Decision for dispute CAC-UDRP-106860

Case number	CAC-UDRP-106860
Time of filing	2024-09-16 09:20:07
Domain names	1xbetapkaz.com, 1xbetapkuz.com, apk1xbetir.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registrations for 1XBET:

- European Union trademark registration No. 014227681 for 1XBET (word mark), filed on June 8, 2015, and registered on September 21, 2015, in classes 35, 41, and 42;
- European Union trademark registration No. 013914254 for 1XBET (figurative mark), filed on April 7, 2015, and registered on July 27, 2015 in classes 35, 41, and 42; and
- European Union trademark registration No. 017517327 for 1XBET (figurative mark), filed on November 23, 2017, and registered on March 7, 2018 in classes 41 and 42.

FACTUAL BACKGROUND

The Complainant operates an online sports betting, lottery, bingo, live betting, lottery business under the 1XBET trademark and has existed since March 9, 2015. 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 Complainant has developed a strong presence and reputation in the global online gambling market, as evidenced by the

numerous sponsorship agreements signed with top sports organization.

The disputed domain names <1xbetapkaz.com> and <1xbetapkuz.com> were registered on January 25, 2022; the disputed domain name <apk1xbetir.com> was registered on January 10, 2022. The disputed domain names resolve to websites with a header whose English translation is “Download 1xbet => Application version => V.111(6560)”. The websites prominently features the 1XBET trademarks and offer 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 websites 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

The Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

(1) The disputed domain names are confusingly similar to the Complainant’s 1XBET trademark, as they fully incorporate this trademark, which is clearly recognizable within each disputed domain name. The addition of the abbreviation “apk” (representing “Android Package Kit,” the file format used by the Android operating system) and the geographical abbreviations "az", "uz", and "ir" – referring to Azerbaijan, Uzbekistan, and Iran respectively – in the disputed domain names <1xbetapkaz.com>, <1xbetapkuz.com>, and <apk1xbetir.com> does not prevent a finding of confusing similarity to the Complainant’s 1XBET trademark. Additionally, the presence of the generic Top-Level Domain (gTLD) “.com” in each disputed domain name is a standard registration requirement and may be disregarded.

(2) The Respondent has no rights or legitimate interests in the disputed domain names, as the Complainant has not authorized the Respondent to register or use these domain names, and the Parties are not affiliated. The disputed domain names were registered several years after the Complainant’s 1XBET trademark, and the Respondent is neither known by the disputed domain names nor does its own any corresponding trademark. The Respondent has not used the disputed domain names for a bona fide offering of goods or services and is not making a legitimate non-commercial or fair use of them. Instead, the Respondent attempts to make Internet users believe that the disputed domain names are directly linked to or operated by the Complainant. The associated websites prominently display the 1XBET trademark and promote a downloadable application related to the Complainant's business, but they do not identify the operator of the website or disclose the absence or nature of the relationship between the Parties. This demonstrates that the Respondent is using the disputed domain names to impersonate the Complainant and to pass off its services as those of the Complainant for commercial gain.

(3) The disputed domain names were registered and are being used in bad faith. The Respondent registered the disputed domain names many years after the Complainant’s first registration of the 1XBET trademark (2015) and the introduction of the 1XBET brand (in 2007). The composition of the disputed domain names shows that the Respondent registered them with the Complainant and its 1XBET trademark in mind, intending to create an association and likelihood of confusion with the Complainant's trademark in the minds of Internet users, thereby taking advantage of the Complainant’s well-known trademark. The disputed domain names incorporate the 1XBET trademark along with terms that refer to specific countries of interest, such as Azerbaijan ("az"), Uzbekistan ("uz"), and Iran ("ir"), and to the 1XBET group’s business area – mobile betting apps. They resolve to websites that prominently display the 1XBET trademark and mimic the Complainant’s official website, 1xbet.com. The Respondent is targeting the Complainant's trademark by registering multiple domain names containing the well-known "1XBET" trademark and by operating infringing websites with misleading content. The Respondent registered and is using the disputed domain names primarily with the intention of attracting Internet users to these websites for commercial gain by creating a likelihood of confusion with the Complainant’s 1XBET trademark regarding the source, sponsorship, affiliation, or endorsement of these websites.

The Respondent

The Respondent did not reply to the Complainant’s contentions.

RIGHTS

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).

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 (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 have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

Language of Proceedings

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, 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 language of the Registration Agreement for the disputed domain names is Russian. The Panel is proficient in both Russian and English.

The factors that the Panel should take into consideration include whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the Parties.

The Complainant has filed the Complaint in English and requested English to be the language of this proceeding based on the Respondent's registration of disputed domain names including an English-language trademark and the fact, that the language of the websites associated with the disputed domain names can be changed to English.

While applying the provision on the language of the proceeding, the Panel considers that it should ensure that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition.

The Respondent raised no objection to the proceedings being conducted in English.

While there is a language requirement in paragraph 11(a) of the Rules, the Panel must balance that against other considerations of ensuring that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their case. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay.

Based on the foregoing, the Panel concludes that it is not unfair to the Parties to proceed in English and finds it appropriate to exercise its discretion and allow the proceedings to be conducted in English.

