

Decision for dispute CAC-UDRP-105051

Case number	CAC-UDRP-105051
Time of filing	2022-12-15 09:41:29
Domain names	bwineight.com, bwinfour.com, bwinnine.com , bwinone.com, bwinseven.com, bwinsix.com, bwinthree.com, bwintwo.com, onebwin.com, bwinone.vip, bwinone55.com, bwinone66.com, bwinone77.com, bwinone88.com, bwin-one.com, bwin-one1.com, bwin-one2.com, bwin-one3.com, bwin-one4.com, bwin-one5.com, bwin-one6.com, bwin-one7.com, bwinone2.com, bwinone3.com, bwinone.org

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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RESPONDENTS

Name	Jehsaj Wakre
Name	Jehsaj Wakre

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 provides a rather lengthy list of trademarks that include the “Bwin” word element owned by Complainant’s subsidiary. Some of these trademarks are:

- the EU trademark “bwin” (word), registration number 007577281, registered on December 10, 2009;
- the EU trademark “bwin” (figurative), registration number 007577331, registered on September 02, 2009;
- the International Trademark registration “bwin” (figurative), registration number 896530, registered on March 16, 2006, effective *inter alia* in Australia, Germany, Bulgaria, Benelux, Italy, Kazakhstan, the UK and
- the International Trademark registration “bwin” (word), registration number 886220, registered on February 03, 2006, effective *inter alia* in Australia, Benelux, Switzerland, France, the UK, Japan.

The Complainant also cites “bwin” trademark registrations in the name of its subsidiary company effective *inter alia* in Brazil, Canada, Spain, the UK and other jurisdictions.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

THE DISPUTED DOMAIN NAMES ARE IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant is an international sports-betting and gaming group, operating both online and in the retail sector and employs over 24,000 individuals in 20 offices across 5 continents.

The Complainant claims that it has a market capitalization value (the market value of a company’s outstanding shares) of over twelve (12) billion British pounds and that its core markets are the UK, Germany, Italy and the United States. It refers to extensive social media presence, awards and accolades associated with the “bwin” trademark and mark’s significant reputation.

The Complainant claims that its subsidiary company has registered “bwin” trademarks and cites previous UDRP decisions where Panels found the Complainant has rights in the “BWIN” mark.

The Complainant claims that it has been operating the domain name <bwin.com> since August 22, 2005 and one of its subsidiary companies has other numerous domain names with the “bwin” word element.

The Complainant alleges that the disputed domain names are confusingly similar to the Complainant’s “bwin” trademark as they incorporate the well-known term “bwin” in its entirety.

The Complainant further requests to disregard the TLD suffixes when making an assessment as to the disputed domain names, as these are merely a technical requirement, used for domain name registrations.

The Complainant submits that the disputed domain names are confusingly similar to the “BWIN” marks. The disputed domain names consist of two elements, namely the “BWIN” mark, prefixed or suffixed with a numerical value.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAMES

The Complainant submits that the Respondent does not have any rights or legitimate interests in the disputed domain names.

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 disputed domain names were only created recently.

The Complainant submits that the disputed domain names resolve to live sites and are being used by the Respondent for the purpose of imitating the Complainant’s genuine website.

Use of the “BWIN” brand and trade dress to imitate the Complainant’s genuine website cannot constitute a bona fide offering of goods or services.

The Complainant claims that to the best of its knowledge, the Respondent has never been known as “BWIN” at any point in time.

The Complainant alleges that nothing from the content of the websites by the domain names 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 trademark within the Asian online betting market.

THE DISPUTED DOMAIN NAMES WERE REGISTERED AND BEING USED IN BAD FAITH

The Complainant’s submissions on the bad faith element can be summarized as follows:

- The Complainant alleges that the Respondent’s behavior falls within par. 4 b. (ii) and par. 4 b. (iv) of the Policy.
- The Complainant states that the disputed domain names operate identical websites that advertise online gambling and betting activities. The websites use the Complainant’s “BWIN” trademark, in addition to the trademarks of third-party gambling companies and likeness of basketball and/or football players with a considerable reputation within both the sports and sports betting industries.
- The Complainant submits upon accessing the websites at the disputed domain names, the user is encouraged to communicate through end-to-end encrypted communication applications, such as Telegram. According to the Complainant the options to participate in varied gambling and betting games are not accessible and encourage users to enter their user name, password and telephone numbers.
- The Complainant alleges that the intention of the Respondent is to divert consumers (intended for the Complainant), to the Respondent’s website. The Complainant is concerned that the content on the disputed domain names and alleges the intention of the Respondent to “phish” personal and/or financial information from the Complainant’s customers.
- The Complainant claims that the Respondent also uses the Complainant’s official support contact address on all 25 disputed domain names, as a means of contact with the consumers. By using the Complainant’s official customer support contact address, the Respondent intends to create an affiliation with the Complainant and give the disputed domain names “an air of authenticity”.
- 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 the Policy.
- The Complainant argues that 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).
- The Respondent has registered multiple confusingly similar domain names between 20 May 2022 and 18 August 2022, using a variety of numerical values and predominantly the same TLDs ‘.com’.

