

Decision for dispute CAC-UDRP-104454

Case number	CAC-UDRP-104454
Time of filing	2022-04-21 09:29:48
Domain names	bwin365bet.com, bwinbet365.net, 365bwinbet.com, 365bwinbet.net, bwinbet365.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Entain Plc
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Complainant representative

Organization	Stobbs IP
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Respondent

Name	Bunda Poker
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Disputed Domain Names.

IDENTIFICATION OF RIGHTS

The Complainant's subsidiary Entain Operations Limited is the holder of many trademark registrations for the sign "BWIN", amongst them:

- European Union Trademark Registration No. 007577281 BWIN, filed on February 3, 2009 and registered on October 10, 2009 for products/services in classes 9, 16, 35, 36, 38, 41 and 42;
- European Union Trademark Registration No. 007577331 BWIN (fig), filed on February 3, 2009 and registered on September 2, 2009 for products/services in classes 9, 16, 35, 36, 38, 41 and 42;
- UK Trademark Registration No. UK00907577281 BWIN, filed on February 3, 2009 and registered on October 10, 2009 for products/services in classes 9, 16, 35, 36, 38, 41 and 42;
- UK Trademark Registration No. UK00907577331 BWIN (fig), filed on February 3, 2009 and registered on September 2, 2009 for products/services in classes 9, 16, 35, 36, 38, 41 and 42;
- Brazil Trademark Registration 900758805 BWIN, filed on February 25, 2008 and registered on December 13, 2011 for services in class 41;
- Spanish Trademark Registration 2723790 BWIN (fig), filed on July 21, 2006 and registered on October 24, 2007 for

products/services in classes 9, 35, 38, 41 and 42;

- International Trademark Registration 886220 BWIN, filed on February 3, 2006 and registered on November 22, 2006 for products/services in classes 9, 16, 35, 36, 38, 41 and 42;

- International Trademark Registration 896530 BWIN (fig), filed on March 16, 2006 and registered on February 28, 2007 for products/services in classes 9, 16, 35, 36, 38, 41 and 42;

- Australian Trademark Registration No. 1122305 BWIN, filed on February 3, 2006 and registered on February 3, 2006 for products/services in classes 9, 16, 35, 36, 38, 41 and 42;

- Australian Trademark Registration No. 1140390 BWIN (fig), filed on March 16, 2006 and registered on March 16, 2006 for products/services in classes 9, 16, 35, 36, 38, 41 and 42; and

- Canadian Trademark Registration No. 1542916 BWIN, filed on September 9, 2011 and registered on January 19, 2016 for products/services in classes 9, 16, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant submits the Whois details for the Disputed Domain Names state the registrant is "Bunda Poker". The registrant individual is identical across the Disputed Domain Names.

The Complainant submitted the consolidation of the Disputed Domain Names within a singular Complaint is justified and satisfies Policy, Paragraph 4(f).

This Complaint is based on the following grounds:

The Complainant, Entain Plc, is an international sports-betting and gaming group, operating both online and in the retail sector. Entain employs a workforce of over 24,000 individuals in 20 offices across 5 continents. Entain owns a comprehensive portfolio of established brands; Sports Brands include bwin, Coral, Crystalbet, Eurobet, Ladbrokes, Neds International and Sportingbet; and Games Brands include CasinoClub, Foxy Bingo, Gala, Gioco Digitale, partypoker and PartyCasino. In December 2020, Entain plc rebranded from GVC Holdings plc.

The Complainant was incorporated in Luxembourg in 2004 as Gaming VC Holdings S.A. in Luxembourg. The First Complainant re-domiciled to the Isle of Man on 5 January 2010 then formally changing its name from GVC Holdings plc to Entain plc on 9 December 2020 (Company No. 004685V).

The Complainant has traded on the Alternative Investment Market (AIM) of the London Stock Exchange (LSE) since 24 May 2010 and as of 20 October 2021, has a market capitalisation value (the market value of a company's outstanding shares) of £12.7 billion.

