

ADMINISTRATIVE PANEL DECISION

Optibet SIA v. Kyrylo Kirieiev
Case No. D2024-3391

1. The Parties

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

The Respondent is Kyrylo Kirieiev, Kazakhstan.

2. The Domain Name and Registrar

The disputed domain name <optibetplay.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 19, 2024. On August 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 20, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 20, 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 August 21, 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 August 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 17, 2024.

The Center appointed Andrew F. Christie as the sole panelist in this matter on September 25, 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 has operated an online casino since 1999. It owns several trademark registrations consisting of or containing OPTIBET, including European Union Trademark Registration No. 018889868 (registered on October 11, 2023) for the composite image and word trademark OPTIBET, and International Trademark Registration No. 1038387 (registered on March 15, 2010, and designating more than 30 countries) for the word trademark OPTIBET.

The Complainant asserted it is the owner of the domain name <optibet.com>. However, the evidence provided in support of this assertion shows the owner is BestBet Limited. The relationship (if any) between the Complainant and BestBet Limited was not explained.

The disputed domain name was registered on May 24, 2024. The Complainant provided a screenshot taken some time in August 2024, showing the disputed domain name resolved to a website that purports to be the site of “Latvian Tours Travel Agency”, and which claims to identify “Best Casino Hotels to Visit in Latvia”. As of the date of this decision, the disputed domain name resolves to a website which appears to be the same as the one shown in the screenshot.

On June 25, 2024, the Complainant’s representative sent a cease and desist letter to Registrar’s abuse email address, for forwarding to the Respondent. The Respondent did not respond to the letter.

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.

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s registered word trademark OPTIBET on the following grounds. The disputed domain name incorporates the Complainant’s word trademark in full, and only adds the word “play”. The word “play” is descriptive of services offered by the Complainant, and therefore in no way distinguishes the disputed domain name from the Complainant’s registered trademark. As the disputed domain name is read from left to right, an Internet user would primarily notice the word “optibet”, which would increase the likelihood of confusion.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name on the following grounds. The Respondent has not been authorized by the Complainant to use its OPTIBET trademark. There is no evidence that the Respondent is commonly known by the disputed domain name, or that the Respondent has made any legitimate use of the disputed domain name. Using the disputed domain name for a website that refers to services covered by the Complainant’s trademark registration is misleading as to the commercial source of the disputed domain name and risks tarnishing the Complainant’s trademark. The Respondent cannot establish rights in the disputed domain name as they have not used it in connection with a bona fide offering of goods or services or for a legitimate noncommercial or fair use. The fact that the Respondent never answered the Complainant’s communications and registered the disputed domain name with a privacy shield service, are additional indicators that the Respondent has no rights or legitimate interest in respect of the disputed domain name.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith on the following grounds. The Complainant has received exposure under its OPTIBET trademark, both through its own marketing channels and its official website at “www.optibet.com”. The Complainant’s OPTIBET trademark was registered several years before the creation of the disputed domain name. Considering that the Complainant is a well-known company and the holder of a reputed trademark, with a substantial and widespread reputation, it is highly unlikely that the Respondent chose the disputed domain name without knowledge of the Complainant’s activities and trademark. This is further supported by the fact the website to which the disputed domain name resolves refers on many occasions to: (i) Latvia, which is the Complainant’s country of incorporation and one of the jurisdictions where it is most well-known; and (ii) services that fall under the exclusive protection of the Complainant’s registered trademark. Bearing in mind the high degree of similarity between the disputed domain name and the Complainant’s registered trademark, as well as the recognizability of the trademark, it ought to be presumed that the Respondent has chosen the disputed domain name because it is confusingly similar, with an intent to commercially benefit from the confusing similarity. Despite being given the opportunity to either transfer the disputed domain name or provide a reasonable explanation as to their choice to register the disputed domain name and its current use, the Respondent actively chose not to reply to the arguments presented in the cease and desist letter. This is behaviour that constitutes further evidence of bad faith registration and use of the disputed domain name. All the above-mentioned circumstances strongly suggest that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

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. It is the owner of a trademark registration for the word trademark OPTIBET.

The entirety of the Complainant’s word trademark is reproduced within the disputed domain name, followed by the word “play”. Although the addition of other terms may bear on assessment of the second and third elements, the Panel finds the addition of the term “play” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. The Panel finds that the Complainant’s trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark 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.

The Panel considers that the composition of the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. Also, the evidence establishes that the Respondent has used the disputed domain name to resolve to a website which seeks to imply that it is affiliated with the Complainant, by referring to: (i) casinos, which is a business activity in respect of which the Complainant’s trademark is registered and used by the Complainant; and (ii) Latvia, which is the Complainant’s country of incorporation and one of the jurisdictions in which the Complainant operates. This use of the disputed domain name is not a legitimate commercial use. Panels have held that the use of a domain name for illegal activity, such implying a commercial affiliation that does not exist, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Having reviewed the available record, the Panel finds that 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 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: (i) the Respondent registered the disputed domain name more than a decade after the Complainant first registered its OPTIBET trademark; (ii) the disputed domain name incorporates the Complainant’s trademark in its entirety, and merely adds the word “play”, which is descriptive of a service for which the Complainant’s trademark is registered and in respect of which it is used by the Complainant; and (iii) the Respondent has used the disputed domain name to resolve to a website that makes references to a service that is offered by the Complainant and a jurisdiction in which the Complainant operates, thereby falsely giving the impression the Respondent is affiliated with the Complainant. It is clear the Respondent registered the disputed domain name with knowledge of 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 evidence shows that the Respondent has used the disputed domain name in an intentional attempt to attract, for commercial gain, Internet users to a website by creating a likelihood of confusion with the Complainant’s trademark. Having reviewed the record, the Panel finds that 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 <optibetplay.com> be transferred to the Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: October 9, 2024