Decision for dispute CAC-UDRP-106837

Case number	**CAC-UDRP-106837**
Time of filing	**2024-09-04 09:24:40**
Domain names	**affiliate1xbet.com**

Case administrator

Name	**Olga Slanařová (Case admin)**

Complainant

Organization	**Navasard Limited**

Complainant representative

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

Respondent

Name	**Sergei Ivanov**

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 owner of many trademarks for 1XBET, e.g. European Union trademark registration no. 014227681, 1XBET (word), registered on September 21, 2015 for services in classes 35, 41 and 42.

FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that it belongs to the group of companies operating under the brand name 1xBET, which is an online gaming platform with worldwide reach (hereinafter also referred to as "1xBET"). 1xBET was founded in 2007 and the Complainant has existed since March 9, 2015. 1xBet offers sports betting, lottery, bingo, live betting, lottery, etc. 1xBet is licensed by the government of Curacao.

The Complainant further contends its trademark be distinctive and well-known.

Furthermore, the Complainant uses the domain name < 1xbet.com >, resolving to its online betting websites.

The disputed domain name was registered on October 22, 2018. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a website prominently displaying the 1XBET trademark and logo without Complainant's approval/authorization and that purportedly offers registration to the Complainants affiliate

programme/promoting the Complainant’s affiliate program.

The disputed domain name currently redirects to another domain name < easyaffiliateinfo.com >, resolving to a website promoting affiliate programs for traffic monetization.

PARTIES CONTENTIONS

The Complaint

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark since it fully incorporates the Complainant's registered and well-known trademark 1XBET. The addition of the descriptive term "affiliate" would not prevent a finding of confusing similarity with the mark under the first element.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, it has not licensed or authorised the Respondent to register or use the disputed domain name, nor is the Respondent affiliated in any way with the Complainant, notwithstanding the inclusion of the word "affiliate" in the disputed domain name. The structure of the disputed domain name - incorporating the 1XBET trademark and the term “affiliate” - reflects the Respondent’s intention to create an association, and a subsequent likelihood of confusion, with the Complainant, its 1XBET trademarks, and its business conducted under the same, in Internet users’ mind. By reading the disputed domain name, incorporating the 1XBET trademark and term referring to affiliation, Internet users may be falsely led to believe that the disputed domain name is directly connected to, authorized by or endorsed by the Complainant. This is emphasized by the content of the website which implies that it is operated by the Complainant or with its consent. However, it is not the case. The website associated with the disputed domain name has not been authorized or approved by the Complainant and is intended to imply a direct association with Complainant and its trademarks. In fact, it prominently and repeatedly quotes the 1XBET figurative and word marks. In addition, the website does not identify the person operating the websites and their relationship to the Complainant, but rather gives the false impression that it is operated by Complainant. In addition, it mimics the Complainant’s official website at <1xbet.com>, by the textual elements, colour scheme and the 1XBET trademarks displayed therein.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent registered the disputed domain name many years after the first registration of the Complainant’s trademarks, which are widely known. The structure of the disputed domain name shows that the Respondent registered it with the Complainant and its trademarks in mind. It reflects the Respondent's clear intent to create an association and subsequent likelihood of confusion with the Complainant's trademark in the minds of Internet users. By reading the disputed domain name, Internet users may believe that it is directly affiliated with or authorized by the Complainant. The Respondent registered the disputed domain name to take advantage of the Complainant's well-known trademark. The disputed domain name contains the 1XBET trademarks and the term "affiliate", which itself suggests affiliation. It resolves to website repeatedly displaying the 1XBET trademark and aiming at mimicking the Complainant’s official website. This reference to the 1XBET trademark aims at attracting the Internet users’ attention and infer that the website is affiliated to the Complainant, which is not the case. Such use of the disputed domain name creates a likelihood of confusion in Internet users’ mind and may lead them to attempt contacting the person operating the website to purchase services. Thus, the use of the disputed domain name might generate revenues for the Respondent. Such gain would be unfairly obtained: the Respondent may sell services unrelated to 1XBET services, by capitalizing on the fame of the Complainant and its trademark. The Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of such website.

The Response

According to the Registrar verification the Respondent is Sergei Ivanov. A person allegedly named Nikita Meshcheriakov filed and signed the Response stating that he has been working with the Complainant since 2018, in particular with one of its divisions.

He contends that the project available under the disputed domain name was implemented by his team only after this project was approved by representatives of the Complainant. In particular, he attaches alleged correspondence with the Complainant’s representative, who allowed them to implement the project and were notified about the domain name. In particular, he attaches an unspecified Telegram correspondence between a certain “Lina 1X” and a certain “Nikita” that allegedly took place in July 2022, with no indication of the full names, official addresses or phone numbers.

He further contends that, with the help of this project, they have been advertising for the Complainant for many years, attracting partners to work with the Complainant around the world. This means that he did not abuse the disputed domain name and did not use it to the detriment of the Complainant, everything was only for the benefit of the Complainant and helped it to develop.

Furthermore, he underlines that the Complainant is a very large company and some people might not know about the agreement. However, this agreement exists and no one has contacted him to change the terms and make changes to the current website project.

He affirms that he has invested a lot of money effort and time to implement this project and that it would be unfair if, contrary to all

agreements, the arbitration takes away the domain and the project from them. He further affirms that he will contact a representative of the Complainant.

Complainant's unsolicited supplemental filing in reply to the Response

The Complainant contends that the Response was filed by Nikita Meshcheriakov, whose relationship to the domain name holder and his authority to file a Response is unclear.

