Decision for dispute CAC-UDRP-107057

Case number	CAC-UDRP-107057
Time of filing	2024-11-19 09:27:13
Domain names	melbets-az.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Batnesto Ltd.

Complainant representative

Organization	Sindelka & Lachmannová advokáti s.r.o.

Respondent

Name	Alex Voronov

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 a registered owner of the following trademarks containing the word element "1XBET":

- MELBET (word), EU Trademark, priority (filing) date 29/07/2024, registration date 09/11/2024, trademark application no. 019060714, registered for goods in the international classes 9, 16, 21, 25, 28, and 30;

besides other international and national trademarks consisting of the "MELBET" denomination (collectively referred to as "Complainant's Trademarks").

Furthermore, the Complainant owns various domain names, including the word element “MELBET”, such as <malbet.com>.

FACTUAL BACKGROUND

The Complainant, Batnesto Ltd, has been operating an online gaming and casino platform under the name Melbet directly or indirectly (through its affiliates and licensees) since 2012.

Melbet has over 400,000 daily users worldwide. The Melbet sportsbook includes over 1,000 daily events. You can bet on a variety of popular sports, including but not limited to football, tennis, basketball, volleyball, ice hockey, golf, boxing, handball, American

football, hockey, baseball, table tennis, biathlon. Melbet also offers bets on cricket, snooker, Formula 1, cycling, ski jumping, curling, floorball, inline hockey and water polo.

Melbet has actively sponsored various sporting events worldwide. In 2020, the brand partnered with prominent soccer clubs, including Juventus Torino.

The disputed domain name was registered on 19/03/2024 and is held by the Respondent.

The disputed domain name website (i.e. website available under the internet address containing the disputed domain name) has a similar layout and “look and feel” as the Complainant’s websites (i.e. it mimics the official Complainant’s websites) and appears to include information about betting and it also offers services that are related to the services provided by the Complainant under the Melbet brand.

The Complainant seeks transfer of the disputed domain name to the Complainant.

PARTIES CONTENTIONS

COMPLAINANT:

A) CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name contains the "MELBET " word element of the Complainant's trademarks in its entirety.
- In addition, the disputed domain name contains only a word element “AZ”, which stands for a country code for Azerbaijan and has no distinctive character.
- Thus, according to the Complainant, the confusing similarity between the Complainant’s trademarks and the disputed domain name is clearly established.

B) NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name.
- The Complainant has not authorized, permitted, or licensed the Respondent to use the Complainant’s trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, the Respondent is not commonly known by the disputed domain name.
- The disputed domain name website implies a direct association with the Complainant and its MELBET Trademarks as it repeatedly quotes the MELBET word and figurative marks and colour scheme (look and feel) of the Complainant’s official website.
- The disputed domain name website does not identify the person (individual or company) operating the site and offering any services or products advertised therein. This may further mislead the internet users to believe that the disputed domain name and the corresponding website is directly associated with the Complainant and/or its affiliated companies.
- 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.

Furthermore, the domain name website has not been used for any legitimate or fair purposes.

C) BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's trademarks predates the disputed domain name's registration and such trademarks are well known in relevant business circles. The Respondent can be considered aware of the Complainant's trademarks when registering the disputed domain name due to its well-known character.
- The disputed domain name (at the time of filing of the complaint) is not used for any bona fide offerings. More particularly, there are present circumstances indicating that, by using the domain name, the Respondent has registered the disputed domain name primarily for creating a likelihood of confusion with the Complainant's trademarks and business as to the source, sponsorship, affiliation, or endorsement of his website.
- The dispute domain name website does not identify the person (individual or company) operating the site and offering any advertised services or products. Instead, the website merely displays the Complainant's trademarks and descriptive terms at the bottom of the website.

RESPONDENT:

The Respondent has not provided any response to the complaint.

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

A) RIGHTS

The disputed domain name and the Complainant’s trademarks are not identical. Therefore, the key element investigated and considered by the Panel is whether the disputed domain name is confusingly similar to the Complainant’s trademarks.

The threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the disputed domain name itself to determine the likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. The addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion. Confusing similarity tests under the UDRP typically involve a straightforward visual and aural comparison of the trademark with the domain name in question.

Applying the principles described above, the Panel contends that incorporation of a dominant "MELBET" element of the Complainant’s trademarks (which standalone enjoys a high level of distinctiveness) into the disputed domain name constitutes a confusing similarity between the Complainant’s trademark and the disputed domain name.

The addition of non-distinctive elements - a descriptive geographical code AZ (which stands for Azerbaijan) and a letter “s” (indicating plural in English) – cannot escape association in the eyes of internet consumers between the disputed domain name and the Complainant’s trademarks and thus the likelihood of confusion still exists. On the contrary, it may mislead the internet users that the disputed domain name is somehow related to the Complainant's business.

For the sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the “.com”) must be disregarded under the identity and confusing similarity tests, as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is identity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant’s assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

Given the facts above and in the absence of the Respondent's response, the Panel concludes that there is no indication that the

disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

C) BAD FAITH

The name MELBET is well-known and have received widespread recognition due to its extensive use by the Complainant for its business activities; such use predates registration of the disputed domain name. The complex name “MELBET” is a denomination with a high degree of distinctiveness. It follows that it is highly implausible that Respondent would register a disputed domain name for itself without knowing the its previous use by the Complainant. This clearly indicates bad faith registration of the disputed domain name by the Respondent.

In addition, the Complainant has proven that the Respondent has used the disputed domain name for promotion and offer services (i) likely with the intention to free-ride on the reputation and goodwill of the Complainant’s trademarks and Complainant’s business and, even more importantly, (ii) in a manner that was detrimental both to the customers as well the Complainant and his business since the information provided about such services were incorrect and misleading.

By using the disputed domain name, the Respondent intentionally attempted to attract, likely for commercial gain from the advertisement, Internet users to the disputed domain name website by creating a likelihood of confusion with the Complainant's trademark to the source, sponsorship, affiliation, or endorsement of the disputed domain name website.

Such unfair use of the disputed domain name for the promotion of Respondent’s services cannot be considered as the use thereof in good faith and in compliance with fair business practices.

All of the activities above are considered malicious activities.

It is well-founded that registration of the disputed domain name that is confusingly similar to the complainant’s trademarks which enjoys a strong reputation, plus other facts, such as the above-described unfair use of the disputed domain name, are sufficient to establish bad faith under the 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. **melbets-az.com**: Transferred

PANELLISTS

Name	**Jiří Čermák**

DATE OF PANEL DECISION 2024-12-18

Publish the Decision