Therefore, the Complainant claims the disputed domain names were registered and being used in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are summarized in the Factual Background section above.

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.

Consolidation request

The Complainant requests to consolidate this proceeding in respect of all 25 (twenty five) disputed domain names and the Respondent. According to the Registrar verification the Respondent has the same name but different addresses.

The Complainant submits the registrant of all the disputed domain names is the same person.

The Complainant further submits that the Respondent's creation of 25 identical disputed domain names, incorporating the Complainant's trade mark and use of the Complainant's official support email address creates the overall impression that the registrant is the same individual operating the 25 disputed domain names, despite a variation of addresses.

The Complainant therefore submits the consolidation of the disputed domain names within a singular Complaint is justified.

Under par. 3 (c) of the Rules the complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder and under par. 10 (e) of the Rules the Panel has the authority to decide a consolidation request submitted by a Party.

According to the "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" ("WIPO Overview 3.0") where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario (see par. 4.11.2).

The Panel accepts the consolidation request of the Complainant in this dispute based on the following:

- The name of the Respondent as disclosed by the Registrar is the same for all 25 disputed domain names;
- All the disputed domain names are used in a similar fashion (for gambling and betting websites with similar content);
- All the disputed domain names are registered via the same Registrar;
- All the disputed domain names were registered within a rather short time-frame;
- The Respondent failed to respond and express any objections against the consolidation request.

Based on the above, it appears that the disputed domain names are registered by the same person and they are under common control.

The Panel finds that consolidation will be fair and procedurally efficient for both Parties and accepts the request.

A. Identical or confusingly similar with Complainant's trademark

The Complainant's subsidiary owns various "BWIN" trademarks effective in various jurisdictions throughout the world. The Complainant itself is not the owner of the trademarks.

Nevertheless, for the purpose of the Policy ownership of the marks by a subsidiary is usually enough to prove standing and as highlighted by WIPO Overview 3.0: "A trademark owner's affiliate such as a subsidiary of a parent or of a holding company, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint" (see par. 1.4.1).

As confirmed by WIPO Overview 3.0, see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

Therefore, the Complainant has standing in this proceeding.

The disputed domain names fully incorporate the word trademark "BWIN" with the addition of various numeric elements and the "BWIN" mark is clearly recognizable in all the disputed domain names.

As stated in WIPO Overview 3.0: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element" (see par. 1.8).

The gTLD ".com" and other gTLD suffixes are to be disregarded under the confusing similarity test as they do nothing to eliminate confusion.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110 and CAC Case No. 101284.

The Complainant provided evidence that the disputed domain names are used for websites containing betting and gambling related content and the logo similar to the logo of the Complainant and its affiliates as well as its "bwin" figurative mark.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows the Panel to draw such inferences as it considers appropriate (see paragraph 14(b) of the Rules).

The Complainant has made a prima facie case of Respondent's lack of rights or legitimate interests. The Respondent is not known by the disputed domain name and is identified as Jehsaj Wakre.

The Complainant has not granted any license or authorization to use the "bwin" trademark to the Respondent, the Complainant is not doing any business with the Respondent and there is no any other indication of possible rights or legitimate interests of the Respondent in this dispute.

The disputed domain names are used in a manner that appears to be an attempt of impersonation of the Complainant. The websites by the disputed domain names contain content related to the Complainant's business activity as well as logo and Complainant's support email address, thus creating an impression of an association and/or affiliation with the Complainant and its business.

As noted by WIPO Overview 3.0: "Panels have categorically held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent" (see par. 2.13.1).

See also UDRP cases illustrating this principle, e.g. CAC Case No.102256: "the Respondent utilized the Complainant's trademark and reproduced the look and feel of one of the Complainant's websites, giving the appearance that the Disputed Domain Name is directly related to the Complainant" and CAC Case No.102136: "Such use of the disputed domain name does not constitute the bona fide use and there is no legitimate interest in creating an association in visitors' minds with the Complainant..."

