Decision for dispute CAC-UDRP-106702

Case number	CAC-UDRP-106702
Time of filing	2024-08-02 09:33:50
Domain names	777brazzino.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Foundcom Limited

Complainant representative

Organization	B&B Services SIA

Respondent

Name	Dmytro Leva

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 registered holder of European Union Trademark <Brazino777> no. EUTM 018763876 registered on 19 January 2023 (application date: 16 September 2022) for goods and services in classes 9 and 41.

FACTUAL BACKGROUND

The Registrar confirmed that the disputed domain name was registered on 19 April 2023.

It results from the Complainant's documented allegations that the disputed domain name is not connected to any active website ("There has been a critical error on this website").

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark. Many panels have found that a domain name is confusingly similar to a complainant’s trademark where it incorporates the complainant’s trademark in its entirety. In the case at hand, the elements of the Complainant’s registered trademark <Brazino777> are fully included in the disputed domain name. Merely the order of the figures <777> has been inverted and the "z" been doubled. In the Panel's view, these modifications result to be minor variations and obvious misspellings of the Complainant's mark and is not enough to exclude confusing similarity. The Panel rather finds that the trademark is recognizable within the disputed domain name.

2.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests to the disputed domain name.

In the Panel’s view, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent’s use of the Complainant’s trademark e.g. by registering the disputed domain name. Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contains the Complainant’s trademark <Brazino777> in a highly similar form. The Panel considers it more likely than not, that this trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. In the absence of any explanations by the Respondent, the Panel finds it most likely that the Respondent registered the disputed domain name with the intention to take advantage of the Complainant’s reputation by registering a domain name containing the Complainant’s trademark in highly similar form with the intent to mislead Internet users.

It is acknowledged that once the panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

3.

According to paragraph 4(a)(iii) of the Policy, the Complainant must, lastly, establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in its paragraph 4(b) may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The disputed domain name does not resolve to active website. In this regard, the Panel notes that the passive holding does not preclude a finding of bad faith (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

Additionally and with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP, deemed to establish bad faith registration and use, the Panel considers the following circumstances surrounding the registration as suggesting that the Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith:

(1) the Complainant's trademark is distinctive and has been incorporated in the disputed domain name in highly similar form;

(2) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use;

(3) the respondent's concealing its identity and

(4) the implausibility of any good faith use to which the disputed domain name may be put (see WIPO Overview 3.0 at section 3.3).

In the light of the above, the Panel finds that the disputed domain name has been registered and is being 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. **777brazzino.com**: Transferred

PANELLISTS

Name	**Tobias Malte Müller**

DATE OF PANEL DECISION 2024-09-11

Publish the Decision