Decision for dispute CAC-UDRP-104477

Case number	CAC-UDRP-104477
Time of filing	2022-04-06 08:44:57
Domain names	bwinbet168.net, bwinsport.org, bwinbola.net, bwinbola365.net, bwinbola365.com, bwinbola88.com, bwinsport365.com, bwinbet303.com, bwinbet88.com, bwinsport88.com, 888bwinsport.com, 88bwinsport.com, bwin-sport88.net, bwinsport8.com, 888bwinsport.net, 88bwinsport.net, bwin-sport88.com, bwinjago.com, bwinjago.net, bwincasino88.net, bwincasino88.com, bwinparlay.com, bwinmantap88.com, parlaybwin.com, bwinbet365.vip, bwinbolavip.com, mainslotbwin.com, mainslotbwin.net

Case administrator

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

Complainant

Organization	Entain Plc

Complainant representative

Organization	Stobbs IP

Respondent

Name	Budi Tanaka

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 is the parent company of 'Entain Operations Limited' who owns rights in the figurative and word marks associated with the word 'BWIN' in several countries and regions, inter alia:

- the EUIPO trademark 'bwin' (registration number 7577281 registered on January 18, 2010);

- the UK IPO trademark 'bwin' (registration number UK00907577281 registered on December 10, 2009);

- the Australia IPAU trademark 'BWIN' (registration number 1122305 registered on February 3, 2006); and

- the Canada CIPO trademark 'BWIN' (registration number 1542916 registered on January 19, 2016).

FACTUAL BACKGROUND

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

The Complainant, Entain Plc, is an international sports-betting and gaming group, operating both online and in the retail sector. The Complainant was incorporated in Luxembourg in 2004 as Gaming VC Holdings S.A. in Luxembourg. The Complainant has traded on the Alternative Investment Market (AIM) of the London Stock Exchange (LSE) since May 24, 2010 and as of October 20, 2021, has a market capitalization value of £12.7 billion. For the relevant financial year ending December 31, 2020, the Complainant's underlying operating profit for the online gaming business was £679 million. 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 disputed domain names were registered on the following dates respectively:

<bwinbet168.net>, <bwinsport.org>, <bwinbola.net>: February 16, 2020;

<bwinbola365.net>, <bwinbola365.com>: June 20, 2020;

<bwinbola88.com>, <bwinsport365.com>: July 11, 2020;

<bwinbet303.com>, <bwinbet88.com>: August 16, 2020;

<bwinsport88.com>: October 24, 2020;

<888bwinsport.com>, <88bwinsport.com>, <bwin-sport88.net>, <bwinsport8.com>, <888bwinsport.net>, <88bwinsport.net>, <bwin-sport88.com>: December 22, 2020;

<bwinjago.com>, <bwinjago.net>: January 7, 2021;

<bwincasino88.net>, <bwincasino88.com>: April 22, 2021;

<bwinparlay.com>: April 25, 2021;

<bwinmantap88.com>, <parlaybwin.com>: May 14, 2021;

<bwinbet365.vip>: June 1, 2021;

<bwinbolavip.com>: June 27, 2021; and

<mainslotbwin.com>, <mainslotbwin.net>: November 29, 2021

All of the disputed domain names resolve to websites which feature the Complainant's trade mark BWIN, in addition to the advertisement of services related to online gambling and sports betting event. The disputed domain names' resolving websites display trademarks of third-party gambling companies, and the likeness of well-known international football players.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

i) The Complainant is the parent company of 'Entain Operations Limited' who owns rights in the figurative and word marks associated with the word 'BWIN' in several countries and regions, inter alia:- the EUIPO trademark 'bwin' (registration number 7577281 registered on January 18, 2010); the UK IPO trademark 'bwin' (registration number UK00907577281 registered on December 10, 2009); the Australia IPAU trademark 'BWIN' (registration number 1122305 registered on February 3, 2006); and the Canada CIPO trademark 'BWIN' (registration number 1542916 registered on January 19, 2016). Therefore, the Complainant has rights in the 'BWIN' word mark and the figurative marks associated with the word 'BWIN.' Each of the disputed domain names is confusingly similar to the Complainant's marks.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain names. The disputed domain names resolve to live sites. 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 mark 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 Respondent is not making a legitimate, non-commercial or fair use of the disputed domain names. 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 event.

iii) The Respondent has registered and is using the disputed domain names in bad faith. It is inconceivable that the Respondent could have registered the disputed domain names without actual knowledge of the Complainant's rights in the trade mark. The disputed domain names resolve to websites displaying and advertising online gambling and betting activities. 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 website, constituting bad faith under paragraph 4(a)(iii) of the Policy. The Respondent has engaged in a pattern of bad faith conduct through the registration of the disputed domain names per paragraph 4(b)(ii) of the Policy.

