

Decision for dispute CAC-UDRP-104455

Case number CAC-UDRP-104455

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Domain names 23bwin.com, 31bwin.com, 65bwin.com, 67bwin.com, 69bwin.com, 71bwin.com, 72bwin.com, 74bwin.com, 75bwin.com, 76bwin.com, 82bwin.com, 84bwin.com, 87bwin.com, 63bwin.com, 13bwin.com, 29bwin.com, 27bwin.com, 79bwin.com, 73bwin.com, 16bwin.com, 83bwin.com, 62bwin.com, 85bwin.com, 15bwin.com, 07bwin.com, 64bwin.com, 10bwin.com, 61bwin.com, 21bwin.com, 25bwin.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization Entain Plc

Complainant representative

Organization Stobbs IP

Respondent

Name Daniel Smith

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.

FACTUAL BACKGROUND

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

The Complainant is an international sports-betting and gaming group, and claims rights in BWIN mark through the ownership of a portfolio of trademark registrations held by Entain Operations, Ltd, to which Complainant is the parent company.

- International Trademark registration BWIN (figurative), registration number 89630, registered on March 16, 2006 for goods and services in classes 3, 16, 35, 36, 38, 41 and 42;
- United Kingdom registered Trade Mark BWIN (figurative), registration number UK00907577331, registered on February 2, 2009 for goods and services in classes 9, 16, 35, 36, 39, 41 and 42;

- United Kingdom register Trade Mark BWIN, registration number UK00907577281, registered on 10 December 2009 for goods and services in classes 9, 16, 35, 36, 38, 41, and 42;
- Swiss registered trademark FREE-BWIN.COM, registration number 606448, first published on October 11, 2010, registered for goods in classes 9, 16, 35, 38, 41, 42;
- Spanish registered trademark BWIN-SPORTS.COM, registration number M2727247(8), filed on August 16, 2006 and registered for goods in classes 9, 35, 38, 41, 42;
- Spanish registered trademark BWIN-SPORTS.COM, registration number M2727247(8), filed on July 28, 2006 and registered for goods in classes 9, 35, 38, 41, 42;
- Spanish registered trademark BWIN.COM, registration number M2723791(5), filed on July 21, 2006 and registered for goods in classes 9, 35, 38, 41, 42;
- Spanish registered trademark BWIN (figurative), registration number M2723790(7) filed on July 21, 2006 and registered for goods in classes 9, 35, 38, 41, 42;
- Spanish registered trademark BWIN.COM, registration number M2723788(5), filed on July 21, 2006 and registered for goods in classes 9, 35, 38, 41, 42;
- Norwegian registered trademark, >>PLAY FOR REAL BWIN.COM (figurative), registration number 0948812, registered on June 30, 2008 for goods and services in classes 09, 16, 35, 36, 38, 41, 42;
- Norwegian registered trademark, BWIN.COM (figurative), registration number 0896530, registered on March 27, 2007 for goods and services in classes 09, 16, 35, 36, 38, 41, 42;
- United Kingdom register Trade Mark BWIN, registration number UK00918196441, registered on 19 August 2020;
- European Union Trade Mark BWIN CUP (figurative) registration number 009504937 on April 14, 2011 for services in class 35;
- European Union Trade Mark BWIN (figurative) registration number EUTM 007577331, registered on September 2 2009, for goods and services in classes 9, 16, 35, 36, 38, 41 and 42;
- European Union Trade Mark BWIN, registration number EUTM 018196441 registered on August 19, 2020, for goods and services in classes 9, 16, 35, 36, 38, 41 and 42;
- European Union Trade Mark, BWIN.PARTY, registration number EUTM 010566404 registered on September 6, 2012, for goods and services in classes 9, 38, and 41;
- European Union Trade Mark, BWIN registration number EUTM 007577281, registered on December 12, 2009 for goods and services in classes 9, 16, 35, 36, 38, 41 and 42;
- Canadian registered trademark, BWIN, registration number TMA928356, registered on February 8, 20016 for goods and service in classes 9, 16, 38 and 41;
- Canadian registered trademark, BWIN, registration number TMA926400, registered on January 19, 20016 for goods and service in classes 9, 16, 35. 36. 38. 41 and 42;
- Belgian registered trademark BWIN.PARTY, registration number 906833, registered on September 20, 2011;
- Australian registered trademark >>PLAY FOR REAL BWIN.COM (figurative), registration number 1221726, registered

claiming convention priority as of August 23, 2007, for goods and services in classes 9, 16, 35, 36, 38, 41 and 42;

- Australian registered trademark BWIN (figurative), registration number 1140390, registered claiming convention priority as of January 25, 2006, for goods and services in classes 9, 16, 35, 36, 38, 41 and 42;

- Australian registered trademark BWIN, registration number 122305, registered claiming convention priority as of September 13, 2005, for goods and services in classes 9, 16, 35, 36, 38, 41 and 42.

