

ADMINISTRATIVE PANEL DECISION

Optibet, SIA v. Mysar Mykhailo

Case No. D2023-5093

1. The Parties

The Complainant is Optibet, SIA, Latvia, represented by Abion AB, Sweden.

The Respondent is Mysar Mykhailo, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <optibetkasiino.top> is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 6, 2023. On December 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 7, 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 (Not available from registry) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 19, 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 December 19, 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 notified the Respondent of the Complaint, and the proceedings commenced on January 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2024.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on February 9, 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 in this administrative proceeding is Optibet, SIA, a company incorporated in Riga, Latvia. The Complainant operates in the gaming and betting industry, providing worldwide online casinos, sports betting, and games.

The Complainant is, inter alia, the owner of:

- European Union Trade Mark OPTIBET (device), registration number 017445982, registered on February 26, 2018;
- International Trademark OPTIBET (device), registration number 1401578, registered on November 15, 2017;
- Latvian Trademark OPTIBET (device), registration number M 55 623, registered on October 20, 2005.

The Complainant is also the owner of the domain name, <optibet.com>, registered on January 16, 2001.

The disputed domain name was registered on April 25, 2023.

The disputed domain name is currently inactive. From the submissions provided by the Complainant it appears that previously (at least on December 5, 2023), the disputed domain name was used to resolve to a website where services identical to those of the Complainant's were displayed.

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 the disputed domain name is confusingly similar to the Complainant's trademark, that the Respondent has no rights or legitimate interests in the disputed domain name, and particularly that the Respondent registered and used the disputed domain name to redirect Internet users to a website where services identical to those of the Complainant's are displayed in order to capitalize on and take advantage of the renown of the Complainant's trademark, aiming to unlawfully profit through this use.

B. Respondent

The Respondent did not reply to the 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 the Respondent's mailing address disclosed by the Registrar is stated to

be in Ukraine, which is 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.

The Panel notes that the records show that the Center's Written Notice could not be delivered to the address disclosed by the Registrar in its verification. However, the Panel notes that the Center's Notification of Complaint email was delivered to the Respondent's email address provided by the Registrar. Moreover, the Respondent was contacted by the Center through the Registrar's whols contact form. The Panel finds that the Respondent has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

6.2. Substantive Issues

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

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.

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "kasiino", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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.

In addition, the Panel notes that the composition of the disputed domain name reproducing the Complainant's OPTIBET trademark with the addition of the term "kasiino", which refers to one of the activities provided by the Complainant, carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark.

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.

The disputed domain name reproduces, without any authorization or approval, the Complainant's registered OPTIBET trademark with the addition of the term "kasiino". The disputed domain name was registered over two decades after the Complainant's OPTIBET trademark was registered. In addition, the disputed domain name is confusingly similar to the Complainant's domain name <optibet.com>, registered in 2001 by the Complainant and in use since then.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the OPTIBET trademark, and chose the disputed domain name intentionally in order to misleadingly attract Internet users to its own website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark, and this amounts to bad faith use and registration of the disputed domain name.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Panels have held that the use of a domain name for illegal activity here, impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 name <optibetkasiino.top> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: February 23, 2024