

Decision for dispute CAC-UDRP-105206

Case number	CAC-UDRP-105206
Time of filing	2023-02-17 09:06:34
Domain names	sportingwin.com, sportingwin.net

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Entain Operations Limited
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Complainant representative

Organization	Stobbs IP
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Respondents

Organization	SB Entertainment Ltd
Name	Miroslav Rashev

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, Entain Operations, Ltd, to which Entain Plc is the parent company, owns extensive rights in the figurative and word marks associated with Sportingbet including, but not limited to, the trademark registrations as below:

- European trademarks
 - #002015402, sportingbet.com GLOBAL SPORTSBOOK9, registered since 18 December 2002;
 - #002706026, Global Sportsbook & Casino sportingbet9, registered since 15 March 2004;
 - #004997714, sportingbet.com, registered since 24 May 2007;
- UK trademarks
 - #UK00902015402, sportingbet.com GLOBAL SPORTSBOOK9, registered since 18 December 2002;
 - #UK00902706026, Global Sportsbook & Casino sportingbet9, registered since 15 March 2004;
 - #UK00904997714, sportingbet.com, registered since 24 May 2007;

In addition, the domain name <sportingbet.com> was registered as early as 4 September 1997. The Complainant completed the acquisition of Sportingbet, the parent company of the domain name registrant, on 20 March 2013. The Complainant also owns several other domain names which incorporate the Sportingbet trademark.

The Respondent is the owner of the following trademark registrations :

- Bulgarian trademark #0159285N, sportingwin, registered since 25 November 2020;
- European trademark #018347948, sportingwin, registered since 11 February 2023;

The disputed domain names, <sportingwin.com> and <sportingwin.net>, were registered on 31 May 2009 and 21 April 2020 with respectively.

FACTUAL BACKGROUND

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. The Complainant completed the acquisition of Sportingbet, the parent company of the domain name registrant, on 20 March 2013. 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 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. The Complainant has traded on the Alternative Investment Market of the London Stock Exchange since 24 May 2010 and as of 20 October 2021, has a market capitalisation value of £12.7 billion. The United Kingdom is the Complainant's core market and accounts for a significant portion of sales, with other key markets being the European Union and Australia. The Complainants' Sportingbet 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 RESPONDENT

Sportingwin is EU licensed online sports betting brand, operated by SB Entertainment OOD which has issued gaming license by the Bulgarian Gambling Regulator (Ministry of Finance) to provide online betting and casino services on the domain <sportingwin.com>. The strict requirements that the company has met to obtain license under Bulgarian law are following: 1) 1.5m BGN (765,000 EUR) Authorized capital, 2) Approved investments (approval strictly examined by Regulator) on the territory of EU of 1m+ BGN (511,000 EUR) 3) 1m BGN (511,000 EUR) bank guarantees for payouts to customers. Although the Sportingwin brand is officially protected since 2020, the disputed domain name <sportingwin.com> is registered in 2009 and has taken part in the raise the Sportingwin brand ever since.

PARTIES CONTENTIONS

THE COMPLAINANT

The Complainant has many registered trademarks for the Sportingbet term and the Sportingbet brand has builtup substantial recognition in the public domain. Respondent's Sportingwin mark is visually identical to the Sportingbet brand and trademarks. The disputed domain names resolve to live websites and are being used by the Respondent for the purpose of imitating and/or gaining an unfair advantage from the Complainants' official and longstanding Sportingbet brand and trade dress. The disputed domain names were selected and used by the Respondent with the intent to attract for commercial gain Internet users to Respondent's web site by trading on the well-known nature of the Complainant's Sportingbet mark.

THE RESPONDENT

The Respondent submits that Complainant's Sportingbet mark is not similar to the two disputed domain names. Its online gaming license and the EU trademark support the findings of its legitimate interests and bona fide offering.

The Respondent further claims that the Complainant has attempted to commit reverse domain name hijacking.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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).

First, the Complainant claims rights in the Sportbet mark through its trademark registrations. By virtue of its trademark registrations, Complainant has proved that it has rights in the Sportingbet mark under paragraph 4(a) of the Policy. See Avast Software s. r. o. v Milen Radumilo, 102384, (CAC 2019-03-12).

