

ADMINISTRATIVE PANEL DECISION

Moonshine Technology Private Limited v. REGL Admin,
Rhino Entertainment LTD
Case No. D2023-2197

1. The Parties

The Complainant is Moonshine Technology Private Limited, India, represented by DSK Legal, India.

The Respondent is REGL Admin, Rhino Entertainment LTD, Malta, represented by Lzafeer Ahmad B F Lzafeer Ahmad B F, India.

2. The Domain Name and Registrar

The disputed domain name <bigbaazi.com> (the “Domain Name”) 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 May 19, 2023. On May 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (White Star B.V.) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 2023, 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 May 26, 2023.

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 May 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2023. The Response was filed with the Center on June 19, 2023.

The Center appointed Jeremy Speres, Meera Chature Sankhari, and Gareth Dickson as panelists in this matter on August 15, 2023. The Panel finds that it was properly constituted. Each member of 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 part of the Baazi Group of Companies, which has been trading in India in the online gaming space, covering poker, casual games, fantasy sports, and card games, since 2014 under a family of BAAZI-incorporating marks, including BAAZI GAMES, POKERBAAZI, BALLEBAAZI, RUMMYBAAZI, and CARDBAAZI. Hereinafter references to the “Complainant” should be read as encompassing both the named Complainant and its associated group companies.

The Complainant owns corresponding domain names for the foregoing marks, and operates the associated platforms from the following websites: “baazigames.com”, “www.pokerbaazi.com”, “www.ballebaazi.com”, “rummybaazi.com”, and “www.cardbaazi.com”. The Complainant owns numerous Indian trade mark registrations for its BAAZI family of marks, including Indian Trade Mark Registration No. 3623471 BAAZI (word) in class 41 with a registration date of August 30, 2017.

The Respondent is part of a group of companies whose business is the provision of regulated online gaming through its wholly owned subsidiaries. The Respondent owns the trade marks and domain names under which such services are offered, which are licensed to its operating company White Star BV of Curaçao, which holds the requisite gaming licenses and has been providing regulated online gaming services since July 2020.

The Respondent’s group has various online casino game offerings, which are offered from its websites at “casinodays.com”, “buustikasino.com”, “luckyspins.com” and “bigbaazi.com”, this last one corresponds to the Domain Name. The Respondent owns corresponding European Union trade mark registrations, including Trade Mark Registration No. 018831489 BIG BAAZI (word) in classes 9, 28, 38, and 41 with a registration date of May 18, 2023.

The Domain Name was registered on January 20, 2022, and has been used by the Respondent since July 2022, for an online casino under the name BIG BAAZI, targeting users on the Indian sub-continent.

5. Parties’ Contentions

A. Complainant

The Complainant contends as follows. As a result of its longstanding and extensive use of BAAZI, the mark has come to be exclusively associated with the Complainant in relation to gaming services and related products in India, and the Complainant enjoys strong common law rights in the well-known mark as a result.

The Domain Name incorporates the Complainant’s well-known and registered mark BAAZI as its essential and most prominent feature, and is confusingly similar to the Complainant’s mark as such.

The Respondent was well-aware of the Complainant’s well-known BAAZI mark when registering and using the Domain Name given that the Respondent targets users in the Complainant’s market of India in a closely related field, and users are likely to be deceived into believing that the Complainant has moved into a new vertical, namely casino gaming. The Respondent’s intention was thus to trade off the goodwill associated with the Complainant’s mark, meaning that the second and third limbs of the Policy should be decided in the Complainant’s favour.

B. Respondent

The Respondent contends as follows. This case falls beyond the limited scope of the UDRP given that it involves complex questions of law concerning the parties' competing rights, in light of the Respondent's own registered trade mark rights over a mark corresponding to the Domain Name, and in light of the Complainant neglecting to adduce the pre-Complaint correspondence exchanged between the parties in which the Respondent, *inter alia*, offered to enter a disclaimer on its website dissociating its BIG BAAZI offering from the Complainant.

The Complainant cannot claim exclusive rights over the term "baazi" because it has common dictionary meanings in Hindi: "1. Game, play; a game, contest 2. A game of chance; gambling. 3. Wager, bet, 4. Turn, play (in a game)." Thus, "baazi" is inherently a descriptive word and is used as such by the Respondent. The Complainant has always used "baazi" in composite form, together with other words in the form of, e.g., BALLEBAAZI, thus the Complainant's common law rights, if any, do not extend to "baazi" on its own. The term "baazi" is the subject of numerous other trade mark registrations and trading names used by third parties in India unconnected to the Complainant, indicating that the term is not exclusively associated with the Complainant.