The Panel does not see any possible rights or legitimate interests of the Respondent in such circumstances given the nature of the disputed domain names, manner of use of the disputed domain names, content of the websites at the disputed domain names (including use of Complainant's support email address) and lack of response.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4 b. of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element.

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see par. 3.1 of WIPO Overview 3.0). Targeting is important in establishing bad faith under the UDRP.

As noted by Gerald M. Levine in his treatise, the leading authority on the subject of UDRP and domain name disputes: "knowledge and targeting are prerequisites to finding bad faith registration" and "knowledge of a complainant's mark, if not directly evident or denied, can be inferred or rebutted from website's content, strength of the mark and respective timing of a mark's use in commerce and registration of the domain name" (see "**Domain Name Arbitration**", Gerald M. Levine, "Legal Corner Press", Second Edition, 2019, page 235).

The Panel finds the disputed domain names were both registered and are used in bad faith based on the following:

- 1) The nature of the disputed domain names – the disputed domain names fully incorporate the "bwin" trademark;
- 2) The fact that the disputed domain names were registered many years after the registration and use of the Complainant's trademarks as well as reputation and certain popularity of Complainant's marks as proved by the available evidence (including social media accounts and various publications about Complainant's activities and use of the "bwin" trademark, including "BWIN" partnership with UEFA);
- 3) The nature of use of the disputed domain names indicates targeting and an intent to impersonate the Complainant, including content of the websites by the disputed domain names related to the Complainant's activity (gambling and betting), use of Complainant's logo on the websites and use of Complainant's support email address on the websites by the Respondent. All this creates an impression of some sort of connection and / or affiliation between the websites by the disputed domain names and the Complainant's mark;
- 4) The Respondent's failure to respond and provide explanations for his choice of the disputed domain names confusingly similar with the Complainant's trademarks registered many years prior to registration dates of the disputed domain names;
- 5) The Panel does not see any plausible explanation for the Respondent's registration of the disputed domain names other than taking advantage of Complainant's trademarks and does not see any plausible good faith use of the disputed domain names in these circumstances;
- 6) The Respondent's behavior falls within par. 4 b. (iv) of the Policy as the evidence provided by the Complainant demonstrates that the Respondent by using the disputed domain names has intentionally attempted to attract, for commercial gain, Internet users to his websites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement (see also previous UDRP cases of the Complainant, CAC Case No.104477: "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..." and CAC Case No.104454: "The Disputed Domain Names resolve to a website related to such activities in which the BWIN trademarks and logo 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");
- 7) The Panel notes that multiple domain name registrations in a short time period by a single person indicates an intention to prevent the Complainant from using its mark in a domain name and provides evidence of a pattern of conduct under par. 4 b. (ii) of the Policy, see e.g. Forum case "Caterpillar Inc., v. Miguel Miyar", Claim Number: FA0009000095623 and Gerald M. Levine, "**Domain Name Arbitration**" as cited above, page 466.

The Respondent registered twenty-five disputed domain names that include the Complainant's "bwin" trademark and this represents a pattern of conduct.

Registration of multiple domain names that fully incorporate the Complainant's mark is a clear indication of targeting.

Based on the above, the Panel finds that Respondent's behavior falls within both par. 4 b. (ii) and par. 4 b. (iv) of UDRP.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bwineight.com**: Transferred
2. **bwinfour.com**: Transferred
3. **bwinnine.com** : Transferred
4. **bwinone.com**: Transferred
5. **bwinsseven.com**: Transferred
6. **bwinsix.com**: Transferred
7. **bwinthree.com**: Transferred
8. **bwintwo.com**: Transferred

9. **onebwin.com**: Transferred
10. **bwinone.vip**: Transferred
11. **bwinone55.com**: Transferred
12. **bwinone66.com**: Transferred
13. **bwinone77.com**: Transferred
14. **bwinone88.com**: Transferred
15. **bwin-one.com**: Transferred
16. **bwin-one1.com**: Transferred
17. **bwin-one2.com**: Transferred
18. **bwin-one3.com**: Transferred
19. **bwin-one4.com**: Transferred
20. **bwin-one5.com**: Transferred
21. **bwin-one6.com**: Transferred
22. **bwin-one7.com**: Transferred
23. **bwinone2.com**: Transferred
24. **bwinone3.com**: Transferred
25. **bwinone.org**: Transferred

PANELLISTS

Name	Igor Motsnyi
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DATE OF PANEL DECISION	2023-02-02
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Publish the Decision
