Decision for dispute CAC-UDRP-106232

Case number	CAC-UDRP-106232
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Domain names	sporitngbet.com

Case administrator

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

Complainant

Organization	Entain Operations, Ltd

Complainant representative

Organization	Stobbs IP

Respondent

Name	Zhenhua Bin

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 name.

IDENTIFICATION OF RIGHTS

The Complainant owns an extensive portfolio of some two dozen trade marks consisting of or incorporating the name SPORTINGBET, including the UK national word trade mark SPORTINGBET, registration number UK00002642443, first registered on 15 November 2012 in international classes 9, 35, 38, 41 and 42; and the Brazilian national combined trade mark SPORTINGBET, registration number 901198730, first registered on 12 July 2011 in international class 41. At least the aforementioned trade mark registrations of the Complainant predate the registration of the disputed domain name.

Furthermore, the Complainant also owns domain names which consist of or incorporate the name SPORTINGBET, including <sportingbet.com>, first registered on 4 September 1997, and actively used since 20 March 2013, which is connected to the Complainant's official website through which it informs Internet users and customers about its products and services.

In addition to its official website, the Complainant also operates an official sports betting app which is made available on mainstream app platforms like Apple and Google Play. The branding of the official app prominently incorporates the Complainant's trade marks.

FACTUAL BACKGROUND

The Complainant, Entain Operations Ltd, is the subsidiary of an international sports-betting and gaming group, operating both online

and in the retail sector. The Complainant's parent, Entain plc, owns a comprehensive portfolio of established brands, including the sports brands BWIN, CORAL, CRYSTALBET, EUROBET, LADBROKES, NEDS INTERNATIONAL, and SPORTINGBET; and the games brands CASINO CLUB, FOXY BINGO, GALA, GIOCO GITITALE, PARTYPOKER and PARTYCASINO. For the financial year ending 31 December 2021, the parent's underlying operating profit for the online gaming business was £484 million. The parent has traded on the Alternative Investment Market (AIM) of the London Stock Exchange since 24 May 2010 and, as of 1 February 2024, has a market capitalisation of £6.1 billion. The United Kingdom is the parent's core market and accounts for a significant portion of sales, with other key markets being the European Union and Australia.

The Complainant asserts that its SPORTINGBET brand is widely known, has accrued significant reputation, and has built up a vast amount of goodwill in relation to a wide range of goods and services. Endorsements and promotional activity associated with the Complainant's brand and trade marks include, notably, the sponsorship of football clubs in the UK and EU, with the brand and trade marks being featured on the official matchday kit of English Premier League club Wolverhampton Wanderers FC between 2009-2013, of English Championship club Leeds United FC between 2011-2014, and Romanian SuperLiga's most successful club Steaua Bucuresti between 2009-2011.

Aside from the Complainant's brand and trade marks being featured on football stadiums and player's matchday shirts, it is also active online, reaching a wide network of users on a global scale. The Complainant's official website and official app facilitate betting services during highly popular football events, including the English Premier League, amassing substantial user traffic. On average, the Complainant's official website generates user traffic of over 12 million visitors a month, from various territories across the globe. The Complainant's social media accounts for the brand SPORTINGBET on the platforms Instagram, Facebook and X have attracts significant numbers of followers.

The disputed domain name <sporitngbet.com> was registered on 13 September 2014. As at the date of this decision, the disputed domain name resolves to a domain hosting an online game.

PARTIES CONTENTIONS

The Complainant contends that all three elements of the UDRP have been fulfilled and it therefore requests the transfer of the disputed domain name to the Complainant.

No administratively compliant response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark 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 name (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 name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel notes that, as at the date of this decision, the disputed domain name resolves to a domain hosting an online game, but that the Complainant has adduced evidence showing that, as at the time of the amended complaint, the disputed domain name redirected instead to the domain <expressvpn.com>; and that the disputed domain name had previously been linked to a range of other domains which promoted a sports gaming app, or offerings relating to the goods and services of the Complainant, such as gambling, games entertainment or e-sports.

It has been commonly accepted by a substantial number of UDRP decisions that panels may perform limited independent factual research into matters of public record in assessing the merits of a case, based on the wide general powers set out in paragraphs 10 and 12 of the UDRP Rules. Such research may include, in particular, visiting the website linked to the disputed domain name in order to obtain information about a respondent's use of the disputed domain name (see, for example, WIPO Overview 3.0 at paragraph

4.8). The Panel is therefore satisfied that it can take into account the change of website to which the disputed domain name is now linked.

The Panel has also considered whether it may be necessary to invite the parties to make further submissions on the new website to which the disputed domain name now forwards. The Panel has however taken the view that doing so in circumstances where, both at the time of the (amended) complaint and at the time of the decision, the disputed domain name has been forwarding to a succession of different third party websites, all of which constitute (for the reasons given below) use of the disputed domain name without legitimate rights or interest, for commercial gain, or taking unfair advantage of the reputation and goodwill acquired by the Complainant's trade marks, would not be necessary or appropriate because it would undermine the UDRP process insofar as a respondent would simply have to change the redirection at different stages during the administrative proceeding to prevent a timely and effective decision from being reached. The Panel therefore considered it appropriate to proceed to a decision without inviting further party submissions.

