

ADMINISTRATIVE PANEL DECISION

Navasard Limited v. Registration Private, Domains By Proxy, LLC / Ma rhealyn Real

Case No. D2022-2972

1. The Parties

The Complainant is Navasard Limited, Cyprus, represented internally.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / Ma rhealyn Real, Philippines.

2. The Domain Name and Registrar

The disputed domain name <1xbet.blog> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2022. On August 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 16, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 17, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 3, 2022.

The Center appointed John Swinson as the sole panelist in this matter on October 6, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a company from Cyprus, and was established in March 2015. The Complainant operates an online sports betting website at <1xbet.com>.

The Complainant owns and uses registered trademarks for 1XBET, including European Union trademark registration number 014227681 with a registration date of September 21, 2015.

The disputed domain name was registered on May 24, 2022.

The disputed domain name does not resolve to an active website.

The Respondent did not file a Response, so little is known of the Respondent. The Registrar's records have an address for the Respondent in the Philippines.

5. Parties' Contentions

A. Complainant

In summary, the Complainant made the following submissions:

The Complainant has existed for a long time prior to the Respondent registering the disputed domain name.

The Complainant is one of the most recognized online sports betting brands on the territory of eastern Europe. The Complainant owns two registered trademarks in Europe for 1XBET, and these were registered prior to the Respondent registering the disputed domain name.

The disputed domain name is identical to the Complainant's registered trademark for 1XBET.

The use of the word "1xbet" in the disputed domain name is made without any authorization or consent by the Complainant. This leads to the conclusion that the Respondent specifically used the Complainant's trademark in order to pursue the goal of misleading the potential clients of the Complainant on the basis of similarity, as well as the Complainant's inability to use disputed domain name in the future.

The Respondent is potentially illegally using the disputed domain name for purposes of potentially re-selling the disputed domain name at a profit by taking advantage of the confusing similarity of the disputed domain name with the popular sports betting trademark held by the Complainant. The apparent lack of so-called active use (e.g., to resolve to a website) of the disputed domain name without any active attempt to sell or to contact the trademark holder (passive holding) does not as such prevent a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant owns trademark registrations for 1XBET.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#); and *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#).

The disputed domain name includes 1XBET in its entirety without any additions.

The Panel concludes that the disputed domain name is identical to the Complainant's 1XBET trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant states that the Respondent is not using the disputed domain name, and so is not making a *bona fide* use of the disputed domain name to provide goods or services and is not making a fair use of the disputed domain name. The Complainant also asserts that the Complainant did not register the disputed domain name and that the Respondent does not have the Complainant's authorization or consent to use the disputed domain name.

The Panel finds that the Complainant has established a *prima facie* case under the second element.

The Respondent had the opportunity to come forward and present evidence that he has rights or legitimate interests in the disputed domain name. He did not do so.

The Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Panel is of the view that the Respondent was aware of the Complainant and the 1XBET trademark when the disputed domain name was registered. 1XBET is an invented word. The Complainant asserts that the Complainant is one of the most recognized online sports betting brands on the territory of eastern Europe. The Respondent did not dispute this. The Panel is aware that 1XBET operates in the Philippines.

The disputed domain name is not being used.

The Complainant relies on the doctrine of passive holding to demonstrate bad faith use, in accordance with the principles set out in well-known cases cited by the Complainant, including *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). See also *Virgin Enterprises Limited v. Cesar Alvarez*, WIPO Case No. [D2016-2140](#). In the *Nuclear Marshmallows* case, the Complainant's trademark was one of the most famous in Australia, the complainant provided substantial evidence of its reputation in Australia, the respondent had an Australian address and was likely aware of the complainant, and the respondent used a fake name (Nuclear Marshmallows) to conceal his or her identity.

In the present case, the Complainant has not presented strong evidence to satisfy the test set out in the *Nuclear Marshmallows* case. Merely asserting that the Complainant has a trademark and the Respondent has not used the disputed domain name is typically not sufficient to satisfy the *Nuclear Marshmallows* test. However, because the disputed domain name is identical to the Complainant's distinctive trademark, the Panel is prepared to infer the Respondent could not possibly use the disputed domain name in a way that is not in bad faith. The Respondent had the opportunity to put forward any good faith use to which the Respondent intends to put the disputed domain name, but the Respondent did not do so.

The Complainant succeeds on the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <1xbet.blog> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: October 20, 2022