

## ADMINISTRATIVE PANEL DECISION

Optibet SIA v. Mike Strong  
Case No. D2024-3392

### 1. The Parties

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

The Respondent is Mike Strong, Germany.

### 2. The Domain Name and Registrar

The disputed domain name <optibet-es.com> is registered with NameCheap, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 19, 2024. On August 20, 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 (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 August 22, 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 22, 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 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 16, 2024.

The Center appointed Andrew F. Christie as the sole panelist in this matter on September 23, 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 22, 2024. The Complainant provided evidence showing that MX records have been configured for the disputed domain name, which would allow the disputed domain name to be used to send emails. As of the date of this decision, the disputed domain name does not resolve to an active location.

On June 25, 2024, the Complainant's representative sent a cease and desist letter to the 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 on the following grounds. The disputed domain name incorporates the Complainant's trademark in full, adding no additional elements that would distinguish it from the Complainant's trademark. The only difference between the disputed domain name and the Complainant's registered trademark is the addition of a hyphen and "es", which is frequently used as a country code for Spain. Such a descriptive addition to the disputed domain name that is otherwise identical to the Complainant's registered trademark does not prevent the finding that the disputed domain name is confusingly similar.

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, and the Respondent does not, to the Complainant's knowledge, own any trademark rights in OPTIBET. 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. 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 interests 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. 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. MX records are activated for the disputed domain name, meaning that if an email were to be sent out by an email address ending with "@optibet-es.com", it is highly probable that the recipient would assume that it has been sent by the Complainant. The fact that MX records are active poses a serious threat to the reputation of the Complainant's registered trademark. The Respondent used a privacy service provider to register the disputed domain name, which also may constitute an indication of the Respondent's bad faith. 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 a hyphen and the characters "es", which is the International Organization for Standardization (ISO) two-letter country code for Spain. Although the addition of other terms may bear on assessment of the second and third elements, the Panel finds the addition of the term "-es" 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 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. Given the confusing similarity of the disputed domain name to the Complainant's trademark and the absence of any relationship between the Respondent and the Complainant, it is difficult to conceive of a use of the disputed domain name by the Respondent that would be either a bona fide use or a legitimate noncommercial or fair use of the disputed domain name. The Complainant has put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this.

The Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

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.

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. [WIPO Overview 3.0](#), section 3.3. The factors that panels have considered relevant in determining if a passive holding of a domain name amounts to use in bad faith include the degree of distinctiveness or reputation of the complainant's mark, the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use, the respondent's concealment of its identity, and the implausibility of any good faith use to which the domain name might be put. In this case, the Complainant's trademark has a solid degree of distinctiveness, the Respondent has not provided any evidence of actual or contemplated good faith use (indeed, has not submitted any response), the Respondent appears to have sought to conceal its true identity, and the Panel is unable to conceive of a realistic good faith use to which the Respondent could put the disputed domain name. Further, the evidence shows that the Respondent has configured MX records for the disputed domain name, which would allow the Respondent to send emails that Internet users would assume, incorrectly, were sent by the Complainant. 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. Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

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 <optibet-es.com> be transferred to the Complainant.

*/Andrew F. Christie/*

**Andrew F. Christie**

Sole Panelist

Date: October 6, 2024