The Panel is also satisfied that all other 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

With regard to the first UDRP element, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade marks SPORTINGBET. Indeed, the disputed domain name incorporates the Complainant's trade marks in their entirety, save that the disputed domain name transposes the letters "t" and "i" in the Complainant's trade marks. The Panel considers the present case to be a plain case of "typosquatting", i.e., the disputed domain name contains an obvious and intentional misspelling of the Complainant's trade marks, which is not sufficient to alter the overall impression of the designation as being connected to the Complainant's trade marks. Minor alterations to the Complainant's trade marks do not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trade marks and associated domain names. The Panel follows in this respect the view established by numerous other decisions that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is to be considered to be confusingly similar to the relevant trade mark (see, for example, CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringelheimpetrreebates.com>; CAC Case No. 101990, JCDECAUX SA v. Emma Purnell <jcdeceux.com>; CAC Case No. 101892, JCDECAUX SA v. Lab-Clean Inc <jcdacaux.com>; WIPO Case No. D2005-0941, Bayerische Motoren Werke AG, Sauber Motorsport AG v. Petaluma Auto Works <bmwsauberf1.com>; WIPO Case No. D2015-1679, LinkedIn Corporation v. Daphne Reynolds <linkedlnjobs.com>; CAC Case No. 103960, SCHNEIDER ELECTRIC SE v. michele Swanson <schnaider-electric.com> ("the obvious misspelling of the Complainant's trademark SCHNAIDER ELECTRIC instead of SCHNEIDER ELECTRIC is a clear evidence of "typosquatting"); and CAC Case No. 103166, BOURSORAMA SA v. Cloud DNS Ltd <recover-bousorama.link> ("A domain name that contains sufficiently recognizable aspects of the relevant mark and uses a common name, obvious or intentional misspelling of that mark is considered by UDRP panels to be similar to the relevant mark for the purposes of the first element (see paragraph 1.9 WIPO Overview 3.0)").

With regard to the second UDRP element, the Panel accepts on the basis of the evidence adduced by the Complainant, that the Complainant's SPORTINGBET brand is widely known and has accrued significant reputation and goodwill in the sporting bets industry. There is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services with any of the succession of websites to which the disputed domain name has been linked since registration. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. The Panel follows in this regard the view established by numerous other decisions that use of a domain to host a page comprising pay-per click commercial links does not represent a bona fide offering of goods or services where such links compete with or capitalise on the reputation and goodwill of the complainant's trade mark, or otherwise mislead Internet users (see, for example, Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend <vancesecurity.com>, <vancesecurity.net>, <vancesecurity.org> (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees); and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe <mayflowermovers.com> ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade marks or to apply for or use the disputed domain name. Additionally, the Whois information for the disputed domain name does not suggest that the Respondent is commonly known by the disputed domain name <sporitngbet.com>. Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name, as is equally not the case here (see, for example, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii)."). Finally, as noted above, the disputed domain name is a typosquatted version of the Complainant's trade marks; the Panel follows the view expressed in other decisions that typosquatting can evidence that a respondent lacks rights and legitimate interests in the domain name (see, for example, Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group < thehackettgroups.com> ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy ¶ 4(a)(ii)."). Against this background, and absent any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trade marks, and that the Respondent registered the disputed domain name in full knowledge of the Complainant's trade marks. Indeed, if the Respondent had carried out a Google search for the term “Sporitngbet”, the search results would have yielded immediate results related to the Complainant, its website, and its connected business and services. It is likely that the disputed domain name would not have been registered if it were not for the Complainant's trade marks (see, for example, WIPO Case No D2004-0673 Ferrari Spa v. American Entertainment Group Inc <ferrariowner.com>). The Panel considers that the disputed domain name was intentionally designed to be confusingly similar with the Complainant’s trademark. Previous panels have seen such actions as evidence of bad faith, which is a view the Panel in these proceedings shares (see, for example, Forum Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines <microssoft.com> ("In addition, Respondent’s misspelling of Complainant’s MICROSOFT mark in the <microssoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy ¶ 4(a)(iii).")) Furthermore, the website related to the disputed domain name resolves to a parking page with pay-per-click links. Based on the decisions of other panels in similar cases, the Panel regards this as an attempt by the Respondent to attract Internet users for commercial gain to its own website based on the Complainant’s trade marks, and as further evidence of bad faith (see, for example, WIPO Case No D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC <studiocanalcollection.com> (“In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.”)). Indeed, it is difficult to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate on the grounds that it would constitute passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trade mark law under circumstances where that disputed domain name corresponds to the Complainant’s trade mark and is similar to the Complainant’s genuine domain names currently used by the latter to promote its goods and services. Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **sporitngbet.com**: Transferred

PANELLISTS

Name	**Gregor Kleinknecht LLM MCIArb**

DATE OF PANEL DECISION 2024-03-17

Publish the Decision