The disputed domain names and their respective registration dates as follows. They are not in numerical order:

The disputed domain names were registered on February 22, 2021, and March 8, 2021 as follows:

- 61bwin.com, February 22, 2021
- 62bwin.com, February 22, 2021
- 63bwin.com, February 22, 2021
- 64bwin.com, February 22, 2021
- 65bwin.com, February 22, 2021
- 67bwin.com, February 22, 2021
- 69bwin.com, February 22, 2021
- 71bwin.com, February 22, 2021
- 72bwin.com, February 22, 2021
- 73bwin.com, February 22, 2021
- 74bwin.com, February 22, 2021
- 75bwin.com, February 22, 2021
- 76bwin.com, February 26, 2021
- 79bwin.com, February 22, 2021

- 82bwin.com, February 22, 2021
- 83bwin.com, February 22, 2021
- 84bwin.com, February 22, 2021
- 85bwin.com, February 22, 2021
- 87bwin.com, February 22, 2021

- 07bwin.com, March 8, 2021
- 10bwin.com, March 8, 2021
- 13bwin.com, March 8, 2021
- 15bwin.com, March 8, 2021
- 16bwin.com, March 8, 2021
- 21bwin.com, March 8, 2021
- 23bwin.com, March 8, 2021
- 25bwin.com, March 8, 2021
- 27bwin.com, March 8, 2021
- 29bwin.com, March 8, 2021
- 31bwin.com, March 8, 2021

The disputed domain names each resolve to active web sites that purport to offer gambling services.

There is no information available about Respondent except for that provided in the Complaint, the Registrar's WhoIs, and information provided by the Registrar in response by the request by the Centre for verification of the registration details of the disputed domain names in the course of this proceeding, which confirmed that the Respondent is the registrant.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that it was incorporated in Luxembourg in 2004 and re-domiciled in the Isle of Man on 5 January 2010, operating gambling services in both online and in the retail sector that employs a workforce of over 24,000 individuals in 20 offices across 5 continents.

The Complainant claims rights in the BWIN mark through the ownership of the portfolio of trademark registrations held by its subsidiary and its extensive use of the mark in its gambling business.

As of 20 October 2021, the Complainant had a market capitalisation value of £12.7 billion and for the financial year ending 31 December 2020, the Complainant's underlying operating profit for the online gaming business was £679 million.

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 reputation on social media.

In addition, the Complainant submits that it is the owner of the domain name <bwin.com> which was registered as early as 22 August 2005.

The Complainant submits that each of the disputed domain names is confusingly similar to the Complainant's BWIN trademark as they each incorporate the well-known term BWIN in its entirety.

Each of the disputed domain names consist of two elements, namely the BWIN trademark, prefixed with a numerical value. For example, the prefix '07' for the disputed domain name <07bwin.com>, the same can be applied for all 30 disputed domain names in this complaint. It is understood by the Complainant that the existence of the prefix does not prevent a finding of confusingly similar for the domain names under the Policy.

The Complainant further submits that the generic Top-Level Domain ("gTLD") suffix <.com> should not be considered when assessing the disputed domain names, as these are merely a technical requirement in each case, used for domain name registrations.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain names because, 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.

The Complainant argues that the disputed domain names were only created recently. The earliest was registered on 22 February 2021 and the most recent was registered on 8 March 2021, as detailed on the WhoIs records annexed to the Complaint and clarified by the Complainant's response to the Panel's Procedural Order No. 1.

The Complainant contends that by the time the disputed domain names were created, the Complainant had already established extensive rights in the BWIN brand.

The Complainant further argues that 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 screen captures of the websites to which the disputed domain names resolve, which are exhibited in an annex to the Complaint, show that each of the disputed domain names resolved to a live web site and was being used by the Respondent for the purpose of imitating the Complainant's genuine website.

The Complainant adds that the Respondent has not been commonly known by the disputed domain names nor to the best of the Complainant's knowledge, has the Respondent ever been known as BWIN at any point in time. As stated by Panelist, R. Eric Gaum in the case of *Vestel Elektronik Sanayi ve Ticaret AS v. Kahveci*. WIPO Case 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 Complainant contends that the registration of the distinctive BWIN mark, which is an indicator of trade origin of the Complainant and the Complainant alone, within the disputed domain names 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 Complainant adds that there is nothing in the content of the disputed domain names to suggest that Respondent is making a legitimate non-commercial or fair use of the disputed domain names, without intent of or commercial gain to misleadingly divert the Complainants consumers. It is contended that the disputed domain names are being used to free ride on the distinctive trade mark, BWIN, within the Asian online betting market. Therefore, the Respondent cannot come within Policy, Paragraph 4(c)(iii).