In addition, the Respondent allegedly contacted the Complainant in July 2022, almost four years after the disputed domain name was registered. This confirms that the Respondent acted in bad faith when it registered the disputed domain name.

Moreover, the Complainant denies the existence of any agreement between the Respondent and/or Nikita Meshcheriakov and/or consent to the registration and use of the disputed domain name. If the Respondent was indeed a member of the affiliate program, he would be obliged to adhere to its terms and the official Complainant's universal partnership program contains a restriction, which prohibits the use of the Complainant's trademark for website registration/prohibiting the use of the Complainant´s trademark in the domain names.

Finally, with respect to the Telegram correspondence provided by Nikita Meshcheriakov, the alleged Complainant's Telegram account is not connected to any official communication channels used by the Complainant's affiliate program or brand and the identity of the person allegedly communicating on behalf of the Complainant is not disclosed. Moreover, the evidence consists only of the screenshot, the veracity and authenticity of which cannot be verified.

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.

The Panel must ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case (see UDRP Rules, paragraph 10 (b)). The Panel must also ensure that the administrative proceeding takes place with due expedition but may, in exceptional cases, extend a time limit fixed by these Rules (see UDRP Rules, paragraph 10 (c)).

On October 16, 2024 the Complainant filed an unsolicited supplemental filing in reply to the Response, titled "Complainant's observations".

To allow the Respondent a fair opportunity to reply/rebut the Complainant's observations, the Panel made procedural orders, in accordance with paragraphs 10 and 12 of the UDRP Rules, inviting the Respondent to file an additional statement in response to the Complainant's observations no later than October 30, 2024 and extending the time limit for delivering the Panel's decision to November 4, 2024 (see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 4.6)

However, the Respondent did not reply, even if it has reviewed the Procedural Orders.

PRINCIPAL REASONS FOR THE DECISION

1. Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark, and that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various 1XBET trademarks.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7. This Panel shares this view and notes that the Complainant's registered trademark 1XBET is fully included in the disputed domain name.

Furthermore, it is the view of this Panel that the addition of the term "affiliate" in the disputed domain name at issue cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the Complainant's trademark is clearly recognizable in the disputed domain name (see WIPO Overview 3.0 at section 1.8).

Finally, the generic Top-Level Domain ("gTLD") (i.e. ".com") of the disputed domain name is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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, based on the undisputed allegations stated above, 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 and to the unsolicited supplemental filing in reply to the Response, the Complainant did, in particular, not authorize the Respondent to use the Complainant's trademark 1XBET, e.g. by registering the disputed domain name comprising said trademark entirely.

The Panel finds that the Respondent has failed to provide sufficient evidence of the existence of an agreement between the Complainant and the Respondent regarding the use of Complainant's trademark in the disputed domain name, as alleged by the Respondent. In particular, it merely provided unspecified Telegram correspondence between "Lina 1X" and "Nikita" that took place in July 2022, but without providing their full names or official addresses allowing the Panel to attribute these persons to the Complainant and Respondent respectively. Most of all, however, it did not provide any evidence as to position of "Lina 1X", allegedly being a Complainant's employee, and to her powers to bind the Complainant. Therefore, the Panel is not in a position to establish the identity of these persons "Lina 1X" and "Nikita" and their power to validly act for the Complainant and the Respondent, which is Sergei Ivanov. In addition, the Panel notes that the Response has been filed and signed by Nikita Meshcheriakov without however specifying in which role this person is empowered to file a Response for Sergei Ivanov, the Respondent.

The Panel has given the Respondent the possibility to rebut the Complainant's statement, eventually providing clear evidence of such an eventual agreement. However, the Respondent did not reply, though he reviewed the Procedural Orders.

Furthermore, the Panel notes that there is no evidence showing that the Respondents 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 is clearly constituted by the Complainant's registered trademark and the term "affiliate", which per se tends to suggest sponsorship or endorsement by the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain name with the intent to attract Internet users for commercial gain. This is also confirmed by the content of the website to which the disputed domain name resolved, allegedly offering registration to the Complainants affiliate programme, displaying without authorization the Complainant's trademark and logo.

Further, the Panel also notes that the website to which the disputed domain name resolved do not display any accurate and prominent disclaimer regarding the lack of the relationship between the Complainant and the Respondent.

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 relevant evidence demonstrating rights or legitimate interests in the domain name, this Panel finds, in the circumstances of this case, that the Respondents have no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the respondent by using the disputed domain name, 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolved to a website displaying the Complainant's trademark and logo, and purportedly offering registration to the Complainants affiliate programme. For the Panel, it is therefore evident that the Respondent positively knew of the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

Finally, the further circumstances surrounding the disputed domain names' registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith (see WIPO Overview 3.0 at section 3.2.1):

(i) the nature of the disputed domain name (i.e., incorporating the Complainant's mark plus the addition of term which per se tends to suggest sponsorship or endorsement by the Complainant);

(ii) the content of any website to which the domain name directs, including any changes in such content and the timing thereof. In the case at issue, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a website displaying the Complainant's trademark and logo without Complainant's approval/authorization and purportedly offering registration to the Complainants affiliate programme. However, the content of the website has changed since the disputed domain name currently redirects to another domain name, resolving to a website promoting in general affiliate programs for traffic monetization;

(iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondents choice of the disputed domain name; and

(iv) the Respondent concealing its identity through a privacy service.

In light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(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. **affiliate1xbet.com**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2024-11-04

Publish the Decision