

ADMINISTRATIVE PANEL DECISION

Optibet SIA v. Kabir S Rawat
Case No. D2024-2257

1. The Parties

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

The Respondent is Kabir S Rawat, India.

2. The Domain Name and Registrar

The disputed domain name <optibet.online> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 3, 2024. On June 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 4, 2024, 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 (Super Privacy Service Ltd c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 4, 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 amended Complaint on June 5, 2024.

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 June 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 30, 2024. The Response was filed with the Center on June 26, 2024. On the same day, the Complainant sent an unsolicited supplemental filing.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on July 5, 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

According to the Complaint, the Complainant is “a well-known” company which owns and has been operating a “highly reputable” online casino since 1999. The Complainant says it has a strong market presence, particularly in the Baltic states.

The Complainant registered the domain name <optibet.com> on January 16, 2001. It appears from the Panel’s inspection of the Wayback Machine that the landing page for that domain name has been captured 205 times since April that year.

The Complainant owns International Registration No 1038387, OPTIBET, which was registered on March 15, 2010 for gambling and totalizator services via the Internet in International Class 41. The International Registration designated 33 countries. These include the European Union countries, Iceland, Norway, Switzerland, and the United Kingdom and eastern European countries including Bulgaria, Ukraine, the Russian Federation, and Armenia. The records in the online International Register database indicate that the registration remains current in most of these countries.

The disputed domain name was registered on January 6, 2024.

It resolves to a webpage which offers the disputed domain name for sale for USD 4,999 or invites the browser to make an offer.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each 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 disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules directs the Panel to decide the 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. Supplemental filing

A first procedural issue is the admissibility of the Complainant’s unsolicited supplemental filing.

Apart from documents requested by the Panel pursuant to paragraph 12 of the Rules, neither the Policy nor the Rules expressly provide for supplemental filings. Their admissibility is therefore in the discretion of the Panel bearing in mind the requirements under paragraph 10 of the Rules to ensure that the proceeding is conducted with due expedition and both parties are treated equally, with each party being given a fair opportunity to present its case.

Where unsolicited supplemental filings are admitted, it is usually because the material corrects some error or addresses something raised in a Response which could not reasonably have been anticipated or which was not otherwise appropriate to deal with until a respondent's position on a particular point was clear.

In addition to some arguments in rebuttal of claims made by the Respondent in the Response, the Complainant's supplemental filing includes a print-out of pages from its current website and a table of some 19 registered trademarks held by the Complainant.

These are matters which a Complainant would usually be expected to address in the Complaint. In the present case, however, the Response specifically denies that the Complainant has any registered trademarks and the Respondent's own diligent searches had failed to identify any – notwithstanding the evidence of the International Registration included in the Complaint. In these circumstances and for this limited purpose only, the Panel admits the Complainant's supplemental filing into the record.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 proven ownership of trade mark registrations for OPTIBET in numerous countries.

In undertaking that comparison between the disputed domain name and the proven trademark, it is permissible in the present circumstances to disregard the generic Top-Level-Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".online" gTLD, the disputed domain name consists of the Complainant's registered trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a 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.

The Respondent registered the disputed domain name after the Complainant began using its trademark and also after the Complainant had registered its trademark.

It is not in dispute between the parties that the Complainant has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. The Respondent does not hold any trademarks for the disputed domain name.

These factors coupled with the use of the disputed domain name to offer it for sale are usually sufficient to raise the required prima facie case.

In the present case, the Respondent states he is a domain investor who maintains a portfolio of domain names of predominantly single word names. The Respondent emphasises that buying and selling domain names is a legitimate practice.

The Complainant makes a point of the fact that the Respondent has been found to have registered and used other domain names in some other proceedings under the Policy. The Respondent acknowledges this but points out that he has also been successful in some and he has many domain names which have not been the subject of dispute.

Before he acquired the disputed domain name, the Respondent says he conducted diligent searches and has not found any active trademark registrations for the term and was unable to locate an operational website or business details for “Optibet”.

