Decision for dispute CAC-UDRP-106874

Case number	**CAC-UDRP-106874**
Time of filing	**2024-09-25 09:25:21**
Domain names	**melbet-eg.com**

Case administrator

Name	**Olga Slanařová (Case admin)**

Complainant

Organization	**Batnesto Ltd**

Complainant representative

Organization	**Sindelka & Lachmannová advokáti s.r.o.**

Respondent

Name	**Askar Rubas**

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

In this proceeding the Complainant relies on the following trademark registrations:

- Peruvian trademark registration No. S00149219 “Melbet” (figurative), filing date is June 8, 2023, registration date is August 10, 2023;
- Burundian trademark registration No. 10242/BI “Melbet” (figurative), filing date is November 9, 2022, registration date is November 15, 2022 and
- Mauritius trademark registration No. 34042/2023 “Melbet” (figurative), filing and registration date is November 9, 2022.

The Complainant also refers to numerous trademark applications for “Melbet” in various jurisdictions filed in 2023 and 2024, including Serbia and the EU.

The Complainant alleges common law trademark rights in the word and figurative “MELBET” mark in relation to online betting and casino services as summarized below.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant alleges that it is a company registered in Cyprus and the holder of the <melbet.com> domain name. The website at the domain name <melbet.com> is operated by a third party – "Pelican Entertainment" B.V. with the Complainant's permission.

The Complainant claims that the "Melbet" online gaming and casino platform has been operated since 2012 and the Complainant provides screenshots of prior use of the "Melbet" platform ("Platform").

The Complainant states that the Platform has over 400,000 daily users worldwide and it includes over 1,000 daily events. Users can bet on a variety of popular sports, including,but not limited to football, tennis, basketball, volleyball, ice hockey, golf and boxing.

The Complainant provides information about the Platform from various sources (such as description and users' reviews) and states that the "Melbet" betting application is available on "AppStore" and for "Android".

The Complainant provides evidence of designs registration in the EU for the website layout and copyright registrations for the website layout in the UK issued by an entity named "Copyright House".

In addition to trademark registrations referred to above the Complainant also alleges common law trademark rights in respect of the "Melbet" mark (both word and figurative).

The Complainant's common law trademark rights arguments are based on the following:

- Under sec. 1.1.1 of "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" ("WIPO Overview 3.0") the term "trademark or service mark" encompasses both registered and unregistered (common law) marks;
- The Complainant alleges that it has submitted evidence demonstrating acquired distinctiveness that it and its legal predecessors have been using the "MELBET" mark for online betting and casino services since 2012;
- The Complainant refers to reviews and information available online that, in the Complainant's view, prove recognition of the "Melbet" mark among relevant consumers and the number of total users – 400,000 also proves existence of common law trademark rights.

The Complainant alleges that the disputed domain name is confusingly similar to its trademarks since it fully incorporates the mark plus a geographical term "EG" – Egypt.

The .com gTLD does not affect confusing similarity analysis.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the disputed domain name was registered on December 26, 2023, namely after the filing and registration of its "Melbet" trademarks and acquisition of common law trademark rights.

The Complainant states that it has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to the Complainant in any form.

There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks.

The Respondent has not been using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services, nor making a legitimate non-commercial or fair use of the disputed domain name.

The Complainant alleges that the structure of the disputed domain name reflects the Respondent's intention to create an association, and a subsequent likelihood of confusion, with the Complainant, its trademarks, and its business conducted under the same mark.

The Complainant believes that the disputed domain name falsely suggests affiliation with the Complainant. Besides, the content of the website at the disputed domain name creates a direct association with the Complainant and its trademarks, the website contains logos of the Complainant and its figurative trademarks. The Complainant also highlights that the website at the disputed domain name does not identify the person operating the website and its relationship to the Complainant. Instead, it mentions at its bottom that it is owned and operated by "Pelican Entertainment" which further strengthens the risk of association with the Complainant.

