

ADMINISTRATIVE PANEL DECISION

Telefônica Brasil S.A. v. Shelton Chirindza, Oxygen 8 Gaming S.A
Case No. D2024-4254

1. The Parties

The Complainant is Telefônica Brasil S.A., Brazil, represented by Silveiro Advogados, Brazil.

The Respondent is Shelton Chirindza, Oxygen 8 Gaming S.A, Mozambique.

2. The Domain Name and Registrar

The disputed domain name <betvivo.com> 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 October 15, 2024. On October 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 16, 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 (“Domains By Proxy, LLC”) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 21, 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 October 21, 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 October 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 12, 2024.

The Center appointed Edoardo Fano as the sole panelist in this matter on November 15, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules, and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Telefônica Brasil S.A., a Brazilian company operating worldwide for more than 20 years in the telecommunication field, and owning several trademark registrations for VIVO, among which the following ones:

- Brazilian Trademark Registration No. 823376397 for VIVO and design, registered on March 11, 2008;
- Brazilian Trademark Registration No. 823418391 for VIVO and design, registered on November 22, 2011;
- Brazilian Trademark Registration No. 823418367 for VIVO and design, registered on October 2, 2007.

The Complainant's trademark VIVO is sufficiently well-known in Brazil that it has been granted the status of "marca de alto-renome" ("well-known mark") under Brazilian trademark law.

The Complainant also operates on the Internet, being "www.vivo.com.br" its official website. The Complainant also contends that it has provided services to over 100 million customers in Brazil since 2003, and sponsors numerous athletes, sporting events, and sporting organizations in Brazil.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on May 22, 2014, and it resolves to an active website in Portuguese operating a live betting and online slot game platform aimed at the Brazilian market.

On October 14, 2024, the Complainant's legal representatives sent a cease-and-desist letter to the Respondent, without receiving any reply.

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 states that the disputed domain name is confusingly similar to its trademark VIVO.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to use its trademark, and it is not making a bona fide offering of goods under the disputed domain name.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark VIVO is distinctive and well known. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, which qualifies as bad faith registration and use.

Further, the Complainant contends that Respondent is not authorized to provide gambling services in Brazil, according to the relevant, public Brazilian records, which would make any provision of gambling services by the Respondent in Brazil illegal. The Complainant also finds it irregular, and indicative of fraud, that the entity associated with a purported gambling license found on the website at the disputed domain name has no record of the Respondent being licensed to provide online gambling services.

B. Respondent

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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.

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 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 entirety of the mark is reproduced 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.

Although the addition of other terms, here “bet”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a generic Top-Level Domain, in this case “.com”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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.

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.

Having reviewed the 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.

Based on the available record, 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, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant’s trademark VIVO, especially in Brazil, is clearly established, and the Panel finds that the Respondent likely knew of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because the Respondent’s website at the disputed domain names offers online betting services targeting the Brazilian market, where the Complainant is based, and where the Complainant’s trademark VIVO has been registered for more than 20 years and is considered well-known. In this regard, the Panel notes that the targeting of the Brazilian market is clear from both the content on the website resolving from the disputed domain name, and the related social media content, which include references (largely in Portuguese) to Brazil, Brazilian sporting competitions, and the BRL currency. Moreover, the Panel finds that the Respondent’s figurative use of the term “vivo” is nearly identical to the Complainant’s figurative mark VIVO, which, in addition to the Respondent’s use of the slogan “when you see VIVO, its BETVIVO” in the heading of the website associated with the disputed domain name, supports a finding that the Respondent has targeted and sought to take unfair advantage of the Complainant and its trademark VIVO.

The Panel further notes that the disputed domain name is also used in bad faith, since the Respondent is trying to to attract, for commercial gain, Internet users to the Respondent’s website, creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <betvivo.com>, be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: November 21, 2024