Decision for dispute CAC-UDRP-106730

Case number	CAC-UDRP-106730
Time of filing	2024-07-29 09:01:04
Domain names	brazino777.app

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	FOUNDCOM LIMITED

Complainant representative

Organization	B&B Services SIA

Respondent

Organization	wenquanxu

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 European Union trademark 'Brazino777' (word) applied for on 16 September 2022 and registered on 19 January 2023 under registration no. EUTM 018763876 for a variety of goods in class 9 and services in class 41 including online casino services; interactive and online entertainment and online gambling services.

FACTUAL BACKGROUND

The Complainant has been operating its website under the domain name <brazino777.com> to offer online gaming and gambling services globally since 2018.

The disputed domain name was registered on July 23, 2023.

PARTIES CONTENTIONS

The submissions of the Complainant are as follows:

The disputed domain name <brazino777.app> incorporates the entirety of the Complainant's trademark and therefore is identical to the Complainant's trademark as the gTLD designation ".app" may be disregarded in the determination of confusing similarity since it is a mere reference to the generic top-level domain.

The Complainant's trade mark was applied for on 16 September 2022 and registered on 19 January 2023 while the disputed domain name was registered on 21 July 2023, i.e., after the Complainant obtained a full and exclusive right on the relevant trade mark.

The Complainant has not permitted the Respondent to use the Complainant's trademark in any manner including applying for or using as a domain name under any gTLD.

The Complainant is also unaware of any earlier use or rights that might belong to the Respondent capable of making the use of the disputed domain name legitimate.

There are no indications that the relevant Respondent could be commonly known by the disputed domain name especially bearing in mind that the Respondent's true identity is hidden under a privacy service, there are no names or contact details on the website under the disputed domain name, the disputed domain name was created just a year ago and there is another trade name (5Gbet.com) used as a commercial identifier by the website under the disputed domain name.

The Respondent's use of the disputed domain name does not qualify as a legitimate noncommercial or fair use. The website associated with the disputed domain name is specifically dedicated to online gambling services, a commercial purpose for financial gain. Therefore, the disputed domain name is not non commercial legitimate fair use.

The use of the disputed domain name cannot be considered fair due to its complete incorporation of the Complainant's trademark suggesting an affiliation with the Complainant and its goods and services or that it offers applications via the .app gTLD provided by or affiliated with the Complainant.

According to WIPO Jurisprudential Overview 3.0 UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (see paragraph 2.5.1). The disputed domain name is no doubt identical to the Complainant's registered trade mark and therefore inevitably creates a high risk of affiliation and confusion.

The Respondent has chosen the disputed domain name with the sole intent to redirect users and to seek unfair advantage from the reputation of the Complainant's trademark with the intent to misleadingly divert consumers or to tarnish the Complainant's trademark. The Respondent's use of the disputed domain name cannot be deemed to be a fair use.

The Respondent does not have rights or legitimate interests in the disputed domain name. Consequently, the conditions set by Para. 4(a)(ii) UDRP are met.

According to WIPO Jurisprudential Overview 3.0 bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. Under Para. 4(b)(iii) and (iv) bad faith of a respondent can be constituted, among others, if the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or a product or service on the respondent's website or other Internet location. The disputed domain name is registered and is being used in bad faith.

The Complainant's trademark is an invented (fanciful) word with a high level of inherent distinctiveness, serving as a clear source of commercial origin. This distinctiveness is further reinforced by the extensive use of the trademark for relevant goods and services, which has contributed to its notoriety and goodwill among internet users, particularly those interested in online gaming and gambling. As a result, the relevant trademark is strongly associated with the Complainant and its products and services. Therefore, it is hardly believable that the Respondent could have chosen the name for the disputed domain name occasionally and unintentionally, not being aware of the Complainant's prior rights derived from the trademark and the domain name, bearing in mind the global nature of the Internet and the fact that is nearly impossible that even a brief check would not reveal have revealed the Complainant's prior trademarks and its domain name/website as confirmed by a simple Google search. In other words, it is highly unlikely that the Respondent could have taken the name for the disputed domain name independently and by coincidence without clear knowledge of the Complainant's trademark and its prior use and without seeking to create an impression of affiliation with the Complainant.

All the above factors as well as the obviously fake identity used for the registration of the disputed domain name suggests that the Respondent was well aware of the Complainant's trademark and has registered the disputed domain name in an abusive manner for the sole purpose of misleading Internet users to dishonestly attract Internet users for commercial gain and create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Respondent's website seeking to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's trademark and the goodwill attached to it, free-riding on the Complainant's trademark and disrupting its business.

Respondent

No administratively compliant Response has been filed.

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

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 Complainant's trade mark was registered as an EUTM in January 2023.

The disputed domain name registered in July 2023 is identical for the purposes of the Policy to the Complainant's prior registered trade mark for casino services adding only the gTLD .app.

The Respondent is not authorised by the Complainant and is not commonly known by the disputed domain name. The Panel did not find any rights of the Respondent or a legitimate use of the disputed domain name.

The disputed domain name has been used for competing services in a confusing manner likely to disrupt the Complainant's business. That provides sufficient ground for both bad faith registration and bad faith use of the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **brazino777.app**: Transferred

PANELLISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2024-09-05

Publish the Decision