

ADMINISTRATIVE PANEL DECISION

Merryvale Limited v. zengzhaowei zeng

Case No. D2023-4836

1. The Parties

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

The Respondent is zengzhaowei zeng, China.

2. The Domain Names and Registrar

The disputed domain names <air-betway.com>, <apple-betway.com>, <banana-betway.com>, <bar-betway.com>, <beef-betway.com>, <betway-air.com>, <betway-apple.com>, <betway-banana.com>, <betway-bar.com>, <betway-beef.com>, <betway-cash.com>, <betway-cctv.com>, <betway-cool.com>, <betway-ctrip.com>, <betway-dog.com>, <betway-douban.com>, <betway-drink.com>, <betway-egg.com>, <betway-free.com>, <betway-hao123.com>, <betway-he.com>, <betway-hupu.com>, <betway-ice.com>, <betway-i.com>, <betway-info.com>, <betway-iqiyi.com>, <betway-james.com>, <betway-jordan.com>, <betway-kobe.com>, <betway-look.com>, <betway-menu.com>, <betway-milk.com>, <betway-old.com>, <betway-on.com>, <betway-she.com>, <betway-sina.com>, <betway-today.com>, <betway-toutiao.com>, <betway-188milk.com>, <betway-888jordan.com>, <cash-betway.com>, <cctv-betway.com>, <cool-betway.com>, <ctrip-betway.com>, <dog-betway.com>, <douban-betway.com>, <drink-betway.com>, <egg-betway.com>, <free-betway.com>, <hao123-betway.com>, <he-betway.com>, <hupu-betway.com>, <ice-betway.com>, <in-betway.com>, <info-betway.com>, <james-betway.com>, <jordan-betway.com>, <kobe-betway.com>, <look-betway.com>, <menu-betway.com>, <milk-betway.com>, <old-betway.com>, <on-betway.com>, <she-betway.com>, <sina-betway.com>, <today-betway.com>, <toutiao-betway.com>, <188milk-betway.com>, <8info-betway.com>, and <888jordan-betway.com> are registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 16, 2023. On November 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 22, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 11, 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 on December 14,

2023. On December 18, 2024, the Center informed the Parties of the partial withdrawal of the Complaint in relation to certain domain names.

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 December 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 10, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on January 29, 2024. 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 a member of Super Group, the holding company of leading global online sports betting and gaming businesses, including BETWAY, an online sports betting brand. Companies included in the Super Group operate several online gaming websites under the brand "BETWAY", with a current monthly average of 347,000 registered and active customers.

It results from the Complainant's undisputed allegations that the Complainant is the proprietor of a portfolio of trademark registrations for the mark BETWAY in many jurisdictions worldwide. In particular, the Complaint is based on European Union trademark No. 004832325, registered on January 26, 2007, for goods and services in classes 9 and 41.

All the disputed domain names were registered on the same date (i.e., November 10, 2022).

Finally, the Complainant provided undisputed evidence demonstrating that all 70 disputed domain names resolve to websites which offer online gaming and gambling services similar to those provided by the Complainant.

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 names.

Notably, the Complainant contends that:

- (i) the disputed domain names are identical or confusingly similar to its trademark BETWAY, as they consist of said mark in its entirety with the addition of a hyphen, a non-distinctive variant (including, inter alia, numbers, letters, third party's trademarks, and descriptive and generic terms), and the generic Top-Level Domain ("gTLD") suffix ".com". These generic additions do not detract from either the identity or the confusing similarity between the disputed domain names and the BETWAY-marks, nor do they create a different overall impression;

- (ii) the Respondent has no rights or legitimate interests in the disputed domain names. In particular, the Respondent registered 70 disputed domain names, all including the BETWAY-marks, with fraudulent websites operating under all of them¹. These fraudulent websites offer similar services to those provided by the Complainant. It is thus difficult to see how such use of the disputed domain names could ever be characterized as bona fide commercial use. Neither could this practice plausibly be characterized as noncommercial use; and
- (iii) the Respondent's registration and use of the disputed domain names constitutes bad faith. According to the Complainant, the Respondent's registration of the 70 disputed domain names, all bearing the BETWAY-marks in their entirety, constitutes a "pattern of conduct" of preventing the Complainant from reflecting its mark in corresponding domain names. The Complainant further submits that the Respondent registered the disputed domain names with the intention of disrupting the Complainant's business and exploiting its reputation for unlawful commercial gain through cybersquatting. Finally, the Complainant asserts that the Respondent's registration of 70 disputed domain names, all incorporating the well known BETWAY-marks, constitutes compelling prima facie evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "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".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain names should be transferred or cancelled:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Panel is satisfied that the registrant of record for the disputed domain names is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

As reflected above, 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.

¹ The Panel notes that the Complaint alleges similar active use of 69 of the 70 disputed domain names, contending that the remaining disputed domain name is inactive. However, after reviewing the available case file, the Panel finds that the evidence presented reflected similar active websites for all 70 disputed domain names, whereas the referenced inactive disputed domain name had been withdrawn from the Complaint at an earlier stage, as mentioned in the Procedural History above.

Said mark BETWAY is entirely reproduced in all of the disputed domain names, respectively combined with further elements separated by a hyphen including, inter alia, numbers, letters, and terms. The Panel has therefore no doubts that mark BETWAY is clearly recognizable within all of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.7.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

(i) First, it results from the Complainant’s uncontested evidence that all the disputed domain names resolve to websites which offer online gaming and gambling services similar to those provided by the Complainant. In the Panel’s view, such use is likely to mislead Internet users and can thus not be qualified as a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In addition, the Respondent did not submit any evidence of bona fide pre-Complaint preparations to use the disputed domain names. In particular, the Complainant’s uncontested allegations demonstrate that it has not authorized or licensed the Respondent’s use of the BETWAY-mark for registering the disputed domain names which are confusingly similar to the Complainant’s trademark.