The Respondent has rights and legitimate interests in its BIG BAAZI mark given that it commenced using the mark for a *bona fide* business prior to being informed of the Complainant's claims, and by virtue of its European Union trade mark registration. The Respondent's offering can be distinguished from the Complainant's in that the Respondent primarily offers games of chance under a unified brand umbrella BIG BAAZI, whereas the Complainant offers different types of games, primarily games of skill, under distinct brands, which are descriptive of the type of game in question, e.g., POKERBAAZI.

The Respondent acted in good faith in registering and using the Domain Name as the BIG BAAZI name was adopted for its descriptive qualities, with "big" emphasising the large number of games available on the Respondent's platform. Neither the Complainant nor the Respondent have ever adopted "baazi" on its own and thus no confusion is likely.

The Respondent requests a finding that the Complaint was brought in bad faith, as Reverse Domain Name Hijacking, given that the Complainant: a) did not reveal the earlier correspondence between the parties; b) filed a Complaint that is beyond the jurisdiction of the UDRP; c) filed a Complaint knowing full well of the Respondent's rights and legitimate interests in the Domain Name; and d) filed a Complaint involving a dictionary term over which it knew it could not claim exclusivity.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant plainly has registered rights in a mark, BAAZI, that is wholly contained within the Domain Name, remaining recognisable within it. Where a domain name incorporates the entirety of a trade mark, the domain name will normally be considered confusingly similar to that mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.7). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent owns a registered European Union trade mark for a mark corresponding to the Domain Name, and the Respondent has, since before being informed of the Complainant's claims, used that mark in relation to an offering hosted at the Domain Name. *Prima facie*, the Respondent therefore has an arguable case in respect of rights and/or legitimate interests, under paragraphs 4(c)(i) and (ii) or otherwise.

However, the existence of a respondent trade mark does not automatically confer rights or legitimate interests on the respondent. For example, panels have generally declined to find respondent rights or legitimate interests in a domain name on the basis of a corresponding trade mark registration where the overall circumstances demonstrate that such trade mark was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant's exercise of its rights (even if only in a particular jurisdiction) ([WIPO Overview 3.0](#) at section 2.12.2).

In *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#), the panel held as follows:

"However, it would be a mistake to conclude that mere registration of a trademark creates a legitimate interest under the Policy... To establish cognizable rights, the overall circumstances should demonstrate that the registration was obtained in good faith for the purpose of making *bona fide* use of the mark in the jurisdiction where the mark is registered, and not obtained merely to circumvent the application of the Policy."

The Respondent registered its trade mark in the European Union, however, its platform would appear to exclusively target users in India. No evidence has been produced showing that the Respondent has sought registration of its mark in India, and no explanation has been provided for this discrepancy either.

In light of this, and considering what is discussed below in relation to bad faith, although the case is finely balanced in this respect, in the Panel's view it is more likely than not that the Respondent's intention in registering and using its trade mark and the Domain Name was to take advantage of the Complainant's reputation in the BAAZI mark.

The Respondent's registration and usage of its trade mark and the Domain Name in these circumstances cannot represent a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy and cannot confer rights or legitimate interests (*Sistema de Ensino Poliedro Vestibulares Ltda., Editora Poliedro Ltda. v. Anonymize, Inc. / STANLEY PACE*, WIPO Case No. [D2022-1981](#)). The Policy would be self-defeating if the mere registration of trade marks and domain names could simultaneously confer rights or legitimate interests. The Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant presented evidence of longstanding, extensive use of a family of BAAZI-incorporating marks in relation to the online gaming space in India since 2014. The Complainant's evidence included significant sales and marketing expenditure figures, national media coverage, public partnerships with well-known Indian celebrities, and social media engagement, amongst others.

