

ADMINISTRATIVE PANEL DECISION

Foundcom Limited v. Viktor Lokator

Case No. D2023-3197

1. The Parties

The Complainant is Foundcom Limited, Cyprus, represented by TB Business Support, LLC, Latvia.

The Respondent is Viktor Lokator, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <brazinos777.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 July 25, 2023. The original Complaint concerned two domain names: <brazinos777.com>, which is the subject to the current decision, and <brazino365.com>. On July 25, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with these two disputed domain names. On July 25, 2023, the Registrars transmitted by email to the Center its verification responses disclosing registrant and contact information for multiple underlying registrants, also disclosing that the Complaint was submitted in a different language than the language of the registration agreement related to the domain name <brazino365.com>.

The Center sent an email communication to the Complainant on August 2, 2023, providing the registrant and contact information disclosed by the Registrars as well as related to the language of the registration agreement, inviting the Complainant to either amend the Complaint adding the Registrar-disclosed registrants as the formal Respondents and provide relevant arguments or evidence demonstrating that all the named Respondents are, in fact, the same entity and that all domain names are under common control, or indicate which of the two domain names will no longer be included in the current Complaint.

The Complainant filed an amended Complaint on August 3, 2023 requesting for partial withdrawal with regard to the domain name <brazino365.com>.

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 August 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 30, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on September 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 provides casino, gaming and gambling services, including online. One of the Complainant's online gaming and gambling platforms is available at <brazino777.com> targeting Latin-American markets and operating since 2018.

The Complainant is the owner of the following trademark registrations:

- European Union Trade Mark Registration No. 018731200 for the word mark BRAZINO, filed on July 11, 2022 and registered on November 9, 2022, in classes 9 and 41; and
- European Union Trade Mark Registration No. 018763876 for the word mark BRAZINO777, filed on September 16, 2022 and registered on January 19, 2023, in classes 9 and 41.

The disputed domain name was registered on October 27, 2022 and presently does not resolve to an active webpage. The disputed domain name has been used in the past in connection with a webpage reproducing the Complainant's logo and offering "welcome bonuses" to the Complainant's platform also stating, in Portuguese language, that "Brazino777 is a long-established project operating in Brazil. Despite its relatively long life, the platform has become well known among fans. New users sign up here every day, and experienced players have already come to appreciate the comfortable game play and generous bonus program." (Annexes 5 and 6 to the Amended Complaint).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that its BRAZINO and BRAZINO 777 trademarks have been in use since 2018 and have obtained some degree of notoriety and goodwill among Internet users in Latin America what is a result not only of their extensive use but also to their highly specific nature as well as high level of inherent distinctiveness due to the fact that the word "Brazino" is an invented word.

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's BRAZINO 777 registered trademark since the disputed domain name incorporates it in its entirety with the addition of a letter "s" to "brazino" what however does not have any valuable impact on the overall impression and will remain unnoticed by Internet users.

As to the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Complainant contends that:

- (a) the disputed domain name was registered well after the original Complainant's domain name <brazino777.com>, was registered in 2018 and the Complainant's trademarks were filed and published;
- (b) the Respondent's use of the disputed domain name cannot be considered a *bona fide* offering of goods and/or services since it cannot be an unintentional coincidence that the Respondent has chosen a domain name so very close and similar (only differing by the addition of a single letter in the middle of the name) to the Complainant's domain name and trademark, putting it to use in the same business sector;
- (c) the Complainant has not licensed or otherwise permitted the Respondent to use its trademark or any variation thereof; also not having licensed or otherwise permitted the Respondent to apply for or use any domain name incorporating its trademark;
- (d) the Respondent is not making any legitimate noncommercial or fair use of the disputed domain name without an intent for commercial gain; rather, the Respondent has used the disputed domain name to divert Internet users and unlawfully profit from an undue association with the Complainant's trademark.

As to the registration of the disputed domain name in bad faith, the Complainant asserts that the Respondent knew or should have known of the Complainant's trademark rights at the time of the registration of the disputed domain name in view of both the degree of notoriety and goodwill among the relevant public that the Complainant's trademark has acquired as well as the high level of inherent distinctiveness that BRANZINO, an invented word, has.

Further, the Respondent's intent to target the Complainant can be inferred from the use made of the disputed domain name in connection with the webpage available in the past which displayed Complainant's logo and made direct reference to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The marks BRAZINO and BRAZINO 777 remain recognizable in the disputed domain name. The Panel finds the addition of the letter “s” does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules.

As seen above, the disputed domain name has been used in the past in connection with a webpage reproducing the Complainant’s logo and offering “welcome bonuses” to the Complainant’s platform. Indeed, such use cannot be considered here a *bona fide* offering of goods or services nor legitimate noncommercial or fair use under the Policy.

Furthermore, the composition of the disputed domain name, wholly incorporating the Complainant’s well-known trademark along with the content of the website (reproducing the Complainant’s trademark), indicates the Respondent’s intention to create a risk of affiliation or association with the Complainant and its mark

Also, the lack of evidence on record showing that the Respondent has been commonly known by the disputed domain name, is a further indication that the Respondent lacks rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of the disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

- a) the use made of the disputed domain name in connection to reproducing the Complainant's logo and offering bonuses to the Complainant's platform;
- b) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name;
- c) the present inactive use of the disputed domain name;
- d) the Respondent's choice to retain a privacy protection service; and
- e) the indication of what appear to be false contact details, not being the Center fully able to deliver communications to the Respondent.

Further, previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <brazinos777.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: September 19, 2023