Second, the Complainant claims that the disputed domain names consist of two elements, namely the "sporting" and "win". The Complainant submits that the use of "win" in conjunction with "sporting" is confusingly similar to the Complainant's trademark. Connotations associated with Sportingbet and Sportingwin create the overall impression that the goods and services offered under both terms would likely to be online betting or sports betting services. The Complainant also requests the Panel to assess the visual similarity of the trademarks between Sportingbet and Sportingwin. The font, stylization and highly similar branding in conjunction with the use of "win" in the disputed domain names create the overall impression that the disputed domain names are confusingly similar to the Complainant's Sportingbet brand. The Respondent admits that [online gambling] is an industry with very stiff competition with thousands of operating domain names. Confusion between different brands could occasionally happen among the millions of articles in the internet it is not difficult to cherry pick specific ones for the purposes of this case.

The Panel wants to highlight one point is that under the paragraph 4(a)(i) of the Policy, the comparison between the disputed domain names and Complainant's valid trademark registrations is an objective test which means whether a reasonable man would agree the disputed domain names are identical or confusingly similar to Complainant's trademark. In this case, the Panel agrees that "sportingwin" is the prominent part of the disputed domain names and both "Sportingbet" and "Sportingwin" have two elements, i.e. "sporting" plus either "bet" or "win". The Panel is of the view that having eight out of eleven characters the same, Sportingbet and

Sportingwin should already be considered as similar. If we also take into account of the logos of the "Sportingbet"  and "Sportingwin"  marks which the colour of the background and fonts are highly identical. See paragraph 1.15 of the WIPO

3.0 ("In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name.")

For the foregoing reasons, the Panel finds the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has no, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). More specifically, the Complainant must first make a prima facie case that the Respondents lack rights and legitimate interests in the disputed domain names, and the burden of prove then shifts to the Respondents to show they do have rights or legitimate interests. See *PepsiCo, Inc. v Smith power production*, 102378, (CAC 2019-03-08).

The Complainant submits that the Respondent does not have any rights or legitimate interests in the disputed domain names under paragraph 4(c) of the Policy, the Complainant acknowledges that a Respondent may demonstrate a right or legitimate interest in the domain name if it can be established that:

- The Respondent's use of the domain name or a name corresponding to the domain name is in connection with a bona fide offering of goods or services;
- The Respondent has been commonly known by the domain name, even if they have acquired no trademark or service mark rights; or
- The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent or commercial gain to misleadingly divert.

The Complainant claims that its Sportingbet brand and operations have been in the online gambling industry since as early as 2000 which predates the registration of the both disputed domain names on 31 May 2009 and 21 and April 2020. A search on the Wayback Machine further shows that the use of the Sportingwin on <sportingwin.com> as early as 25 August 2021 and on <sportingwin.net> as early as 21 January 2022.

The Complainant submits that the disputed domain names resolve to live websites and are being used by the Respondent for the purpose of imitating and/or gaining an unfair advantage from the Complainants' official and longstanding Sportingbet brand and trade dress. The Complainant also disputes the validity of the Respondent's license and maintains that this was obtained unlawfully.

The Complainant also submits that to the best of their knowledge, the Respondent has never been known as Sportingbet at any point in time.

The Complainant further submits that nothing from the content of the disputed domain names suggest 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, Sportingbet, within the Bulgarian online betting market. The Complainant has provided evidence regarding the cancellation action of the Bulgarian TM Registration No. 015928N and EUTM No. 018347948. The Respondent has even gone as far as to geo-block the United Kingdom, which is the Complainant's and the Sportingbet brand's domestic territory.

The Panel is of the view that UDRP is not a proper channel for raising a dispute regarding to the lawfulness of any national license so the allegation related to Respondent's Bulgarian gaming license is disregarded in the present case. Nonetheless, the Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain names, see *ARCELORMITTAL (SA) v. Milen Radumilo*, 102379 (CAC 2019-04-18). The burden of proof has been shifted to the Respondent to prove that it has right or legitimate interests to the disputed domain name.

Paragraph 4(c) of the Policy listed some common circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate Respondent's rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii). The Respondent has provided evidence that it has the gaming license issued by the Bulgarian Ministry of Finance as well as the active trademark registrations of Sportingwin with the Bulgarian Trademark Office and the European Trademark Office. The Respondent also claims that Complainant has been banned by the Bulgarian Court to restrict access from the territory of Bulgaria where is the jurisdiction of the Respondent and the Respondent has also restricted access from the territory of UK where is the jurisdiction of the Complainant.

