Decision for dispute CAC-UDRP-106451

Case number	CAC-UDRP-106451
Time of filing	2024-04-22 09:21:52
Domain names	bwin.tokyo, bwinasia.tokyo, bwin-asia.tokyo, ladbrokes.tokyo

Case administrator

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

Complainant

Organization	Entain Operations, Ltd.

Complainant representative

Organization	Stobbs IP

Respondent

Name	Chai Rui Chen

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 (clerical error from the Complainant mentioning the parent company Entain Plc), has provided evidence of ownership of the following trademark:

International trademark registration BWIN n° 886220 filed on February 3, 2006 duly renewed and claiming goods and services in classes 9, 16, 35, 36, 38, 41 and 42 and covering amongst others Australia, USA, Hungary, Russia, Japan, Benelux, Switzerland, Cyprus, France, UK...

The Complainant relied also on the following trademarks standing in the name of Entain Marketing (UK) Limited:

UK trademark registration LADBORKES n° 0650225 filed October 8, 2021 and claiming goods and services in classes 9, 16, 28, 35, 38, 41 and 42.

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. 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 First 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 (Company No. 004685V).

The Complainant has traded on the Alternative Investment Market (AIM) of the London Stock Exchange (LSE) since 24 May 2010 and as of 20 October 2021, has a market capitalisation value (the market value of a company's outstanding shares) of £12.7 billion.

The Complainant is the parent company of Entain Operations Limited with the registered office Suite 6, Atlantic Suites, Europort Avenue, Gibraltar, and owns extensive rights in the figurative and word marks associated with BWIN and LADBROKES including, but not limited to, the trade mark registrations. This very clearly demonstrates the Complainant has rights in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), (3)(b) (viii).

For the relevant financial year ending 31 December 2021, the Complainant's underlying operating profit for the online gaming business was £484 million. It is clear from this that the Complainant's brand has been a significant commercial presence for a long period of time and continues to have the same, strong presence today.

The Complainant would have been aware of the registration of the following domain names:

<bwin.tokyo> registered on August 25, 2023

<bwinasia.tokyo> registered on August 25, 2023

<bwin-asia.tokyo> registered on August 25, 2023

<ladbrokes.tokyo> registered on August 26, 2023

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domains names should be transferred to it. The Complainant makes a number of legal arguments and also supplies a set of annexes providing evidence of its activities and of the Respondent's use of the disputed domain name.

No administratively compliant Response has been filed. It ought to be indicated that the Centre sent of the complaint but nor the advice of delivery thereof was returned to the Czech Arbitration Court. The notice of the Commencement of the administrative proceeding was therefore only sent by e-mail. Yet, the e-mail notice sent to <postmaster@bwin.tokyo>, <postmaster@bwinasia.tokyo>, <postmaster@bwin-asia.tokyo> and <postmaster@ladbrokes.tokyo> was returned back undelivered as the e-mail address had permanent fatal errors. The e-mail notice was also sent to <yiingyue602@gmail.com>, but the CAC never received any proof of delivery or notification of undelivery. No further e-mail address could be found on the disputed sites.

The Respondent never accessed the online platform.

RIGHTS

Despite the clerical error in the name of the Complainant mentioned in the "factual and legal backgrounds" of the Complaint, 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).

Yet, this is convincing the Panel to the extent that the international registration BWIN is concerned. Indeed, the Complainant did not to the satisfaction of the Panel show that he was entitled to act on behalf of company Entain Marketing (UK) Limited, owner of the UK registration LADBROKES. The Panel relied on WIPO Overview of WIPO Panel Views on Selected UDRP Questions (3rd Edition) and more specifically point 1.4.1 "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 UDRP for purposes of standing to file a complaint". The Complainant is not, or it has not demonstrated that he is, a trademark owner's affiliate as defined.

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 reproducing the sign BWIN (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, reproducing the sign BWIN, 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 Panel recalls the wording of WIPO Overview of WIPO Panel Views on Selected UDRP Questions (3rd Edition) and more specifically point 4.8 i.e. "Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision."

The Panel conducted a quick search on the trademark and trade registers to examine the status of trademarks owned by the Complainant and company Entain Marketing (UK) Limited as well as the possible legal connection with both entities. It came up that some kind of link could be inferred with the parent company Entain Plc and those entities but none between the two trademark owners indicated in the Complaint.

In the light of these information and the drafting of the Complaint the Panel has to (i) examine the request of consolidation and (ii) the language of the proceedings.

