

ADMINISTRATIVE PANEL DECISION

Foundcom Limited v. Anatoliy Rudolf

Case No. D2023-3684

1. The Parties

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

Respondent is Anatoliy Rudolf, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <brazino7.com> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2023. On September 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 4, 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 (DATA REDACTED) and contact information in the Complaint. The Center sent an email communication to Complainant on September 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 11, 2023.

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 Respondent of the Complaint, and the proceedings commenced on September 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 6, 2023.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on October 23, 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

Complainant operates online gambling casino via a primary website at the domain name <brazino777.com>.

Complainant owns several trademark registrations in the European Union and other jurisdictions containing the word marks BRAZINO and BRAZINO777. Some examples of Complainant's trademark registrations can be found below:

Registration No.	Trademark	Jurisdiction	International Classes	Filing Date	Registration Date
018763876	BRAZINO777	European Union	9, 41	Sept. 16, 2022	January 19, 2023
018731200	BRAZINO	European Union	9, 41	July 11, 2022	November 9, 2022

The disputed domain name <brazino7.com> was registered on May 17, 2023, and, according to the evidence submitted by Complainant, used to resolve to what appears to be a fake website. The disputed domain name currently resolves to a webpage without content.

5. Parties' Contentions

A. Complainant

Complainant pleads that the disputed domain name <brazino7.com> is almost identical and confusingly similar to Complainant's registered trademarks BRAZINO and BRAZINO777. The disputed domain name and Complainant's trademark share the same word element "brazino" and a sole numerical element "7". The only difference is the lack of repetition of the last two numerical elements "7" in the disputed domain name, which is not enough to distinguish from Complainant's trademark BRAZINO777, especially, creating a risk of association, fulfilling paragraph 4(a)(i) of the Policy and paragraph 3(b)(viii) and 3(b)(ix)(1) of the Rules.

Complainant affirms that Respondent has never been authorized by Complainant to register or use Complainant's registered trademarks BRAZINO nor BRAZINO777 or to apply for or use any domain name incorporating such trademarks. According to Complainant, Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair use manner. At the time of filing the Complaint, according to the attached evidence, the disputed domain name resolved to a what appears to be a fake website, that displayed images without any functions (Annex 5 of the Complaint). At the time of filing the Amended Complaint, the disputed domain name resolved to a website without content. This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules has been fulfilled.

In addition, Complainant states that Respondent would not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademarks BRAZINO nor BRAZINO777 as a domain name nor is Respondent associated with Complainant. Complainant states that Respondent registered the disputed domain name to free ride on Complainant's renown, and now presents behavior of passive holding. Thus, the requirement for the registration and use of the disputed domain name is fulfilled, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Procedural issue

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. As Respondent's mailing address is stated to be in Ukraine, subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Complaint was delivered to Respondent's email address provided by the Registrar. The Panel finds that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

6.2 Substantive Issues

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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 burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

A. Identical or Confusingly Similar

Complainant has duly proven that it owns prior trademark rights for BRAZINO and BRAZINO777, and that the disputed domain name <brazino7.com> reproduces entirely Complainant's BRAZINO mark with the addition of the numerical element "7", which incidentally reproduces partially the BRAZINO777 mark.

The Panel notes the disputed domain name holds a generic Top-Level Domain ("gTLD") ".com", for which, according to the section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the gTLD ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

The Panel finds the entirety of the trademark BRAZINO is reproduced within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. Moreover, although the addition of other terms here, the number "7" may bear on assessment of the second and third elements, the Panel finds the addition of such number does not prevent a finding of confusing similarity between the disputed domain name and the trademark BRAZINO for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel also finds the trademark BRAZINO777 is recognizable within the disputed domain name. [WIPO Overview 3.0](#), sections 1.7 and 1.9 (“[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant.”)

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant’s trademarks BRAZINO and BRAZINO777, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of [WIPO Overview 3.0](#) as follows: “[w]hile 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.”

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant’s contentions, the Panel has considered Complainant’s un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* use that could demonstrate rights or legitimate interests, since the evidence shows that the disputed domain name currently resolves to a website without content, as mentioned in the Amended Complaint and consulted by this Panel. The use of a confusingly similar disputed domain name to mislead unsuspecting Internet users to a website without content, cannot constitute fair use. Moreover, given the previous use of a fake website by Respondent, as alleged by the Complainant, in addition to the fact that the disputed domain name is inherently misleading, cannot constitute fair use.

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that includes Complainant’s trademark BRAZINO in its entirety and misspells the trademark BRAZINO777 and Complainant’s domain name <brazino777.com>, without the repetition of the number “7”. Based on the available record, the Panel finds that Respondent was likely aware of Complainant’s rights to BRAZINO and BRAZINO777 at the time of the registration, as Complainant’s trademark is widely known and enjoys an international reputation. Moreover, the previous use of the disputed domain name as a fake website, indicates the likelihood of Respondent’s knowledge of Complainant’s trademark and a clear intent to take a free ride on the Complainant’s renown and misguide costumers.

Further, the Panel verifies that currently the disputed domain name resolves to a website without content. Previous UDRP panels have concluded in similar cases that such non-use does not prevent a finding of bad faith use by the passive holding doctrine. See *BPCE v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / pascale kiss, cherhgi*, WIPO Case No. [D2021-1251](#):

Prior UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).

As discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), there are five circumstances that indicate if the passive holding of a domain name could be regarded as bad faith:

- (i) the Complainant's trademark has a strong reputation and is widely known [...],
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,
- (iii) the Respondent has taken active steps to conceal its identity [...],
- (iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and
- (v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate [...].

Considering all of the items listed above, the Panel finds that at least items (i), (ii) and (v) are present in this case, since (i) Complainant enjoys a well-known reputation for the trademarks BRAZINO and BRAZINO777; (ii) Respondent has not responded to Complainant's contentions, failing to provide evidence of the use in good faith of the disputed domain name; and (v) there is no plausible use of the disputed domain name that would not represent bad faith, especially considering that the disputed domain name is inherently misleading. Thus, in the circumstances of the present case the current passive holding of the disputed domain name supports a finding of bad faith.

Moreover, it should be noted that, in the circumstances, Respondent's lack of response further reinforces that the disputed domain name most likely was registered and is being used in bad faith. In this sense, the panel found in *Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Alexis Kane*, WIPO Case No. [D2021-0912](#) that:

The following factors were also considered by the Panel as indicative of bad faith registration and use of the disputed domain name: (i) the Respondent's lack of response to the Complaint. See, *Awesome Kids LLC and/or Awesome Kids L.L.C. v. Selavy Communications*, WIPO Case No. [D2001-0210](#); [] (iii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name as per paragraph 4(b) of the Policy.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

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, <brazino7.com> be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: November 6, 2023