

ADMINISTRATIVE PANEL DECISION

Optibet SIA v. Igor shanska

Case No. D2024-2263

1. The Parties

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

The Respondent is Igor shanska, France.

2. The Domain Name and Registrar

The disputed domain name <optibets.site> is registered with NameCheap, 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 3, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 6, 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 June 12, 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 June 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 4, 2024.

The Center appointed Anna Carabelli as the sole panelist in this matter on July 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

Since 1999, the Complainant owns and operates an online casino under the brand name "Optibet", with a strong market presence particularly in the Baltic States.

The Complainant owns the following trademark registrations consisting of or including OPTIBET:

- International trademark registration No. 1038387, registered on March 15, 2010;
- Latvian trademark registration No. M73510 (figurative), registered on December 20, 2018.

The Complainant also owns the domain name <optibet.com> registered on January 16, 2001, which is used for its online casino and betting activities.

The disputed domain name was registered on February 22, 2024. The evidence in the Complaint is that the disputed domain name resolves to a webpage featuring the Complainant's OPTIBET figurative trademark, and displaying a text in Lithuanian which loosely translated into English reads as follows:

"OptiBet Lithuania

Mobile version

The Opti Bet office offers its users a mobile application to make it more convenient to use the service. It is available for both Android and iOS users, making it versatile for most mobile devices. OptiBet Casino's mobile app design is as simple and stylish as the main website. In terms of functionality, the program is in no way inferior to the full version of the site. Users can bet on sports, play in the casino, as well as use all the additional features of the service. Overall, this is a useful tool for those who want to keep up with all the happenings and not miss a single interesting game."

On April 12, 2024, the Complainant sent a cease-and-desist letter to assert its trademark rights in OPTIBET and request the transfer of the disputed domain name. The cease-and-desist letter was sent to the Registrar's abuse email address to be forwarded to the registrant (whose details were not disclosed at that time), and remained unanswered.

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 established rights in the OPTIBET trademark by virtue of longstanding and extensive use;
- The disputed domain name is confusingly similar to a trademark in which the Complainant has right, since it consists of the Complainant's OPTIBET mark. The addition of an "S" at the end of the Complainant's trademark does nothing to distinguish the disputed domain name from the Complainant's OPTIBET mark;
- The Respondent has no rights or legitimate interests in the disputed domain name since: (i) the Complainant has not authorized or somehow given consent to the Respondent to register and use the disputed domain name, (ii) the Respondent is not commonly known by the disputed domain name, and (iii) the Respondent's use of the disputed domain name is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use. In this regard the Complainant points out that the disputed domain name resolves to a webpage prominently displaying the Complainant's trademark and a text in Lithuanian describing services directly related to the Complainant's area of business;

- The disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name having in mind the Complainant's OPTIBET trademark, with the clear intention to trade-off of the reputation and goodwill of the Complainant's mark, by diverting Internet users seeking the Complainant's website to its own website for commercial gain.
- The fact that the Respondent registered the disputed domain name with a privacy shield service and did not respond to the Complainant's cease-and-desist letter are further evidence of the Respondent's bad faith.

Based on the above the Complainant requests the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove 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;
- (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 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

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 entirety of the Complainant's registered trademark OPTIBET is reproduced and 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 addition of an "S" at the end of the Complainant's trademark does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy.

The other additional element is the generic top level domain ".site". A generic Top-Level-Domain (gTLD) suffix generally has no capacity to distinguish a domain name from a trademark and as such is disregarded

as insignificant for purposes of determining the similarity between the disputed domain name and the trademark, because the Top-Level-Domains (TLDs) are functionally necessary to operate the domain name. [WIPO Overview 3.0](#), section 1.11.1.

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. There is no indication before the Panel of any activity in relation to the disputed domain name that would give rise to rights or legitimate interests to the Respondent.

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, in the Panel’s view it is difficult to believe that the Respondent did not have in mind the Complainant’s OPTIBET trademark when registering the disputed domain name. The fact that the Respondent has used the disputed domain name following registration, to resolve to a webpage which prominently features the Complainant’s OPTIBET mark, and displays a text in Lithuanian describing services directly related to the Complainant’s area of business, establishes both the Respondent’s actual knowledge of the Complainant’s rights and the Respondent’s intention to take unfair advantage of those rights. Indeed, the Respondent has used the disputed domain name to capitalize on the goodwill of the Complainant’s OPTIBET trademark, and has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

The above conduct constitutes bad faith registration and use of the disputed domain name 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 <optibets.site> be transferred to the Complainant.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: July 23, 2024