The Complainant is the parent company of Entain Operations Limited with the registered office Suite 6, Atlantic Suites, Europort Avenue, Gibraltar, and owns extensive rights in the figurative and word marks associated with BWIN including, but not limited to, the trade mark registrations attached to the Complaint. This very clearly demonstrates the Complainant has rights in the marks BWIN in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), (3)(b)(viii).

In addition, the domain name <bwin.com> was registered as early as 22 August 2005. The Complainant completed the acquisition of Bwin.Party Digital Entertainment, the parent company of the domain name registrant, on 2 February 2016. The Complaint also owns several other domain names that incorporate the BWIN trade mark.

For the relevant financial year ending 31 December 2020, the Complainant's underlying operating profit for the online gaming business was £679 million. It is clear from this that the Complainant's brand has been a significant commercial presence for a long period of time and continues to have the same, strong presence today.

The United Kingdom is the Complainant's core market and accounts for a significant portion of sales, with other key markets being the United States, Germany and Italy. The Complainant's BWIN brand has a significant reputation and has built up a vast amount of goodwill in the sign in the UK in relation to a wide range of goods and services. The Complainant received significant endorsement for their BWIN brand on social media.

The Complainant submits that the registration and use of the Disputed Domain Names is abusive under the Policy.

The Disputed Domain Names are identical or confusingly similar to a trade mark or service mark in which the Complainant have rights; (Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The Complainant relies on the general consensus principle held by prior panelists, that provided a Complainant has a

registered trademark (in any jurisdiction) at the time of commencing proceedings, they will satisfy the threshold of holding 'rights', for the purpose of Policy, Paragraph 4(a)(i).

As illustrated in this Complaint, the Complainant has registered trade marks for the BWIN term. Furthermore, the Complainant's brand has built up substantial recognition in the public domain, supported by their awards and accolades. The Complainant further relies on prior domain dispute decisions, where panels have found the Complainant has rights in the BWIN brand:

- GVC Holdings plc / ElectraWorks Limited v. Registration Private, Domains By Proxy, LLC / Adnan Atakan Alta WIPO Case No. D2016-2563 (Concerning <betbwin1.com>, <betbwin2.com>, <betbwin24.com> and <betbwin365.com>);
- bwin.party digital entertainment plc and ElectraWorks Limited v. 1Bet2Bet Ltd. WIPO Case No. D2016-0122 (Concerning <tobwin.com>);
- bwin.party digital entertainment plc and ElectraWorks Limited v. Domains by Proxy, LLC / Jason D'Cruz and Identity Protection Service / Yeo Hock Heng WIPO Case No. D2014-1705 (Concerning <bwinarbitrage.co> and <bwinarbitrage.com>);
- PartyGaming IA Limited / bwin.party digital entertainment plc v. Carlos Lapuerta WIPO Case No. DES2013-0007 (Concerning <bwinpoker.es>);
- bwin Services AG v. Xia Wang, team manager WIPO Case No. D2011-0905 (Concerning <bwin3.com>);
- bwin Services AG v. Domains by Proxy, Inc. / Ukraine-Host WIPO Case No. D2011-0902 (Concerning <4bwin.com>);
- bwin Services AG v. shenoyan WIPO Case No. D2011-0901 (Concerning <bwin2.com> and <bwin788.com>);
- bwin Services AG v. wang jian aka jian wang WIPO Case No. D2011-0900 (Concerning <5bwin.com>).

The decisions ultimately led to a transfer of the domains to the Complainant. The Complainant submits that the circumstances in the present case are such as to also warrant a transfer of the Disputed Domain Names to the Complainant.

The Disputed Domain Names are confusingly similar to the Second Complainant's BWIN trade mark as they incorporate the well-known term BWIN in its entirety.