RESPONDENT:

Respondent did not submit a response in this proceeding.

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the

statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

(2) respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant contends that it is the parent company of 'Entain Operations Limited' who owns rights in the figurative and word marks associated with the word 'BWIN' in several countries and regions, inter alia: the EUIPO trademark 'bwin' (registration number 7577281 registered on January 18, 2010); the UK IPO trademark 'bwin' (registration number UK00907577281 registered on December 10, 2009); the Australia IPAU trademark 'BWIN' (registration number 1122305 registered on February 3, 2006); and the Canada CIPO trademark 'BWIN' (registration number 1542916 registered on January 19, 2016).

The Panel observes that a trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the Policy for purposes of standing to file a complaint. See Section 1.4.1, WIPO Jurisprudential Overview 3.0. This Panel will follow that approach and allow the Complainant, the trade mark owner's parent company given the circumstances that the Respondent has not rebutted the Complainant's claim for standing to file the Complaint and that this is not a case where there exists an obvious impediment to the trade mark owner's bringing the Complaint directly, and nothing in the record suggests any advantage sought or gained by having the parent company rather than the trade mark owner file the Complaint.

The Panel notes that a national trademark registration or an international trademark registration is sufficient to establish rights in that mark. As such, the Panel finds that the Complainant has established its rights in the mark 'BWIN.'

The Complainant contends that the disputed domain names include generic terms, including but not limited to "mainslot", "sport", "vip," "bola," etc., in addition to gTLDs; and an approximate translation of the term "bola" in Indonesian is "ball," which is a generic term. Therefore, the Complainant contends that all of the disputed domain names are confusingly similar to the Complainant's mark BWIN.

The Panel observes that all of the disputed domain names incorporate the Complainant's mark 'BWIN' in their entireties merely adding descriptive terms or less distinctive words in English or Indonesian, and/or numbers such as 'bola (meaning 'ball'),' 'sport,' 'bet,' 'win sport,' 'jago (meaning 'a player' or 'a champion'),' 'casino,' 'parlay (meaning 'betting'),' 'mantap

(meaning ‘decisive or adamant’),’ ‘vip,’ ‘main slot,’ '168,' ’88,’ ‘365,’ ‘303,’ ‘888,’ ‘8’ and so on. The Panel further notes that the terms and numbers as listed above are descriptive in connection with the Complainant’s sports-betting and gaming business, and thus being considered non-distinctive or much less distinctive. The addition of gTLDs such as ‘.com,’ 'org,' ‘.net,’ ‘.vip' and descriptive terms, less distinctive words or mere numbers is disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing a domain name and a trademark. Therefore, the Panel finds that each of the disputed domain names is confusingly similar to the Complainant's trademark BWIN.

No rights or legitimate interests

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. All of the disputed domain names resolve to live sites. 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 mark 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 Respondent is not making a legitimate, non-commercial or fair use of the disputed domain names. 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 event.

The Complainant has provided the Panel with screenshots of the resolving websites of each of the disputed domain names which feature the Complainant’s trade mark BWIN, in addition to the advertisement of services related to online gambling and sports betting event. The Panel finds that use of the BWIN mark to imitate the Complainant’s genuine website does not constitute a bona fide offering of goods or services. For the same reasons, the Panel finds that the Respondent is not making a legitimate, non-commercial or fair use of the disputed domain names.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(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 the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain names in bad faith. It is inconceivable that the Respondent could have registered the disputed domain names without actual knowledge of the Complainant's rights in the trademark.

The Panel observes that while constructive knowledge is insufficient for a finding of bad faith, per Policy paragraph 4(a)(iii), registration of an infringing domain name with actual knowledge of another's trademark rights is sufficient to establish bad faith, and can be shown by the notoriety of the mark and the use a respondent makes of the disputed domain name. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding Policy paragraph 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it."); see also AutoZone Parts, Inc. v. Ken Belden, FA 1815011 (Forum December 24, 2018) ("Complainant contends that Respondent's knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel here finds that Respondent did have actual knowledge of Complainant's mark, demonstrating bad faith registration and use under Policy paragraph 4(a)(iii).").

The Panel agrees and infers, due to the notoriety of the Complainant's mark and the manner of use of the disputed domain names that the Respondent had actual knowledge of the Complainant's rights in the mark BWIN at the time of registering the disputed domain names, and thus the Panel finds the bad faith registration of the disputed domain names.

