (American Standard Code for Information Interchange)) and could be pronounced phonetically in English; and
- The Complainant is not in a position to conduct these proceedings in Chinese without significant additional expense and delay due to the need to arrange for the translation of the Complaint and the supporting Annexes.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

Considering the circumstances of this case, the Panel has determined that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not create any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

6.2. Substantive Elements

A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the BETWAY trade mark.

Disregarding the generic Top-Level Domain (“gTLD”) “.com”, the disputed domain name incorporates the Complainant’s trade mark BETWAY in its entirety, simply preceding it with the term “ww”.

Where the relevant trade mark 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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the BETWAY trade mark and in showing that the disputed domain name is identical or confusingly similar to its mark.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case has been established, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and the Panel has not been provided with any evidence suggesting that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

As such, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has failed to demonstrate that prior to the notice of the dispute, he or she had used or made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Furthermore, the Panel has not been provided with any evidence showing that the Respondent is commonly known by the disputed domain name or that the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

At the time of filing of the Complaint, the disputed domain name did not resolve to an active website.

As such, the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances in particular, but without limitation, 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 (the owner of the trade mark 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 trade mark 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 has 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.

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the BETWAY trade mark was already known and directly associated with the Complainant's activities. Given the prior use and fame of the Complainant's marks, in the Panel's view, the Respondent knew or should have been aware of the Complainant's marks when registering the disputed domain name.

While the disputed domain name does not resolve to an active website, the doctrine of passive holding provides that the non-use of the domain name does not necessarily prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3. Accordingly, given the reputation and prior use of the Complainant's marks, the disputed domain name being confusingly similar to the Complainant's BETWAY mark, the Respondent's use of false or incomplete contact details (the Written Notice was not able to be delivered), the failure of the Respondent to submit a response, and the lack of plausibility for any legitimate good faith use of the disputed domain name, the current passive holding of the disputed domain name does not preclude a finding of bad faith.

The Panel thus finds that the Respondent registered and is using the disputed domain name in bad faith.

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 <wwbetway.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: August 4, 2023