Despite in some cases, the existence of a respondent trademark does not however automatically confer rights or legitimate interests on the respondent, (see paragraph 2.12 of the WIPO Overview 3.0), the Panel is of the view that holding active national license and trademark registrations in multiple jurisdictions including EUTM should confer rights or legitimates on the Respondent in some sort. Furthermore, it appears to the Panel that both parties have applied active geo-blocking on their official websites and limit the access from the territory of the other party, so both parties are not actually competing in their major market. Base on the facts presented by the both parties at the moment, the Panel tends to find that the Respondent has proved that it has right or legitimate interests in respect of the disputed domain names.

For the foregoing reasons, the Panel finds the Complainant has not satisfied paragraph 4(a)(i) of the Policy.

BAD FAITH

As the Panel concludes that the Complainant has not satisfied the second element in the present case under paragraph 4(a) of the Policy, it is not necessary to rule on the third element under paragraph 4(a) of the Policy. See ARCELORMITTAL v. Hussam Akroush (SoftFab), 104976 (CAC 2022-12-09).

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.

PRELIMINARY FINDINGS - CONSOLIDATION:

Pursuant to Paragraph 10(c) of the Rules that a Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and the Rules. The Rules further state that Respondent means the holder of a domain name registration against which a complaint is initiated.

The Complainant submits that the followings are the same among the disputed domain names:

- The content on both disputed domain names features highly similar content;
- The registrant of <sportingwin.net> is the director and shareholder of SB Entertainment Ltd whom is the registrant of <sportingwin.com>; and
- <sportingwin.net> redirects to <sportingwin.com>, evidencing the two disputed domain names are linked.

The Respondent confirms that it owns one of the disputed domain name <sportingwin.com>. The other disputed domain name <sportingwin.net> is owned by a bigger holding [company] which does not own the disputed domain name <sportingwin.com>.

The Panel has reviewed the evidence and agrees with the Complainant that the two disputed domain names are likely under common control. Even the Respondent dismisses that one of the disputed domain name is owned by a bigger holding company, it has not rebutted that the disputed domain names and the registrants are linked in some sort.

Having considered the key considerations listed out under Article 4.11.2 of the WIPO Overview 3.0, the Panel concludes that the consolidation request be accepted pursuant to paragraphs 3 and 10 (e) of the Rules.

PRELIMINARY FINDINGS - PROCEDURAL ORDER NO.1:

Pursuant to Paragraph 10(b) of the Rules, a Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

In light of the technical issues related to the delivery of the Complaint Annexes, the Panel hereby makes the following procedural order:

1. The Complainant is required to resubmit a Complaint with all the necessary information attached, including but not limited to any annexes in a readable format. The resubmitted Complaint shall be uploaded to the CAC portal on or before 28 March 2023.
2. The Respondent may then upload a Response to the CAC portal on or before 4 April 2023.

3. The resubmitted Complaint and Response shall supersede the previously submitted Complaint and Response with respectively.
4. Any documents submitted in languages other than English shall be accompanied by a translation in whole or in part into English, otherwise the documents shall not be admitted.
5. The projected decision date has been postponed to 18 April 2023.

Both parties have re-submitted the Complaint and Response within the required period.

PRELIMINARY FINDINGS - REVERSE DOMAIN NAME HIJACKING (RDNH)

Paragraph 15(e) of the Rules provides that "if the Panel concludes that the dispute is not within the scope of Paragraph 4(a) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding."

In the present case, the Respondent claims that it strongly believes that there is enough evidence to show that the Complainant knows the present complaint would not succeed due to Respondent's EU trademark registration.

The Panel is of the view that merely a trademark registration may not preclude Complainant's success and in some cases such a trademark could be considered as obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant's exercise of its rights in accordance with paragraph 2.12 of the WIPO Overview 3.0. Given the Panel has found that the Complainant has successfully proved the first element under paragraph 4(a) of the Policy, the Panel does not find that the Complainant attempted Reverse Domain Name Hijacking within the meaning of the Rules. See *ARCELORMITTAL v. Hussam Akroush (SoftFab)*, 104976 (CAC 2022-12-09).

PRINCIPAL REASONS FOR THE DECISION

Having not established all three elements required under the UDRP Policy, the Panel concludes that relief shall be denied without prejudice.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **sportingwin.com**: Remaining with the Respondent
2. **sportingwin.net**: Remaining with the Respondent

PANELLISTS

Name	Mr Paddy TAM
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DATE OF PANEL DECISION **2023-04-05**

Publish the Decision
