

ADMINISTRATIVE PANEL DECISION

Optibet, SIA v. Trafify Leads
Case No. D2023-5331

1. The Parties

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

The Respondent is Trafify Leads, Latvia.

2. The Domain Name and Registrar

The disputed domain name <optibetlt.fun> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2023. On December 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 26, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 2, 2024, 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 January 2, 2024.

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 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on January 26, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on January 30, 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 Latvian company, established in 1999, operating online casinos, sports betting, and games for customers worldwide. It is the proprietor of several registrations for its OPTIBET trademark, including the following:

- Latvian Trademark No. M55623 for OPTIBET (word mark), registered on October 20, 2005, for services in class 41;
- International Trademark No. 1038387 for OPTIBET (word mark), registered on March 15, 2010, for services in class 41;
- European Union Trademark No. 017445982 for OPTIBET (device mark), registered on February 26, 2018, for services in classes 41 and 43.

The Complainant operates its primary business website at the domain name <optibet.com>, which it registered on January 16, 2001.

The disputed domain name was registered on April 24, 2023. It does not resolve to an active website.

The record contains a copy of a cease-and-desist letter sent by the Complainant to the Respondent on July 7, 2023. The record does not reflect the Respondent's response thereto.

There is no information available about the Respondent.

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 it has been using the OPTIBET mark since the beginning of its business operations in 1999. It has over 23 registrations for its OPTIBET mark. The disputed domain name substantially imitates the Complainant's mark, except for the addition of the letters "l" and "t." The letters could indicate a connection to Latvia, the location of the Complainant's business. The Respondent has no rights in the OPTIBET mark and is not using the disputed domain name to resolve to a website. The Complainant has publicized its distinctive OPTIBET mark through marketing channels, its official site, and through affiliate partners. The mark is highly renowned within the online gambling and gaming industry. The Respondent is passively holding the disputed domain name in bad faith to take advantage of the OPTIBET marks or to inflict damage on the Complainant's business. The Respondent used a privacy service provider to conceal its identity.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (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 Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall 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”.

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 OPTIBET 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. The Panel finds that the disputed domain name is an obvious misspelling of the Complainant’s mark, as it reproduces this mark in its entirety, with the addition of the letters “l” and “t.” [WIPO Overview 3.0](#), section 1.9.

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.

The Panel notes that there is no evidence that the disputed domain name is being used in connection with a bona fide offering of goods or services, or that the Respondent is commonly known by the disputed domain name or is making legitimate noncommercial or fair use thereof. The disputed domain name is an obvious misspelling of the Complainant’s OPTIBET mark, which is inherently misleading. Under the circumstances, the non-use of the disputed domain name cannot support a finding of rights or legitimate interests.

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 disputed domain name is a deliberate misspelling of the Complainant's distinctive mark, which was first registered in 2005 and has been used in connection with online gaming since then. The disputed domain name does not resolve to an active website. The Respondent failed to respond to the Complainant's cease-and-desist letter. There is no evidence to support the Respondent's own rights or legitimate interests in the disputed domain name. Under the circumstances, the Panel finds that the Respondent registered the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

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. Having reviewed the available record, the Panel finds the 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 within the relevant industry, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of 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 <optibetlt.fun> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: February 13, 2024