The Complainant also adduced a judgment of the High Court of Delhi, dated January 31, 2022, in which the High Court ruled, at the interim relief stage, on a trade mark infringement and passing off action instituted by the Complainant against defendants based in India offering an online gaming platform under a name incorporating "BAAZI". In ruling against the defendants, the High Court held as follows (comments added by the Panel in italics and square brackets):

"These figures would show that the plaintiff's business is a thriving business and they have established their popularity as an online gaming platform. It is not evident that any other competitor was using 'Baazi', throughout this time period [*since 2015*] and therefore, prima facie it does appear that 'Baazi' is a brand indicating the name of the provider of the services, namely, the plaintiff... surely 'Baazi' is not a word apt to describe gaming or wagering services online or as a mobile App. Thus it is a clever and creative use of a common word by the plaintiff for its services. There is nothing on record to indicate that the word 'Baazi' is commonly used in the industry."

Albeit a decision at an interim stage, the case was apparently decided with the benefit of evidence being led by both sides and the benefit of argument from counsel. The decision has not been seriously gainsaid by

the Respondent in these proceedings.

Based on the evidence before it as well as its own limited Internet searches, the Panel's view is that, although there is an element of descriptiveness about the Complainant's BAAZI mark in the context of online gaming, the mark has not been widely adopted in the industry in its descriptive sense, and is more associated with the Complainant, in this specific industry in the Indian market, than with its descriptive meaning. This was more likely than not the position when the Respondent registered the Domain Name in January 2022, based on the evidence in the record as well as the Panel's own Internet searches specifically limited to websites published in India prior to the registration date of the Domain Name. The BAAZI mark also has multiple meanings, not all of which are descriptive, or purely descriptive, in this context. BAAZI is therefore more akin to a suggestive rather than a purely descriptive mark, which is reflected in the High Court judgment quoted above. Accordingly, the Panel is satisfied that the Complainant enjoys a reputation and common law rights in the BAAZI mark, which was well-known in its industry in India prior to the registration of the Domain Name. It is noteworthy that the High Court judgment, finding similarly, was delivered a mere 11 days after registration of the Domain Name.

The Respondent's adoption of BAAZI in the same industry as the Complainant (or one very closely aligned to it but nevertheless competitive with it to some degree), targeting the very same territory where the Complainant's BAAZI mark was and is well-known, is an indicator that the Respondent intended to take advantage of the Complainant's reputation. UDRP panels have consistently found that registration of a domain name that is confusingly similar to a well-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4).

The Respondent did not deny knowing of the Complainant before registering and using the Domain Name, nor can it credibly do so in the circumstances. Of course, knowledge is not the same as bad faith targeting, but it is a prerequisite which is clearly fulfilled in this case.

The Respondent defends its registration and use of the Domain Name on the basis that the Respondent adopted and has used "baazi" descriptively. There are two problems with this argument. Firstly, the Respondent does not itself use "baazi" descriptively. Its only use of the term appears to be as part of its brand name, which it sought to register as a trade mark. Instead of using "baazi" the Respondent has itself used terms such as "bet", "betting", "wager" and "wagering" on its website. Secondly, as confirmed by the foregoing High Court decision and the Panel's own searches, "baazi" is not widely used in the industry in India in a descriptive sense, with terms such as "bet" and "wager" being preferred. Internet searches for "baazi" coupled with terms descriptive of the online gaming space, limited to Indian websites, reveal results largely associated with the Complainant, which bears out when such searches are limited to Indian websites published prior to registration of the Domain Name.

The Respondent, in pre-Complaint correspondence, offered to include a disclaimer on its website dissociating its offering from that of the Complainant. Where the overall circumstances of a case point to a respondent's bad faith, as they do in this case, the mere existence of a disclaimer cannot cure such bad faith. In such cases, panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused ([WIPO Overview 3.0](#) at section 3.7). On balance, considering the cumulative effect of the factors addressed above, the Panel finds that the Respondent's offer of a disclaimer is a tacit admission of the Complainant's prior goodwill and the likelihood of confusion.

On balance, the Panel's view is that it is more likely than not that the Respondent sought to register and use the Domain Name in order to take advantage of the Complainant's reputation. The Complainant has satisfied paragraph 4(a)(iii) 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 Domain Name, <bigbaazi.com> be transferred to the Complainant.

/Jeremy Speres/
Jeremy Speres
Presiding Panelist

/Meera Chature Sankhari/
Meera Chature Sankhari
Panelist

/Gareth Dickson/
Gareth Dickson
Panelist
Date: August 29, 2023