The Panel accepts that buying and selling domain names can be a legitimate practice under the Policy. Whether it is or is not in a particular case depends on whether the purchase and offer to sell the domain name in question is an attempt to take advantage opportunistically of the resemblance of the domain name to a third party's trademark. As a corollary to this, findings in previous proceedings involving a particular Respondent will not in themselves be determinative.

In the present case, the Panel cannot accept the Complainant's claim that its trademark is well-known as that is simply an unsupported assertion. That assertion would not be sufficient to establish the Complainant has common law rights in an unregistered trademark. See e.g., [WIPO Overview 3.0](#), section 1.3. And a claim that a trademark is well-known in most cases will require at least some corroborating evidence.

On the other hand, the term “optibet” is not an ordinary dictionary word. That is true for English and neither party has suggested it has a meaning in any other language. So far as the Panel is aware, therefore, the term is not directly descriptive of any particular thing or service and it is not a geographic reference. That conclusion is reinforced by the successful registration of OPTIBET in numerous countries as indicated by International Registration No. 1038387 and other countries indicated in the supplemental filing including Latvia (No. M-04-1609) Canada (No. 2031837).

The question then arises how the Respondent arrived at the decision to register “optibet”. The Respondent has not attempted to explain that. It does not appear to have been through a purely automated process as the Respondent claims he undertook diligent searches before registering the disputed domain name.

The Respondent does not give details of what those diligent searches involved. Given the Respondent is offering the disputed domain name for sale globally to the whole world on the Dan.com website, the Panel would not describe a search of trademarks in one or two countries, if that is all that was involved, as “diligent”. In the present case, the evidence shows that the Complainant does have trademarks registered in numerous countries. A rudimentary search of databases such as WIPO’s Global Brand Database would have clearly disclosed the existence of such registrations.

Further, a simple Internet search via a service such as Google or Bing would have thrown up numerous links or references to the Complainant, its business and trademark. At least from the Panel’s location, the links to the Complainant’s website are inaccessible. However, the page generated by following those links includes the Complainant’s trademark and the statement “If you believe you received this message in error, please contact: [...]@optibet.com”. If nothing else, the presence of the Complainant’s logo and trademark on the page indicates that someone is using the trademark.

Further yet, the Respondent is offering the disputed domain name for sale at a price of USD 4,999. That appears to be significantly higher than the standard price for registration in the “.online” gTLD. For example, the standard price offered by the Registrar appears to be USD 28.95.

Whether that, or some other amount, was the price paid by the Respondent is unknown as the Respondent has not explained how much was paid to register the disputed domain name. The Respondent also has not explained how the price of USD 4,999 has been arrived at. The Respondent does say his practice is to register single words as domain names due to their branding potential, but that is an inadequate explanation for the price in question bearing in mind the nature of the disputed domain name described above.

In the absence of evidence about the nature of the searches, or at least a much more detailed explanation of what the searches entailed, therefore, the Panel is not prepared to accept the claim that the Respondent’s diligent searches did not reveal any trademarks or that the Respondent was unaware of the Complainant and its trademark when the Respondent registered the disputed domain name.

In these circumstances, it appears much more likely that the Respondent registered the disputed domain name to take advantage of its correspondence to the Complainant’s trademark. Contrary to the Respondent’s contentions, that does not constitute a good faith offering of services or a fair use under the Policy.

As the Complainant has established a sufficient prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name and the Respondent has not rebutted that prima facie case, therefore, the Panel finds the Complainant has established the second requirement under the Policy also.

D. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: See e.g., *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Panel finds this is the most likely explanation for the registration of the disputed domain name in this case for the reasons set out in section 5B above rejecting the Respondent claim of rights or legitimate in the disputed domain name.

For those reasons, the Panel also finds that the disputed domain name has been registered in bad faith and the offering of it for sale in the manner identified constitutes use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <optibet.online> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: July 22, 2024