The Complainant refers to WIPO Overview 3.0 and sec. 2.13.1, namely that the use of a domain name for illegal activities such as impersonation and other types of fraud can never confer rights or legitimate interests on a respondent. In particular, the Complainant notes that the Respondent's website due to the use of the Arabic language and incorporation of the country code "EG" in the disputed domain name gives the false impression that it is the official Egyptian website of the Complainant, which is not the case.

The Complainant alleges that the Respondent is using the disputed domain name to engage in illegal activities, in particular to impersonate the Complainant and/or to pass off its services as those of the Complainant.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant's submissions on the bad faith element can be summarized as follows:

- The Complainant states that the Respondent registered the disputed domain name after the first registrations of the Complainant's "MELBET trademarks and after the Complainant established alleged common law trademark;
- The Complainant alleges that its "MELBET" marks are widely-known due to the overwhelming online presence of the Platform. The Complainant alleges that by conducting a simple online search on popular search engines for the term "Melbet", the Respondent would have inevitably learned about the Complainant, its mark and its business;
- The registration of the disputed domain name is intended to create a direct association with the Complainant's "MELBET" trademarks, and the Complainant's own domain name <melbet.com>. The Respondent registered the disputed domain name to take advantage of the Complainant's mark and the content of the website at the disputed domain name demonstrates that;
- The Complainant claims that the Respondent's behavior falls within par. 4 b.(iv) of the Policy and the Respondent's use of the disputed domain name as described above creates a likelihood of confusion in Internet users' mind and may lead them to attempt contacting the person operating the website to purchase services.

Based on the above the Complainants claim that the disputed domain name has been registered and is being used in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are summarized in the Factual Background section above

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.

Language of the administrative proceeding:

The Registrar in its verification stated that the language of the registration agreement is Russian.

The Complainant requests to conduct this proceeding in English based on the following grounds:

- The content of the website at the disputed domain name is in Arabic rather than Russian;
- The website contains several English words, including but not limited to "PROMO CODE, Get Lucky AZ, Android, MELBET APK". This shows that the Respondent, who is based in Russia, understands the language of the complaint and
- If the Complainant were required to translate the complaint into Russian, such translation would result in significant additional costs to the Complainant and delay in the proceedings.

Under par. 11 (a) of the UDRP Rules unless otherwise agreed by the Parties, or specified otherwise 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.

The Panel needs to consider the interests of both parties to the proceeding and provide them with a fair opportunity to present their case and at the same time to ensure that the administrative proceeding takes place with due expedition.

The Panel carefully considered the need to conduct this proceeding with due expedition and the issue of fairness to both parties and decided to accept the Complainant's request and conduct this proceeding in English.

The website at the disputed domain name is in Arabic. Some words/phrases on the website are in English and some phrases appear to be in Azeri language. Therefore, the Respondent did not choose to have his website in Russian and based on the evidence available there is no Russian language information on the website at the disputed domain name.

The Respondent was notified by the CAC in both Russian and English language about this proceeding, he did not submit any response (whether formal or informal) and he never accessed the online platform of the CAC.

The Panel knows both Russian and English and had the Respondent submitted any response and/or evidence in Russian, the Panel would have considered such response /evidence.

However, the Respondent chose not to respond. In particular, the Respondent never questioned the language issue in this dispute.

In the circumstances when the Respondent chose to have his website in Arabic with some phrases in English and Azeri and the Respondent failed to submit any response, the Panel finds that changing the language of the proceeding to English would not be unfair.

Based on the above the Panel decides to proceed in English.

PRINCIPAL REASONS FOR THE DECISION

A.Identical or confusingly similar

The Complainant provides evidence of various trademark registrations for the "MELBET" mark.

The Complainant provided evidence of registration as well as evidence of recorded trademark assignment in respect of registrations in Mauritius and Burundi.

As confirmed by WIPO Overview 3.0: "where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case" (see sec. 1.2.1).

Therefore, the Complainant proved that it has trademark rights in respect of the "MELBET" term. While the registrations are figurative, the word element "Melbet" is a dominant one in all the marks.

