

ADMINISTRATIVE PANEL DECISION

978 Tech N. V. v. Ngan Huynh Thi Thuy
Case No. DFM2024-0001

1. The Parties

The Complainant is 978 Tech N. V., Netherlands (Kingdom of the), represented by Justec Legal Advisory Services LLC, United States of America (“United States”).

The Respondent is Ngan Huynh Thi Thuy, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <8xbet.fm> (the “Domain Name”) 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 26, 2024. On June 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 26, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (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 27, 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 28, 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 July 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 22, 2024.

The Center appointed Ian Lowe as the sole panelist in this matter on July 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 is a corporation existing under the laws of Curacao, Netherlands (Kingdom of the) and claims to operate an online gambling website at <https://8xbet.com>. It has a pending application at the United States Patent and Trademark Office ("USPTO") for registration of the word mark 8XBET, serial number 97939901, filed on May 16, 2023.

The Domain Name was registered on April 7, 2023. It does not currently resolve to an active website, but at the time of preparation of the Complaint, as illustrated by a screenshot annexed to the Complaint, it resolved to what appears to be a website in the Vietnamese language offering a range of gambling services and illustrating on the page shown the logo of Leicester City Football Club with the caption (per Google Translate) "First Class Champions Back to the Premier League", and a group of footballers. Leicester City is a football club in the English Premier League.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its 8XBET mark, that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Respondent registered and is using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In particular, the Complainant contends that:

- a) it has used the 8XBET mark in commerce since January 1, 2022 and that in the short time that the Complainant has been in business it has become Asia's largest betting site and is among the world's leading online gambling sites. Further it is one of the major sponsors of Manchester City Football Club in the UK's [sic] Premier League. The Complainant accordingly relies on unregistered trademark rights in the mark 8XBET;
- b) the Respondent has used the Domain Name for the purpose of a website purporting to offer the same gambling services as those offered by the Complainant, and makes use of the Complainant's trademark rights and copyright-protected content published on the Complainant's website in an attempt to mislead users into believing that the Respondent's website is owned by or affiliated with the Complainant;
- c) it has never authorized the Respondent to register the Domain Name or any domain name containing terms related to or confusingly similar to 8XBET;
- d) the Respondent's use of the Domain Name in connection with a website featuring the unauthorized use of the Complainant's intellectual property makes it clear that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the 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 Domain Name; and
- (iii) the 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant relies on rights in its 8XBET mark. However, it has no registered trademark rights in the mark but only a pending application before the USPTO. Section 1.3 of the [WIPO Overview 3.0](#) sets out guidance on what a complainant needs to show in order that it might successfully assert unregistered or common law trademark rights. It points out that specific evidence supporting assertions of acquired distinctiveness should be included in the complaint and that conclusory allegations of unregistered or common law rights, even if undisputed, do not normally suffice to show secondary meaning. However, the fact that a respondent is shown to have been targeting the complainant's mark may support the complainant's assertion that its mark has achieved significance as a source identifier.

Here, the Complainant makes bare assertions that it has become Asia's largest betting site and is among the world's leading online gambling sites, but has not provided evidence of its revenue under the mark, or of the number of visitors to its website, or of the number of gambling transactions made through its website, or of its advertising spend promoting its website. Further, the Complainant has not annexed any screenshots of its website to demonstrate its existence, or illustrate its use of the 8XBET mark, or show the goods or services offered by it. Attempts by the Panel to access the website at "https://8xbet.com" from a United Kingdom based browser resolve to a webpage at the domain name <8xbet.co.uk> containing a warning by anti-virus software that the website is infected and that "the URL contains malicious code that could harm your computer".

However, the Complainant also makes the assertion that it is one of the major sponsors of Manchester City Football Club in the UK's [sic] Premier League. The Panel has confirmed through Internet research that on July 5, 2022 Manchester City announced that it had entered into a regional partnership with the Complainant such that it would become the club's Official Betting Partner in Asia.

Accordingly, the Panel accepts that it is likely to have carried on business under the name 8XBET since 2022 and in light of its partnership with Manchester City, a football club in the English Premier League, its business presumably grew from 2022 such that, on balance, it had established unregistered trademark rights in the mark for the purposes of the UDRP before the Domain Name was registered. The fact that the Respondent is apparently targeting the Complainant's trademark supports such a finding.

Ignoring the country code Top-Level Domain ("ccTLD") ".fm", the Domain Name is identical to the Complainant's 8XBET mark.

Accordingly, the Panel finds that 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. Accordingly, 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 evidence, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Domain Name. Panels have found that the use of a domain name for unlawful activity such as impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Domain Name such as those enumerated in the Policy or otherwise.

Based on the available evidence, 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.

The Domain Name comprises the entirety of the Complainant’s 8XBET mark in which the Panel has found that the Complainant had established unregistered trademark rights before the Domain Name was registered. In light of the use to which the Respondent has put the Domain Name, there is accordingly no doubt that the Respondent had the Complainant and its rights in the mark in mind when it registered the Domain Name. The Respondent has used the Domain Name for a website impersonating the Complainant or passing it off as a website authorised or operated by the Complainant and the Panel accepts that it did so with a view to misleading gambling Internet users for commercial gain.

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 Domain Name <8xbet.fm> be transferred to the Complainant.

/lan Lowe/

Ian Lowe

Sole Panelist

Date: August 8, 2024