Next, the Complainant contends that the disputed domain names resolve to websites displaying and advertising online gambling and betting activities. The websites of the disputed domain names use the Complainant's BWIN mark, the trademarks of third-party gambling companies, and the likeness of well-known international football players. The Internet user is presented with promotional offers inferring an authorization provided on behalf of the Complainant and its subsidiaries, when no such authorization has been provided. The disputed domain names' resolving websites encourage Internet users to divert from the disputed domain names to end-to-end encrypted communication applications, such as LINE and WhatsApp. 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 website, constituting bad faith under paragraph 4(a)(iii) of the Policy.

The Panel observes that the Respondent passes itself off as the Complainant or its subsidiary. Use of a disputed domain name to pass off as a complainant and offer competing or counterfeit versions of its products may be evidence of bad faith per Policy paragraph 4(b)(iii) and (iv). See Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund, FA 1790949 (Forum July 9, 2018) (finding bad faith per Policy paragraphs 4(b)(iii) and (iv) where the respondent used the disputed domain name to resolve to a website upon which the respondent passes off as the complainant and offers online cryptocurrency services in direct competition with the complainant's business); see also Guess? IP Holder L.P. and Guess?, Inc. v. LI FANGLIN, FA 1610067 (Forum Apr. 25, 2015) (finding respondent registered and used the domain name in bad faith per Policy paragraph 4(b)(iii) because the respondent used the resolving website to sell the complainant's products, using images copied directly from the complainant's website); see also Bittrex, Inc. v. Wuxi Yilian LLC, FA 1760517 (Forum Dec. 27, 2017) (finding bad faith per Policy paragraph 4(b)(iv) where "Respondent registered and uses the <lbittrex.com> domain name in bad faith by directing Internet users to a website that mimics Complainant's own website in order to confuse users into believing that Respondent is Complainant, or is otherwise affiliated or associated with Complainant."). Therefore, the Panel concludes that the Respondent registered and used the disputed domain names in bad faith per paragraph 4(b)(iii) or (iv) of the Policy.

The Complainant further contends that the Respondent has engaged in a pattern of bad faith conduct through the registration of multiple domain names in order to prevent the Complainant from reflecting the mark in the disputed domain names, in accordance with paragraph 4(b)(ii) of the Policy. The Respondent has registered multiple confusingly similar domain names between February 16, 2020 and November 29, 2021, containing the BWIN trade mark with a variety of generic terms and a variety of TLDs.

The Panel observes that registering multiple domain names that incorporate a complainant's trademark may constitute a pattern of bad faith conduct. See Alexa Internet/Amazon Technologies, Inc./eBayInc./Elance, Inc./PayPal, Inc. v. duan xiangwang, CAC 100614 (August 1, 2013)(finding "respondent's registration and use of multiple domain names for each respective trademark that violates Complainants' rights in their respective marks constitutes a pattern of bad faith registration."); see also Salvatore Ferragamo S.p.A v. Ying Chou, WIPO D2013-2034 (January 18, 2014)(finding "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 Panel finds that the fact of registering 28 disputed domain names that incorporate the Complainant's trademark represents a pattern of bad faith conduct directed against the Complainant, preventing it from reflecting its trademark in the disputed domain names per paragraph 4(b)(ii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BWINBET168.NET**: Transferred
2. **BWINSPORT.ORG**: Transferred
3. **BWINBOLA.NET**: Transferred
4. **BWINBOLA365.NET**: Transferred
5. **BWINBOLA365.COM**: Transferred
6. **BWINBOLA88.COM**: Transferred
7. **BWINSPORT365.COM**: Transferred
8. **BWINBET303.COM**: Transferred
9. **BWINBET88.COM**: Transferred
10. **BWINSPORT88.COM**: Transferred
11. **888BWINSPORT.COM**: Transferred
12. **88BWINSPORT.COM**: Transferred
13. **BWIN-SPORT88.NET**: Transferred
14. **BWINSPORT8.COM**: Transferred
15. **888BWINSPORT.NET**: Transferred
16. **88BWINSPORT.NET**: Transferred
17. **BWIN-SPORT88.COM**: Transferred
18. **BWINJAGO.COM**: Transferred
19. **BWINJAGO.NET**: Transferred
20. **BWINCASINO88.NET**: Transferred
21. **BWINCASINO88.COM**: Transferred
22. **BWINPARLAY.COM**: Transferred
23. **BWINMANTAP88.COM**: Transferred
24. **PARLAYBWIN.COM**: Transferred
25. **BWINBET365.VIP**: Transferred
26. **BWINBOLAVIP.COM**: Transferred
27. **MAINSLOTBWIN.COM**: Transferred
28. **MAINSLOTBWIN.NET**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2022-05-18

Publish the Decision