Claims of unregistered (common law) trademark

The Complainant also alleged that it owns common law trademark rights in the "Melbet mark".

Indeed, the Policy protects both registered and unregistered marks.

However, to establish common law trademark rights for the purpose of the Policy the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services (see sec. 1.3 of WIPO Overview).

As noted in "UDRP Perspectives On Recent UDRP Jurisprudence", updated on August 30, 2024 ("UDRP Perspectives"), sec. 1.1: "To support a claim of common law trademark rights, the Complainant should present strong and serious evidence of constant use by the Complainant and recognition of the trademark from the customers of the associated goods or services" and that both direct and indirect evidence of acquired distinctiveness/secondary meaning can be provided (see sec. 1.2 of UDRP Perspectives). At the same time WIPO Overview 3.0 underlines that Panels can take into account such factors as the type and scope of market activities and the nature of the complainant's goods and/or services (see sec. 1.3).

The Panel notes that the Complainant is active in the field of online gambling and casino.

Some previous UDRP Panels found common law trademark rights in case of online businesses despite relatively short time-period of use of a claimed mark, see e.g. CAC Case No.105900: "The Panel finds that the Complainant has established common law rights in the CHAI mark prior to the registration of the disputed domain name under Policy because consumers in the relevant market are likely to recognize the mark "CHAI" as a source indicator of the Complainant's app products and services under the circumstances"; CAC Case No. 105490: "Although the evidence of the use and extent of the Complainant's trademark covers little more than a year, considering factors such as the type and scope of market activities and the nature of the Complainant's goods and services, namely "online gaming, blockchain and NFTs", and the fast growth shown in terms of users and followers, this Panel considers that there is nevertheless sufficient material in the present record to find that the SPACE FALCON trademark has acquired a secondary meaning…" and "978 Tech N. V. v. seo, Senh Sam" and WIPO Case No. D2023-4092: "Here, the evidence shows that the Complainant has become one of the major sponsors in Asia of Manchester City Football Club, which has won the UEFA Champions League competition for the 2022/2023 season. This partnership must have generated substantial media presence…".

In the present dispute the Complainant provided some evidence of alleged common law trademark rights, however the Panel is not

entirely persuaded that it is enough to establish that the mark has become a distinctive identifier which consumers associate with the Complainant's services. The Complainant alleges use of the term "Melbet" mark since 2012, however it is unclear how the initial use of the term is connected to the Complainant in the present dispute and how the business and name were transferred to the Complainant by the original founder.

The Complainant itself admits that the "Wiki" information provided about the history of the business is outdated as it was published in 2022. Other pieces of evidence are primarily screenshots of the Complainant's own website and only very limited information from third parties' sources, including seven (7) reviews of users from 2022-2023. The Panel believes the Complainant has a potential case to establish common law trademark rights. Nevertheless, the Panel finds that the provided information is insufficient for establishing unregistered trademark even taking into account the nature of Complainant's business and the fact that the Respondent targeted the Complainant.

At the same time, information related to its alleged common law trademark rights and use of the "Melbet" term, although, in this Panel's view, insufficient to establish relevant rights, is relevant to the second and the third elements of the Policy, in particular targeting.

Confusing similarity

The test for confusing similarity under the UDRP is relatively straightforward and typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The disputed domain name fully incorporates the Complaint's mark plus the "EG" element that can be seen as a geographical element/term (Egypt).

As highlighted in 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" (sec. 1.8). Here the addition of "EG", whether seen as a geographical term or meaningless, does not prevent a finding of confusing similarity since the "Melbet" mark is clearly a dominant element in the disputed domain name. The ".com" gTLD is to be disregarded under the confusing similarity test as it does nothing to eliminate confusion.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and

(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see **"Julian Barnes v. Old Barn Studios", WIPO Case No. D2001-0121** and sec. 2.1 of WIPO Overview 3.0.

According to the provided "Whois" data the disputed domain name was registered on December 26, 2023.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows the Panel to draw such inferences as it considers appropriate, see paragraph 14(b) of the Rules and **CAC Case No. 101284**: "A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable inferences may be drawn from the information provided by the complainant".