CONSOLIDATION

The Complainant has requested that the proceedings concerning both disputed domain names are consolidated into single proceedings in accordance with paragraph 4(f) of the UDRP and paragraphs 3(c) and 10(e) of the UDRP Rules. The Complainant asserts that all disputed domain names are owned or under the effective control of a single person or entity, or a group of individuals acting in concert. In support of this assertion, the Complainant contend that the domain names:

1. the Disputed Domain Names use a privacy protect service to mask the registrant;
2. the Disputed Domain Names use GMO Internet Group, Inc. as registrar;
3. the Disputed Domain Names were all registered within a single day of one another;
4. the Disputed Domain Names use Cloudflare proxy services to mask the web hosting service provider;
5. the Disputed Domain Names use Cloudflare nameservers;
6. the Disputed Domain Names resolve to a website with the primary purpose of advertising gambling related services;
7. the similarity of Disputed Domain Names' anatomy to one another; and
8. evidence of identical and/or highly similar content (including website UI and look and feel) at the resolving websites.

Section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") provides as follows:

"Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. At the same time, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder."

For the above reasons put forward by the Complainant, the Panel concludes that there are sufficient grounds to support the conclusion that the disputed domain names are subject to common control and that consolidation would be fair and equitable to all Parties.

LANGUAGE OF THE PROCEEDINGS:

The Complainant aware, that pursuant to paragraph 11 of the Rules, unless otherwise agreed by the parties, the default language of proceedings is the language of the registration agreement, which in this consolidated Complaint is Japanese.

The Complainant requested thus that these proceedings should be conducted in English and that the Complaint should be accepted in the language filed i.e. English.

Before entering in a complete analysis of this query, the Panel could read in the "non_standard_communication_2" containing the "registrar verification" that the registrar clearly mentioned that "The language of the registration agreement is English".

Hence the Panel concludes that English language is acceptable for the Complaint and in line with the paragraph 11 of the Rules and should not be cast otherwise.

RIGHTS

The Complainant has established rights in the name BWIN. The disputed domain names <bwin.tokyo>, <bwinasia.tokyo> and <bwin-asia.tokyo> are found to be confusingly similar to the Complainant's Trademark. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of:

a. disregarding the top-level suffix in the domain names (i.e. ".tokyo");
b. finding that the identical reproduction of the trademark right or same with the adding of a geographical word i.e. "asia" would not be considered sufficient to distinguish a domain name from the concerned trademark being reproduced strictly identically which is intentionally designed to be confusingly similar with the trademark, i.e. a case of typosquatting;

The disputed domain names are therefore confusingly similar to the earlier right "BWIN", and the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

With respect to domain name <ladborkes.tokyo>, the disputed domain name is confusingly similar to the Complainant's trademark "LADBORKES". The disputed domain name incorporates the alleged Complainant's trademark in its entirety. Prior Panels have also followed this line of argument, satisfying also per se the requirement under paragraph 4(a)(i) of the Policy. However, the Complainant did not, to the satisfaction of the Panel, demonstrated being the owner or the owner's affiliate of trademark LADBORKES.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has put forward that the Respondent is not commonly known by the disputed domain names. The Respondent is not identified in the Whois under the disputed domain names. Past panels have held that a Respondent was not commonly known by a disputed domain names if the Whois information was not similar to the disputed domain names. The Respondent is in no way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain names by the Complainant. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a) (ii) of the Policy). The disputed domain names resolve to live sites using the prior rights for the purpose of imitating the Complainant's services to divert genuine customers.

In summary, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain names were registered by the Respondent and are being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain names in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain names. This prima facie evidence was not challenged by the Respondent.

The disputed domain names redirect to websites in the field of the Complainant's services. Such making use of the disputed domain names, obviously in a potential fraudulent manner, neither qualifies as a bona fide nor as a legitimate noncommercial or fair use under the UDRP and may not of itself confer rights or legitimate interests in the disputed domain names. The potential collection of personal data or passwords via phishing process being one possible fraudulent act.

The Respondent has failed to demonstrate any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the domain names by the Respondent that would not be illegitimate, by passing off, infringement of consumer protection legislation, or infringement of the Complainant's rights under trademark law.

In the absence of a Response and given the reputation of the Complainant and its trademark(s), company name and domain as supported by the Complainant's evidence, the Panel must conclude that the Respondent was fully aware of the Complainant's trademark, domain and company name "BWIN" at the time of registering the disputed domain names <bwin.tokyo>, <bwinasia.tokyo>, <bwin-asia.tokyo>.

Therefore, it has been established to the satisfaction of the Panel that the disputed domain names were registered and are being used in bad faith, in order to prevent the Complainant from making proper use of the mark in the disputed domain names <bwin.tokyo>, <bwinasia.tokyo> and <bwin-asia.tokyo>.

The Panel concludes that the Respondent has registered and is using the disputed domain names in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the

Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Partially Accepted/Partially Rejected

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

1. **bwin.tokyo**: Transferred
2. **bwinasia.tokyo**: Transferred
3. **bwin-asia.tokyo**: Transferred
4. **ladbrokes.tokyo**: Remaining with the Respondent

PANELLISTS

Name	**David-Irving Tayer**

DATE OF PANEL DECISION 2024-05-26

Publish the Decision