The Complainant notes the inclusion of generic terms '365' and 'bet' within the Disputed Domain Name.s The inclusion of the terms intersected by the BWIN trade mark do nothing to alter the impression in the eyes of the average Internet user. Prior panelists have made the same conclusions regarding the addition of non-distinctive terms in paragraph 4(a)(i). A recent example can be seen in the case between Boehringer Ingelheim Pharma GmbH & Co.KG Fundacion Comercio Electronico. CAC Case No. 103973 [<boehringeringelheimequinerebate.com>], where Panelist Victoria McEvedy held that: '... additional material cannot prevent the inevitable association in the eyes of internet consumers between the disputed domain name and the Complainant's trademarks and thus the likelihood of confusion is real and serious. The addition of a non-distinctive term cannot sufficiently distinguish the disputed domain name from the Complainant's name and trademarks.'

The Complainant notes the use of third-party trade marks within the Disputed Domain Names. It is understood by the Complainant that the existence of third-party trade marks does not prevent a finding of confusing similarity for the domain names under Policy, Paragraph (a)(i). The Panel in Guccio Gucci S.p.A. v. Brenda Hawkins, WIPO Case No. D2013-0603 found that:

"[T]he fact that the third party trademark "IPAD" is included in the disputed domain names <gucciipadcase.net> and <gucciipadcases.com> does not eliminate the similarity between the Complainant's trademark and such domain names".

The Complainant requests that the Panel omits the TLD suffixes '.COM' and '.NET' when making an assessment as to the Disputed Domain Names, as these are merely a technical requirement, used for domain name registrations. This principle confirmed in Inter IKEA Systems B.V. v. Келюх Ирина Павловна/Kelyukh Irina. CAC Case No. 101646 [<ikeacrimea.com>]: 'The gTLD suffix ".com" is to be disregarded under the confusing similarity test.'

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

The Complainant submits that the Respondent does not have any rights or legitimate interests in the Disputed Domain Names under Policy.

Bearing in mind the considerable reputation of the BWIN brand and the Complainant's operations in the online betting industry since as early as 2000, there is no believable or realistic reason for registration or use of the Disputed Domain Names other than to take advantage of the Complainant's rights. As evidenced the Disputed Domain Names were registered on 23 October 2019. By this point, the Complainant already had extensive rights in the BWIN brand dating back over fifteen years ago. Furthermore, the BWIN brand name and it is implausible that a third party would not be aware of the Complainant's brand, especially where many of the Disputed Domain Names incorporate other sports betting brands. The Respondent's use of the Disputed Domain Names or a name corresponding to the Disputed Domain Names is not in connection with a bona fide offering of goods or services.

The Complainant submits that the Disputed Domain Names at present resolve to live sites, apart from the Disputed Domain Name <bwinbet365.com> which currently resolves to a parked page. The Disputed Domain Name <bwinbet365.com> resolved to a webpage that was identical or highly similar to the webpages of the remaining Disputed Domain Names. All of the Disputed Domain Names are still registered by the Respondent. Specifically, the Respondent has used the Disputed Domain Names in addition to the use of the BWIN trade mark for the purpose of imitating the Complainant's genuine website. Use of the BWIN brand to imitate the Complainant's genuine website cannot constitute a bona fide offering of goods or services.

The Respondent has not been commonly known by the Disputed Domain Names.

The Complainant submits that to the best of their knowledge, the Respondent has never been known as BWIN at any point in time. As stated by Panelist, R. Eric Gaum in *Vestel Elektronik Sanayi ve Ticaret AS v. Kahveci*. D2000-1244: 'merely registering the domain name is not sufficient to establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy'. The registration of the distinctive mark BWIN within the domain name, which is an indicator of trade origin of the Complainant and the Complainant alone (i.e., it is not a common word within the English language) leads the Complainant to conclude that the only reason that the Respondent registered the Disputed Domain Names was to take advantage of the Complainant's goodwill and valuable reputation. No other logical or reasonable conclusion can be gleaned.