(ii) Furthermore, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain names, or any single of them, in the sense of paragraph 4(c)(ii) of the Policy.

(iii) Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Respondent is using all disputed domain names to run commercial gaming and gambling websites so that any noncommercial use of the disputed domain names is excluded from the outset. Furthermore, the Panel considers that such use misleadingly diverts consumers to the websites operated under the disputed domain names which entirely incorporate the trademark BETWAY. Noting the absence of any disclaimer on the websites, the disputed domain names’ content, with services similar as those proposed by the Complainant under its trademark BETWAY, exacerbates the confusion caused by the incorporation of the Complainant’s trademark in the construction of the disputed domain names. Accordingly, the Panel holds that the Respondent’s use of the disputed domain names as described above excludes any bona fide offering, noncommercial, or fair use of the disputed domain names.

Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. In the present case, the Panel notes that the Respondent by using the disputed domain names, has intentionally attempted to attract, for commercial gain, Internet users to its websites or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its websites or locations or of a product or service on its websites or locations (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand:

It results from the documented and undisputed evidence provided by the Complainant that all the disputed domain names resolve to websites which offer online gaming and gambling services similar to those provided by the Complainant. However, the Complainant has not given any authorization for such use and is not linked to the Respondent or its websites. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain names included the Complainant's trademark BETWAY entirely when it registered the disputed domain names. While some of the added terms to the Complainant's trademark in the disputed domain names consist of, or can be perceived as, third party trademarks (i.e., "apple" and "douban"), these marks and terms also relate to the online industry wherein the Complainant operates, and as such were a deliberate selection by the Respondent to further heighten confusion. See, e.g., *FXCM Global Services, LLC v. HEIN MAC*, WIPO Case No. [D2023-1879](#). While the ability to indeed acquire the promoted gaming and gambling-services on those websites is not known to the Panel, the alleged commercial offering and impersonation of the Complainant is sufficient to establish the Respondent's bad faith intent to mislead Internet users.

In addition, the finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the trademark BETWAY is fully incorporated in the disputed domain names. At the date the Respondent registered the disputed domain names, said mark existed and had been used for more than 15 years and had acquired a substantial reputation throughout the world (cf. *Merryvale Ltd. v. Nunnapat Ekouru*, WIPO Case No. [D2022-1088](#); *Merryvale Limited v. 莫静宜 (Mo Jing Yi)*, WIPO Case No. [D2021-1559](#); and *Merryvale Limited v. Super Privacy Service LTD c/o Dynadot / Longzhu mart, zhanghui*, WIPO Case No. [D2022-0266](#));
- (ii) the Respondent registered 70 disputed domain names all identically including the trademark BETWAY. It is true that panels have been reluctant to find a pattern of abuse where a single UDRP case contains several domain names registered simultaneously by the same respondent directed at a single complainant mark (cf. [WIPO Overview 3.0](#), section 3.1.2). However, this Panel considers the registration of 70 disputed domain names on the same day and identically including the Complainant's mark as clear additional general indication of bad faith registration, taking into account that the list of circumstances set out in paragraph 4(b) of the Policy is not exhaustive;

- (iii) the details disclosed for the Respondent by the Registrar are incomplete and inaccurate, noting the courier's inability to deliver the Center's Written Notice;
- (iv) the Respondent failed to provide any evidence of actual or contemplated good-faith use; and
- (v) the absence of any disclaimer on the websites, and the impersonating nature of the website design.

The Panel finds that the Complainant has established the third element 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 names <air-betway.com>, <apple-betway.com>, <banana-betway.com>, <bar-betway.com>, <beef-betway.com>, <betway-air.com>, <betway-apple.com>, <betway-banana.com>, <betway-bar.com>, <betway-beef.com>, <betway-cash.com>, <betway-cctv.com>, <betway-cool.com>, <betway-ctrip.com>, <betway-dog.com>, <betway-douban.com>, <betway-drink.com>, <betway-egg.com>, <betway-free.com>, <betway-hao123.com>, <betway-he.com>, <betway-hupu.com>, <betway-ice.com>, <betway-i.com>, <betway-info.com>, <betway-iqiyi.com>, <betway-james.com>, <betway-jordan.com>, <betway-kobe.com>, <betway-look.com>, <betway-menu.com>, <betway-milk.com>, <betway-old.com>, <betway-on.com>, <betway-she.com>, <betway-sina.com>, <betway-today.com>, <betway-toutiao.com>, <betway-188milk.com>, <betway-888jordan.com>, <cash-betway.com>, <cctv-betway.com>, <cool-betway.com>, <ctrip-betway.com>, <dog-betway.com>, <douban-betway.com>, <drink-betway.com>, <egg-betway.com>, <free-betway.com>, <hao123-betway.com>, <he-betway.com>, <hupu-betway.com>, <ice-betway.com>, <in-betway.com>, <info-betway.com>, <james-betway.com>, <jordan-betway.com>, <kobe-betway.com>, <look-betway.com>, <menu-betway.com>, <milk-betway.com>, <old-betway.com>, <on-betway.com>, <she-betway.com>, <sina-betway.com>, <today-betway.com>, <toutiao-betway.com>, <188milk-betway.com>, <8info-betway.com>, and <888jordan-betway.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: February 12, 2024