

ADMINISTRATIVE PANEL DECISION

Cube Limited v. Ji Leang Taing
Case No. D2023-2683

1. The Parties

The Complainant is Cube Limited, United Kingdom, represented by Farrer & Co., United Kingdom.

The Respondent is Ji Leang Taing, Cambodia.

2. The Domain Name and Registrar

The disputed domain name <188win.net> (the “Disputed Domain Name”) is registered with Register.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 22, 2023. On June 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 27, 2023, 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 (Perfect Privacy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 30, 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 July 6, 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 July 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 27, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on August 10, 2023. 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, Cube Limited, operates a betting website available through its domain name <188bet.com>.

The Complainant holds various registered trade marks consisting of, or including, the numerals “188”, including the following:

- 188, European Union Trade Mark (“EUTM”) registration No. 008390379, registered on March 22, 2010 in classes 9, 28, 41 and 42;
- 188BET, EUTM registration No. 008449597 depicted below, registered on March 22, 2010 in classes 9, 28, 41 and 42;



- 188BET, United States of America trade mark registration No. 5724600 depicted below, registered on April 16, 2019 in classes 9 and 41:



The Disputed Domain Name was registered on May 14, 2011. According to the Complainant’s evidence, the Disputed Domain Name resolved to a website which appeared to offer services similar to the Complainant’s services. The Panel observes that this is still the case, but that the logo in the top left corner of the home page appears to have been adapted during the present proceedings.

5. Parties’ Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to trade marks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent is neither a licensee of the Complainant nor does it have any connection or affiliation with the Complainant whatsoever. Also, according to the Complainant, there is no evidence that the Respondent is commonly known by the Disputed Domain Name, or evidence of *bona fide* or fair use of the Disputed Domain Name. On the contrary, the Complainant claims that the Respondent is not providing its own *bona fide* goods/services under its own trade marks but in fact, is purposefully seeking to confuse Internet users into thinking its website is owned by and/or affiliated with the Complainant, to exploit and fraudulently trade off the goodwill and reputation attached to the Complainant, its brand and the Complainant’s trade marks.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. The Complainant claims that given its significant global reputation, the Respondent likely knew of the Complainant’s prior rights in the Complainant trade marks before registering the Disputed Domain Name and creating an associated website which uses the Complainant’s trade marks. According to the Complainant, the Respondent’s use of a privacy service also supports an inference of bad faith. The Complainant contends that by directing users to a website offering betting services competing with the Complainant’s services and displaying the Complainant’s trade marks (or similarly confusing words and logos), the Respondent clearly and intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s trade marks as to the source, sponsorship, affiliation or endorsement of the Respondent’s website and the services available from that website.

B. Respondent

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

6. Discussion and Findings

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

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. The standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The Disputed Domain Name is identical or confusingly similar to a trade mark 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 Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trade mark or service mark in which it has rights. The Complainant has clearly established that there are trade marks in which it has rights. The Complainant's 188 and 188BET trade marks have been registered and used in connection to its betting and gaming business.

The Disputed Domain Name matches the Complainant's 188 trade mark and the distinctive part of its 188BET trade marks except for the addition of the term "win". Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level Domains, here ".net", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's 188 and 188BET trade marks.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)). The Panel observes

that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trade mark or service mark rights (there being no Response or evidence of any such rights). According to the information confirmed by the Registrar, the Respondent is named “Ji Leang Taing”. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trade mark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trade mark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant’s 188 trade mark and the distinctive part of its 188BET trade marks in their entirety and simply adds the descriptive term “win”, which can easily be considered to relate to betting and gaming services as provided by the Complainant. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

According to the Complainant’s evidence, the Disputed Domain Name appeared to refer to a website purporting to offer services similar to the Complainant’s services. This website also included a logo copying the figurative element of the Complainant’s figurative marks as shown above under section 4, namely the orange shape. The Panel finds that the above elements falsely suggest that the website linked to the Disputed Domain Name was operated by the Complainant or an affiliated entity and are therefore indications of illegal activity using the Disputed Domain Name. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13 of the [WIPO Overview 3.0](#)).

The fact that the logo displayed on the website linked to the Disputed Domain Name has been changed during the course of the present proceedings, and does not copy the figurative elements of the Complainant’s figurative marks anymore, does not change the Panel’s finding.

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds that it is very likely that the Respondent was aware of the Complainant and its trade mark rights when it registered the Disputed Domain Name. The Disputed Domain Name

matches the Complainant's 188 trade mark and the distinctive part of its 188BET trade marks in their entirety with the sole addition of the term "win", which can clearly be linked to the Complainant's business. The website linked to the Disputed Domain Name included (elements of) the Complainant's word and figurative trade marks, and still displays a logo including the Complainant's 188 word mark. In the Panel's view, the Respondent's awareness of the Complainant's trade mark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#), where it was held that the respondent acted in bad faith when registering the disputed domain name, because widespread and long-standing advertising and marketing of goods and services under the trademarks in question, the inclusion of the entire trademark in the domain name, and the similarity of products implied by addition of a telecommunications services suffix ("voip") suggested knowledge of the complainant's rights in the trademarks).

The Respondent appears to have used the Disputed Domain Name to resolve to a website offering betting and gaming services competing with the Complainant's services under a name confusingly similar to the Complainant's trade marks. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark (see section 3.1.4 of the [WIPO Overview 3.0](#)).

The fact that the logo displayed on the website linked to the Disputed Domain Name has been changed during the course of the present proceedings, and does not copy the figurative elements of the Complainant's figurative marks anymore, does not change the Panel's finding. On the contrary, the Panel finds that such change *in tempore suspecto* provides further evidence of bad faith in the circumstances of this case.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 <188win.net> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: August 24, 2023