The Complainant next submits that the disputed domain names were registered and are being used in bad faith in accordance with Policy, Paragraph 4(a)(iii), arguing that when the disputed domain names were registered the Complainant's BWIN trade mark was well established; and reemphasising that, 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. Citing *Intesa Sanpaolo S.p.A. v. Pankaj Tanwar CAC Case No. 102374* [*<intesasanpaoloblockchain.com>*], where the panel found the registration of the domain name ten years after registration of the trademark was held to constitute bad faith.

The Complainant argues that such use of the Complainant's BWIN trade mark in the disputed domain names to operate websites to advertise competing online gambling and betting activities constitutes bad faith use for the purposes of the Policy.

The Complainant submits that the screen captures adduced in evidence, illustrate that the websites to which the disputed domain names resolve make use the Complainant's BWIN trademark, in addition to the trademarks of third-party gambling companies and likeness of football players with a considerable reputation within both the sports and sports betting industries. Referring to the screen captures, the Complainant submits upon accessing the websites to which the disputed domain names resolve, the user is encouraged to communicate through end-to-end encrypted communication applications, such as "Customer Service Chat".

The Complainant submits that the purported options to participate in varied gambling and betting games are not accessible to Internet users and do not resolve to any content. The only interactive content on the Respondent's websites encourages the user to communicate via redirected weblinks.

The Complainant infers from the registration and use of the disputed domain names, that the intention of the Respondent is to divert consumers, intended for the Complainant, to the Respondent's website.

The Complainant expresses concern that the content on the websites to which the disputed domain names resolve is set up with the intention to "phish" personal and/or financial information from the Complainants customers and argues that this is further supported by the 'discounts' offered to visitors to the websites via the customer service feature as shown in a screen capture exhibited in an annex to the Complaint. The Complainant submits that similar circumstances were found in *Bourorama SA v. mustapha rojola CAC Case No. 102388* [*<boursalroma.com>*], in which the imitation webpage "invited the user to enter his/her username and password" were held to constitute bad faith in accordance with Policy, Paragraph 4(b) (iv).

Also similar circumstances found in *Grupo Financiero Inbursa, S.A. de C.V. v. inbursa* WIPO Case No. D2006-0614, were

held to constitute bad faith in accordance with Policy, Paragraph 4(b): “Phishing’ is a form of Internet fraud that aims to steal valuable information such as credit cards, social security numbers, user Ids, passwords, etc. A fake website is created that is similar to that of a legitimate organization, typically a financial institution such as a bank or insurance company and this information is used for identity theft and other nefarious activities.”

The Complainant alleges that 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 Complainant adds that it is evident through Whois records which are exhibited in an annex to the Complaint, it is shown that the Respondent has registered multiple confusingly similar domain names between 22 February 2021 and 8 March 2021, using a variety of numerical values, all on the same gTLD <.com>. All of the domain names of which resolve to identical or highly similar webpages. The panel in Salvatore Ferragamo S.P.A V. Ying Chou, WIPO Case No. D2013-2034 found a similar chain of actions to be in bad faith: “The fact of registering four domain names that incorporate the Complainant’s trademark represents, in the Panel’s assessment, a pattern of conduct directed against the Complainant, stopping it from reflecting its trademark in the disputed domain names. The Panel concludes that paragraph 4(b)(ii) of the Policy is made out.”

The Complainant next alleges that the Respondent has engaged in a pattern of bad faith conduct through the registration of the disputed domain names to prevent the Complainant from reflecting the mark in Disputed Domain Names, in accordance with Policy, Paragraph 4(b)(ii). When discussing a pattern of abusive domain registrations, Jonathan S. Bain Esq. in Smoky Mountain Knife Works V Deon Carpenter eResolution AF-23-ab stated: “a domain registrant can operate “vertically”, targeting a single entity, but registering multiple domains which reflect either different aspects of the target’s business, or different alphabetic variations of the target’s trademark”.

In view of the distinctive nature of the BWIN trademark, and the colossal scope of the Complainants’ business, there is no way in which the Respondent could use the disputed domain name in question without falling foul of Paragraph 4(b) of the Policy.

RESPONDENT:

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

The Complainant has provided convincing evidence that it has rights in the BWIN mark, established by its use of the mark in its substantial gaming business and ownership by its subsidiary company of the international portfolio of trademark registrations for, and incorporating, the BWIN mark described above.

Each of the disputed domain names consists of the Complainant's mark in its entirety, preceded by a two-digit number, the generic Top Level Domain "(gTLD)" extension <.com>.

The Complainant's BWIN mark is the dominant and only distinctive element in each of the disputed domain names clearly recognizable as such in each case. The two-digit numbers add no distinguishing character to any of the disputed domain names.

Neither does the gTLD extension <.net> add any distinguishing character. It would be considered by Internet users as a necessary technical requirement for a domain name.

