Decision for dispute CAC-UDRP-106484

Case number	CAC-UDRP-106484
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Domain names	apk1xbetar.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Navasard Limited

Complainant representative

Organization	Sindelka & Lachmannová advokáti s.r.o.

Respondent

Name	Dmitrii Sofronov

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 is the owner of the following trademark registrations for the sign “1XBET” (the “1XBET trademark”):

– the European Union trademark 1XBET (combined) with registration No. 017517327, registered on March 7, 2018 for services in International Classes 41 and 42; and

– the European Union trademark 1XBET (combined) with registration No. 017517384, registered on March 7, 2018 for services in International Classes 41 and 42.

FACTUAL BACKGROUND

The Complainant offers sports betting, lottery, bingo, live betting, lottery and other games. It is the owner of the domain name <1xbet.com>, which resolves to the website where the Complainant offers its services under the 1XBET trademark.

The disputed domain name was registered on April 21, 2022. It resolves to an Arabic language website with a header whose English translation is “Download 1xbet => All versions of 1xbet V.111(6560) Betting Apps + Free Bonus”. The website prominently features the 1XBET trademark and offers for download an 1XBET application, where the clicking of the download button starts the download of a file with the name “1xbet.apk”. The provider of the website and its contact details are not indicated. The website includes a “Change the language” (English translation) button, which redirects visitors to other domain names that also incorporate the 1XBET trademark and resolve to websites in other languages that also offer the download of what appears to be the same 1XBET application.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant states that the disputed domain name is confusingly similar to its 1XBET trademark, because it fully incorporates the same trademark which is clearly recognizable in it. The Complainant maintains that the addition of the abbreviation “apk” which stands for “Android Package Kit”, designating the file format used by the Android operating system, does not prevent a finding of confusing similarity of the disputed domain name to the 1XBET trademark. The Complainant adds that the website at the disputed domain name displays the 1XBET trademark. According to it, this shows that the Respondent registered the disputed domain name because it believed that it was confusingly similar to the 1XBET trademark of the Complainant.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, because the Complainant has not authorized it to register or use the disputed domain name and the Parties are not affiliated. The Complainant notes that the disputed domain name was registered several years after the Complainant registered the 1XBET trademark, and submits that the Respondent is not known by the disputed domain name and does not own any corresponding trademark. According to the Complainant, the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services and is not making a legitimate non-commercial or fair use of it, but attempts to make Internet users believe that the disputed domain name is directly linked to, or operated by, the Complainant, because the associated website prominently displays the 1XBET trademark and promotes a downloadable application related to the Complainant's business, but does not identify the person operating the website and does not disclose the absence or nature of the relationship between the Parties. According to the Complainant, this shows that the Respondent is using the disputed domain name to impersonate the Complainant and to pass off its services as being provided by the Complainant for commercial gain.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that the Respondent registered the disputed domain name several years after the Complainant registered its 1XBET trademark and introduced the 1XBET brand. The Complainant states that the composition of the disputed domain name shows that the Respondent registered it with the Complainant and its 1XBET trademark in mind with an intent to create an association and likelihood of confusion with the Complainant's trademark in the minds of Internet users, and to take advantage of the Complainant's well-known trademark.

The Complainant concludes that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to the website at the disputed domain name, by creating a likelihood of confusion with the Complainant's 1XBET trademark as to the source, sponsorship, affiliation, or endorsement of this website.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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).

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

Language of the proceeding

Under paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or otherwise specified in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Paragraph 10(b) and (c) of the Rules requires the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated fairly and given a fair opportunity to present their respective cases.

The Registrar has informed the CAC that the language of the Registration Agreement for the disputed domain name is Russian. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant has filed its Complaint in English and requests that English be the language of the proceeding.

The Panel notes that the online platform of the CAC currently does not work in Russian. However, the CAC has sent information about the proceeding also in Russian, and the Respondent has accessed the online case file, but did not file a Response or request any assistance. This is sufficient to support a conclusion that the Respondent was provided an opportunity to present its case in this proceeding and to respond formally to the issue of the language of the proceeding, but it did not contest the Complainant's request is respect of the language of the proceeding.

Considering the above, the Panel concludes that the choice of English as the language of the present proceeding is fair to both Parties. The Panel also notes that to require the translation of the Complaint and all supporting documents in Russian would cause additional costs and would unnecessarily delay the proceeding.

Having considered all the above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding shall be English.

In view of all of the above, 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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

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

(iii) the domain name was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the 1XBET trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "apk1xbetar", in which the 1XBET trademark is recognisable, and which sequence can be regarded as a combination of the same trademark with the elements "apk" and "ar". As discussed in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("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. Here, the element "apk" can be understood as standing for Android Package Kit (see https://www.techtarget.com/whatis/definition/APK-file-Android-Package-Kit-file-format#:~:text=An%20APK%20file%20(Android%20Package%20Kit%20file%20format)%20is%20the,program's%20code%2C%20assets%20and%20resources), and this understanding is reinforced by the content of the associated website where an 1XBET application is indeed offered for download in the APK file format. The inclusion of the "apk" element in the disputed domain name therefore increases the likelihood of confusion between it and the 1XBET trademark. As to the element "ar", it may be understood as an abbreviation for "Arabic", since "AR" is used as the code for Arabic in the ISO Language Table (see http://www.lingoes.net/en/translator/langcode.htm). Another argument for the same conclusion is the fact that the associated website is in Arabic.

Taking the above into account, the Panel finds that the disputed domain name is confusingly similar to the 1XBET trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it was not authorized to use the 1XBET trademark, is not related to the Complainant and is not commonly known under the disputed domain name. The Complainant adds that the disputed domain name is being used for a website that attempts to impersonate the Complainant by displaying the 1XBET trademark and offering for download a 1XBET application, without disclosing the lack of relationship with the Complainant. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not disclosed the reasons why it has registered the disputed domain name or its plans how to use it.

In the Panel's view, the circumstances of this case do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It is confusingly similar to the distinctive 1XBET trademark of the Complainant in combination with the abbreviations for Android Package Kit and for the Arabic language, and resolves to a website in Arabic that offers visitors to download what is referred to as the 1XBET application, while displaying an exact copy of the 1XBET trademark with the same graphical design as the registered trademark of the Complainant, without disclosing the lack of relationship with the Complainant. All this may create an impression in Internet users that the disputed domain name, the associated website and the application offered for download there are under the control of the Complainant. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant's 1XBET trademark, has registered and used the disputed domain name targeting this trademark in an attempt to exploit its goodwill by impersonating the Complainant. The Panel does not regard such conduct as giving rise to rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have 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 complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a

product or service on your website or location."

The registration of the distinctive 1XBET trademark predates by four years the registration of the disputed domain name. It represents a combination of the same trademark with the abbreviations for Android Package Kit and the Arabic language and resolves to an Arabic language website that offers for download an 1XBET application in the APK format, without disclaiming the lack of relationship with the Complainant. This may confuse Internet users to believe that the disputed domain name and the application offered for download belong to or are endorsed by the Complainant. Taking this into account, and in light of the fact that the Respondent has not provided any plausible explanation of its choice of a domain name and its plans how to use it, the Panel is of the view that the Respondent is more likely to have registered and used the disputed domain name with knowledge of the Complainant's trademark and with the intention of taking advantage of its goodwill by impersonating the Complainant.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **apk1xbetar.com**: Transferred

PANELLISTS

Name	**Assen Alexiev**

DATE OF PANEL DECISION 2024-05-26

Publish the Decision