The Respondent is not making a legitimate, non-commercial or fair use of the Disputed Domain Names, without intent of or commercial gain to misleadingly divert the Complainant's consumers.

The Complainant submits that nothing from the content of the domain name suggests that the Respondent is making a legitimate non-commercial or fair use. The Disputed Domain Names are being used to free ride on the distinctive trade mark, BWIN, in addition to the advertisement of services related to online gambling and sports betting evident through use of the website display provided. Therefore, the Respondent cannot come within Policy, Paragraph 4(c)(iii).

In light of the comments submitted above, the Respondent does not satisfy any of the above-mentioned grounds under Policy, Paragraph 4(c).

C. The Disputed Domain Names were registered and are being used in bad faith; (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The Complainant submits that the Disputed Domain Names have been registered and used in bad faith in accordance with Policy, Paragraph 4(a)(iii).

Bad Faith: Policy, Paragraph 4(b)(iv)

The Complainant draw the Panel's attention to Policy, Paragraph 4(b)(iv):

"you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's, as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your website or location".

With reference to paragraph 1.4 of the Complaint, the Complainant has established rights in the BWIN trade mark, dating back to 16 March 2006. The Respondent registered the Disputed Domain Names between on the 23 October 2019, by which time the distinctive character and reputation of the Complainant's BWIN trade mark was well established.

The Complainant owns via its subsidiary entity, Entain Operations Limited, EU Trade Mark No. 007577281 for BWIN [word] in Classes 9, 16, 35, 36, 38, 41 and 42 (registered on 10 December 2009). EU Trade Mark No. 007577281 includes coverage for "computer software; advertising; financial and monetary services related to sports betting and gaming; message sending via the internet in connection with sports betting and gaming; and entertainment in the field of sports betting and gaming", among other things.

The Complainant submits the Disputed Domain Names operate websites advertising online gambling and betting activities.

The websites of the Disputed Domain Names use the Complainant's BWIN trade mark, the trade marks of third-party gambling companies, and the likeness of well-known international football players.

The Complainant submits, upon accessing the websites at the Disputed Domain Names, the user is presented with promotional offers inferring an authorisation provided on behalf of the Complainant and its subsidiaries, when no such authorisation has been provided.

The websites at the Disputed Domain Names encourage the user to divert from the Disputed Domain Names to end-to-end encrypted communication applications, such as LINE and WhatsApp. Similar circumstances have found this characteristic to indicate bad faith use of the domain name, Migros-Genossenschafts-Bund v. Mary Hines CAC Case No. 101810 [migrosch.site].

The Complainant submits the varied gambling and betting activities via the websites at the Disputed Domain Names are not accessible and do not resolve to any content. The only active areas of content at the websites encourage the user to enter further information via redirected weblinks.

The Complainant infers from the registration and use of the Disputed Domain Name, that the intention of the Respondent is to divert consumers (intended for the Complainant), to the Respondent's website. The Complainant asserts that the content at the Disputed Domain Names is setup with the intention to "phish" personal and/or financial information from the Complainant customers.

The intention of the Respondent is therefore to attract users for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the web site, constituting bad faith under Policy, Paragraph 4(a)(iii).

The use of the Disputed Domain Name constitutes bad faith. Therefore, the Complainant asks that the Panel makes the same finding of bad faith registration and use in this case.

Bad Faith: Policy, Paragraph 4(b)(ii)

The Complainant draws the Panel's attention to Policy, Paragraph 4(b)(ii):

"you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct"

The Complainant submits the Respondent has engaged in a pattern of bad faith conduct through the registration of the Disputed Domain Names in order to prevent the Complainant from reflecting the mark in Disputed Domain Names, in accordance with Policy, Paragraph 4(b)(ii).

Evident through Whois records, the Respondent has registered multiple confusingly similar domain names on 23 October 2019, coinciding the BWIN trade mark with a variety of generic terms and a variety of TLDs, such as <bwin365bet.com>; <bwinbet365.net>; <365bwinbet.com>; <365bwinbet.net>; and <bwinbet365.com>. The Complainant notes the Disputed Domain Names, with the exception of <bwinbet365.com> resolve to identical or highly similar webpages.