This Panel finds therefore that each of the disputed domain names is confusingly similar to the BWIN mark in which the Complainant has rights and the Complainant has therefore succeeded in the first element of the test in Policy 4(a)(i).

The Complainant has made out a prima facie case that Respondent has no rights legitimate interests in the disputed domain names arguing that:

- because of 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;
- the disputed domain names were only created recently. The earliest were registered on 22 February 2021 and the most recent were registered on 8 March 2021, by which time the Complainant had already established extensive rights in the BWIN brand;
- the Respondent is not using the disputed domain names or a name corresponding to the disputed domain names in connection with a bona fide offering of goods or services;
- the screen captures of the websites to which the disputed domain names resolve, which are exhibited in an annex to the Complaint, show that each of the disputed domain names resolved to a live web site and have been used by the Respondent for the purpose of imitating the Complainants' genuine website;
- to the best of the Complainant's knowledge the Respondent has not been commonly known by the disputed domain names nor has the Respondent ever been known as BWIN at any point in time;
- the registration of the distinctive BWIN mark, which is an indicator of trade origin of the Complainant and the Complainant alone, within the disputed domain names means that the only reason that the Respondent registered the disputed domain names was to take advantage of the Complainant's goodwill and valuable reputation and no other logical or reasonable conclusion can be gleaned;
- there is nothing in the content of the disputed domain names to suggest that Respondent is making a legitimate non-commercial or fair use of the disputed domain names, without intent of or commercial gain to misleadingly divert the Complainants consumers and in fact the disputed domain names are being used to free ride on the distinctive trademark, BWIN, within the Asian online betting market.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in a domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate

interests.

The Respondent has failed to discharge that burden in respect of any of the disputed domain names, and therefore this Panel must find that Respondent has no rights or legitimate interests in the disputed domain names.

The Complainant has therefore succeeded in the second element of the test in Policy 4(a)(ii).

Each of the disputed domain names consists of the Complainant's BWIN mark preceded by a two-digit number. The Complainant's mark is clearly identifiable in each of the disputed domain names. The additional numeric elements have no significance, however by the time that the disputed domain names were registered the Complainant had established multi-million-dollar international betting business. It is most improbable that the disputed domain names were chosen and registered for any reason other than to refer to the Complainant's BWIN mark.

Significantly the disputed domain names were registered on two batches within weeks of each other and in each batch, each of the disputed domain names consisted of the identical composition i.e. the Complainant's mark preceded by a two-digit number on the same <.com> gTLD.

This Panel finds therefore that on the balance of probabilities each of the disputed domain names was registered with the Complainant's mark in mind with the intention of taking predatory advantage of the Complainant, its goodwill and reputation in the BWIN mark.

The uncontested evidence shows that the Respondent is using each of the disputed domain names as the address of almost identical websites that prominently display the BWIN trademark, with graphics illustrating sporting activities and text in English and Chinese characters, at least one of the webpages refers to "Beijing time" and offer "slots", "casino", "e-sports", "card game", "fishing", and "lotto" options. There are also third-party gaming logos in the footer of the webpages, which may or may not be linked to competitors' websites. There is a copyright legend "© Bwin" in the English language. It is clear that the websites are intentionally designed to impersonate the Complainant or create the false impression that there is a connection between the Complainant and the Respondent's website.

Such intentional use of the disputed domain names in an attempt to attract, for commercial gain, Internet users to the Respondent's websites by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web sites and the services purported to be offered by Respondent on his web site constitutes use of the disputed domain names in bad faith for the purposes of the Policy.

This finding is supported by the fact that the Respondent availed of a privacy service to conceal his identity on the published WhoIs, has not responded to the Complaint, and had not contested Complainant's allegations that he is acting in bad faith and that there is a concern that he is using the disputed domain names to engage in phishing activity.

As this Panel has found that the disputed domain names were registered and are being used in bad faith, Complainant has succeeded in the third element of the test in Policy 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. 23BWIN.COM: Transferred
2. 31BWIN.COM: Transferred
3. 65BWIN.COM: Transferred
4. 67BWIN.COM: Transferred
5. 69BWIN.COM: Transferred
6. 71BWIN.COM: Transferred
7. 72BWIN.COM: Transferred

8. 74BWIN.COM: Transferred
9. 75BWIN.COM: Transferred
10. 76BWIN.COM: Transferred
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25. 07BWIN.COM: Transferred
26. 64BWIN.COM: Transferred
27. 10BWIN.COM: Transferred
28. 61BWIN.COM: Transferred
29. 21BWIN.COM: Transferred
30. 25BWIN.COM: Transferred

PANELLISTS

Name	Mr James Jude Bridgeman
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DATE OF PANEL DECISION	2022-05-17
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Publish the Decision