PRINCIPAL REASONS FOR THE DECISION

Substantive Issues

The burden for the Complainant under paragraph 4(a) of the Policy is to prove:

1) that the disputed domain names registered by the Respondent are identical or confusingly similar to a trademark in which the Complainant has rights;

2) that the Respondent has no rights or legitimate interests in respect of the disputed domain names; and

3) that the disputed domain names have been registered or are being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") and, where appropriate, will decide consistent with the consensus views captured therein.

1. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name.

The Complainant has shown rights in respect of the trademark 1XBET for the purposes of the Policy. See WIPO Overview 3.0, section 1.2.1.

Moreover, the disputed domain names are confusingly similar to the Complainant's 1XBET trademark, as they incorporate the trademark in its entirety, with the mere addition of the term "apk" (commonly understood as Android Package Kit, see Navasard Limited vs. Dmitrii Sofronov, CAC-UDRP-106484) and the geographical abbreviations "az," "uz," and "ir," referring to Azerbaijan, Uzbekistan, and Iran, respectively. These additions do not significantly alter the visual perception of the core part of the disputed domain names.

Although panels typically disregard the content of the websites associated with disputed domain names when assessing confusing similarity under the first element, in this case, the Panel has taken note of the content of these websites to confirm the likelihood of confusing similarity. It appears prima facie that the Respondent is intentionally targeting the Complainant's trademark through the disputed domain names (See WIPO Overview 3.0, section 1.15).

Addition of Top Level Domain ("TLD") ".com" is viewed as a standard registration requirement and may be disregarded for the purposes of the confusing similarity test. See WIPO Overview 3.0, section 1.11.1.

For all of the above-mentioned reasons, the Panel is of the view that the disputed domain names are confusingly similar to the Complainant's mark, which means that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

2. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. WIPO Overview 3.0, section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has no trademark rights or any other legitimate rights in the mark 1XBET, nor has it been authorized or licensed by the Complainant to use its 1XBET trademark. The Respondent is not an authorized 1XBET partner or consultant.

The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

Furthermore, the disputed domain names resolve to websites impersonating the Complainant and mimicking the Complainant's official website www.1xbet.com. These websites replicate the textual elements, color scheme (blue and green), and display the 1XBET trademarks to promote a downloadable application related to the Complainant's business. The disputed domain names do not disclose any lack of affiliation with the Complainant, despite repeatedly referencing and using the Complainant's 1XBET trademark and logo. Combined with the composition of the disputed domain names, which integrate the 1XBET trademark with descriptive terms such as "apk," "az," "uz," and "ir," it is evident that the Respondent intended to mislead Internet users into believing they were accessing the Complainant or its authorized affiliates for commercial gain. Panels have held that the use of a domain name for illegal activities (e.g., impersonation/passing off or other types of fraud) can never confer rights or legitimate interests on a respondent. WIPO Overview 3.0, section 2.13.1.

With the evidence on file, the Panel therefore concludes that the Respondent has no rights or legitimate interests in the disputed domain names and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

3. Registered or Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain names were registered in bad faith, with knowledge of the Complainant and its trademark particularly because the Complainant's 1XBET trademark was registered years earlier, and through extensive use and marketing, it has become well-known worldwide.

This is further emphasized by the fact that the Respondent has registered three disputed domain names following the same pattern, i.e., combining the Complainant's 1XBET trademark with a country code and the descriptive term "apk." Moreover, the disputed domain names resolve to websites repeatedly quoting the Complainant's 1XBET trademarks, which further shows that, at the time of registering the disputed domain names, the Respondent very likely acquired them with the intent to use them in connection with the 1XBET trademarks.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's 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 of a product or service on the respondent's website or location is evidence of registration and use in bad faith.

The Respondent registered the disputed domain names having no rights in the mark 1XBET. Further, the Respondent is using the Complainant's 1XBET trademarks in the content of the websites to which the disputed domain names resolve, falsely creating the impression that it is associated with the Complainant.

Panels have also held that using a domain name for illegal activity (e.g., impersonation, passing off, or other types of fraud) constitutes bad faith. WIPO Overview 3.0, section 3.4.

Given that the disputed domain names incorporate the Complainant's trademark with additional descriptive terms, and the websites operated under the disputed domain names mimic the Complainant's official website www.1xbet.com and promote a downloadable application related to the Complainant's business, indeed in this Panel's view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain names who may be confused and believe that the websites are held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

The Panel also finds that the Respondent is targeting the Complainant's trademarks by registering several domain names that incorporate the Complainant's well-known "1XBET" trademark and by operating infringing websites with misleading content (see also Navasard Limited vs. Dmitrii Sofronov, CAC-UDRP-106484, concerning <apk1xbetar.com>, registered by the same Respondent, where the Panel ordered the transfer). As stated in WIPO Overview 3.0, section 3.1.2, "UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration. This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even where directed at the same brand owner".

The Respondent's pattern of registering infringing domain names, thereby preventing the rights holder from reflecting their mark, demonstrates bad faith. This pattern provides sufficient evidence that the Respondent has registered the disputed domain names to prevent the trademark owner from reflecting their mark in corresponding domain names.

All the above circumstances confirm the Respondent's bad faith in the disputed domain names under the Policy. Therefore, the Panel finds that the disputed domain names were registered and are being used in bad faith under paragraph 4(b)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **1xbetapkaz.com**: Transferred
2. **1xbetapkuz.com**: Transferred
3. **apk1xbetir.com**: Transferred

PANELLISTS

Name	**Ganna Prokhorova**

DATE OF PANEL DECISION 2024-10-27

Publish the Decision