A pattern of bad faith registration was found similarly in Alexa Internet/Amazon Technologies, Inc./eBay Inc./Elastic, Inc./PayPal, Inc. v. duan xiangwang CAC Case No. 100614:

"Respondent's registration and use of multiple domain names for each respective trademark that violate Complainants' rights in their respective marks constitutes a pattern of bad faith registration."

In view of the distinctive nature of the BWIN trade mark, and the colossal scope of the Complainant's business, there is no way in which the Respondent could use the Disputed Domain Names in question without falling foul of Paragraph 4(b) of the Policy.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Disputed Domain Names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

I. RIGHTS

The Disputed Domain Names are confusingly similar to the Complainant's trademarks owned by its subsidiary, since all the Disputed Domain Names reproduce the Complainant's group well-known mark 'BWIN', adding the number 365 and the term "bet", that together form an also well-known third party trademark.

The mark BWIN is easily recognisable in all the Disputed Domain Names, notwithstanding the presence of other elements that correspond to another mark of a third party that is also well known in the sector. As noted in Aldi GmbH & Co. KG, Aldi Stores Limited v. Ronan Barrett, WIPO Case No. D2016-2219:

"In the view of UDRP Panels, the presence, in a particular disputed domain name, of the mark of a third party not joined in the proceeding does not by itself prevent a finding of confusing similarity (cf., e.g., Cummins Inc. v. Dennis Goebel, WIPO Case No. D2015-1064, <fordcummins.com>). In the present case, the addition of the third party trademark "LIDL" and the conjunction "or" does not, in the Panel's view, sufficiently eliminate the general impression that the disputed domain names are associated in some way with the Complainant or used for some sort of co-operative venture between the Complainant and LIDL."

The Panel therefore concludes that the Complainant has fulfilled paragraph 4(a)(i) of the Policy.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the Disputed Domain Names.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D20020856:

"As mentioned [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists." WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

The Disputed Domain Names refer to a sports betting website, a sector in which the BWIN trademarks are well known. In fact, on the website the BWIN trademark is reproduced with its characteristic logo, therefore clearly trying to impersonate the Complainant. Obviously, this use cannot be considered as legitimate.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Names.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant's allegations and evidence with regard to the Respondent's registration and use of the Disputed Domain Names in bad faith. The Complainant has filed evidence of the well-known character of the BWIN trademark in sports betting sector. The Disputed Domain Names resolve to a website related to such activities in which the BWIN trademarks and logo in reproduced. Consequently, it seems clear that the Respondent is trying to impersonate the Complainant and that the Respondent registered the Disputed Domain Names for this fraudulent purpose.

Paragraph 4(b) (iii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent

has registered and is using the Disputed Domain Names in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product or service on its website or location.

As mentioned in *Andrey Ternovskiy dba Chatroulette v. Alexander Ochki*, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see *AT&T Corp. v. Amjad Kausar*, WIPO Case No. D2003-0327)."

Furthermore, as pointed out above, the Dispute Domain Names also include another well-known third party trademark, which confirms the parasitic purpose of the Respondent.

It has, therefore, been satisfactorily demonstrated to the Panel that the Disputed Domain Names have been registered and used in bad faith.

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy, the Panel orders that the Disputed Domain Names be transferred to the Complainant. The transfer of the Disputed Domain Names shall be ordered without prejudice to any rights of any third party in the Disputed Domain Names.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BWIN365BET.COM**: Transferred
2. **BWINBET365.NET**: Transferred
3. **365BWINBET.COM**: Transferred
4. **365BWINBET.NET**: Transferred
5. **BWINBET365.COM**: Transferred

PANELLISTS

Name	José Ignacio San Martín
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DATE OF PANEL DECISION 2022-05-17

Publish the Decision