The evidence available demonstrates that the disputed domain name was used for a website that seems to have been offering competing services with the services of the Complainant, namely sports betting and the website copied the Complaint's website design.

The information is primarily in Arabic and information about "Pelican Entertainment" indicated as the website operator. "Pelican Entertainment" operates the Complainant's website under an agreement with one of Complainant's partners.

Colors of the Complainant's own website is used throughout the website at the disputed domain name as well as Complainant's logos.

The Panel accepts the Complainant's arguments that such use of the disputed domain name indeed indicates impersonation and passing off and such use is not fair (see also sec. 2.5 of WIPO Overview 3.0). Both the composition of the disputed domain name and the nature of use of the disputed domain name indicate impersonation, in particular use of Complainant's colors and logos and use of contact information by the Respondent on his website that indicate a false connection with the Complainant's own website.

The Panel agrees that the use of a domain name for illegal activity (including impersonation/passing off) can never confer rights or legitimate interests on a respondent, see sec. 2.13.1 of WIPO Overview 3.0 and e.g. CAC Case No. 106558: "Masquerading as the Complainant in this manner cannot amount to a bona fide offering of goods and services".

In the absence of any response and any explanations from the Respondent regarding his choice of the disputed domain name and his use of the disputed domain name, the Panel accepts that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith. These circumstances are non-exhaustive and other factors can also be considered.

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see sec. 3.1 of WIPO Overview 3.0). Cybersquatting or abusive registration can be defined as "registration made with bad-faith intent to profit commercially from others' trademarks" (see par. 4.1 c. of the ICANN "Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy", 1999). Targeting with an intent to take an unfair advantage of the complainant's mark is important in establishing bad faith under the UDRP.

As noted in UDRP Perspectives, sec. 3.3: "**Targeting can be established by either direct evidence (e.g. content of the website)** or circumstantial evidence such as strength of the mark and nature of a disputed domain name (e.g. mark plus a term describing Complainant's business), timing of registration of a domain name and timing of trademark registration, geographic proximity of the parties".

Here direct evidence indicates that the Respondent targeted the Complainant and such targeting was with an intent to profit commercially from the Complainant's trademarks.

The Panel finds that the disputed domain name was registered and is being used in bad faith based on the following:

1. The nature of the disputed domain name that fully incorporates the word element of the Complainant's mark plus the "eg" element that can be seen as a reference to Egypt, the country where the Complainant's services are available.
2. Timing of registration of the disputed domain name. The disputed domain name was registered relatively soon after the Complainant filed and registered the trademarks referred to above and after the Complainant had started its business under the mark. The Complainant also submitted evidence of numerous "Melbet" trademark applications in various jurisdictions, including Serbia, the EU and Costa Rica, filed in 2023 and 2024 (both shortly before and after the disputed domain name was registered). While the applications do not create trademark rights, this may indicate Respondent's intent to unfairly capitalize on the Complainant's nascent (unregistered) trademark rights (see also "978 Tech N. V. v. seo, Senh Sam", WIPO Case No. D2023-4092). The Complainant provided only limited evidence of reputation of its trademarks. The Panel is not persuaded that the trademarks are widely-known, as claimed by the Complainant. However, there is direct evidence of targeting by the Respondent.
3. The content of the website clearly demonstrates targeting, including copying of design elements of the Complainant's own website and a false claim that the website at the disputed domain name is operated by "Pelican Entertainment". The Respondent's use of the disputed domain name creates an impression of affiliation or endorsement.
4. Based on the above, the Panel finds that Respondent's behavior falls within, at least, par. 4 b (iv) of UDRP and the Respondent by using the disputed domain name has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement.

Based on the facts and evidence of this dispute it appears that the Respondent targeted the Complainant with an attempt to take unfair advantage of the Complainant's mark and this in itself indicates bad faith.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **melbet-eg.com**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2024-10-28

DATE OF PANEL DECISION

Publish the Decision