

## **ADMINISTRATIVE PANEL DECISION**

bet365 Group Limited v. Ads Project

Case No. D2023-2790

### **1. The Parties**

The Complainant is bet365 Group Limited, United Kingdom, represented by Mishcon de Reya LLP, United Kingdom.

The Respondent is Ads Project, United Kingdom.

### **2. The Domain Name and Registrar**

The disputed domain name <bet365india.net> 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 June 30, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 3, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 12, 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 14, 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 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2023. The Respondent sent an email communication to the Center on July 21, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on August 15, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on August 17, 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 is the parent company for the “bet365” group of companies. The group was founded in 2000 and now provides online betting and gaming services to approximately 80 million customers located in around 140 countries.

The trading style of the bet 365 group is BET365 and the Complainant has registered trade marks in multiple jurisdictions to protect its brand. These include, by way of example only, United Kingdom trade mark, registration number 2456453, in multiple classes, registered on January 16, 2009. The Complainant also owns many domain names which comprise or include its BET365 mark, including <bet365.com>, which resolves to its principal website from which its betting and gaming products can be accessed.

The disputed domain name was registered on August 24, 2022. At the time of filing of the Complaint, it resolved to a website which stated that it was the “Official Bet365 Online Sports Betting Site In India”, made extensive use of the Complainant’s BET365 mark and purported to provide information on the Complainant’s gaming and entertainment services. Additionally, it invited visitors to create accounts. Some hyperlinks within the website linked back to the Complainant’s website and also featured design elements and logos taken from the Complainant’s website. The website also used the Complainant’s email address for its own support service. Various sections of the Respondent’s website recommended the betting and gaming products of a competitor of the Complainant, which was misleadingly presented as a brand connected with the Complainant.

While drafting the decision, attempts to access any website to which the disputed domain name resolves generate a notice stating “Sorry, you have been blocked. You are unable to access bet365india.net”. An explanatory note headed “Why have I been blocked?”, asserted that “This website is using a security service to protect itself from online attacks ...”.

#### **5. Parties’ Contentions**

##### **A. Complainant**

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 a trade mark in which it has rights. Given that the disputed domain name contains the Complainant’s BET365 mark and that the mark is highly distinctive, there can be no doubt that the threshold of confusing similarity has been met;
- the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent has no connection or affiliation with the Complainant and the Complainant has not licensed or otherwise authorized the Respondent to use its mark. Moreover, given the repute and distinctiveness of the Complainant’s BET365 mark and the fact that the mark is wholly incorporated into the disputed domain name, there is no conceivable basis upon which the Respondent could legitimately register or use the disputed domain name;
- the disputed domain name was registered and is being used in bad faith. In the light of the reputation of the Complainant, it is self-evident that, as at the date of registration of the disputed domain name, the Respondent would have known of the existence of the Complainant’s marks. Having regard to the content of the Respondent’s website it is inevitable that Internet users will be confused into believing

that it has some form of association with the Complainant, not least given the extensive use within the website of the Complainant's logo, design elements and contact information.

## **B. Respondent**

The Respondent did not provide a formal reply to the Complainant's contentions. However, on July 21, 2023, it sent an email to the Center asserting that it had removed all information relating to the Complainant from its website and that: "1. All information relating to bet365 we have removed from the site. 2. We are representatives of another brand bet365india and in no way parasitize on the name bet365, as well as we do not use their trademark. 3. At the moment the site is blocked and is in the process of correcting all the final moments, so that you can be sure that we are not associated with the brand bet365."

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in order to succeed in its Complaint: (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.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its BET365 trade mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".net" in the case of the disputed domain name, is usually disregarded when assessing confusing similarity. The Complainant's BET365 mark is reproduced in its entirety within the disputed domain name and is clearly recognizable within it. In these circumstances the addition of the word "india" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's mark for the purposes of the Policy; see [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element; see [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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; see paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2. Irrespective of the Respondent's specific motive for creating its website, the use of the disputed domain name to resolve to a webpage which masqueraded as that of the Complainant, in addition to encouraging Internet users to visit the website of a competitor of the Complainant, did not comprise a *bona fide* use of it; see, for example, *Bytedance Ltd. v. Registration Private, Domains By Proxy, LLC / Kemal Aydin, Kemal*, WIPO Case No. [D2020-3433](#). Moreover, UDRP panels have held that the use of a domain name for illegal activity, including impersonation/passing off, can never confer rights or legitimate interests on a respondent; see [WIPO Overview 3.0](#), section 2.13.1;
- there is no evidence in the record that the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name; see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not 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; see paragraph 4(c)(iii) of the Policy and [WIPO Overview 3.0](#), section 2.4;
- the current use of the disputed domain name to resolve to a webpage stating that access to its website has been blocked, whilst consistent with the Respondent's claim to have prevented access to its website following the institution of these proceedings, does not amount to use in connection with a *bona fide* offering of goods and services;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

Before turning to the Complainant's case on bad faith, the Panel deals with – and rejects – the assertion in the Respondent's email to the Center dated July 21, 2023 that it is a representative of “another brand bet365india” and that it has not “parasitize[d]” or used the Complainant's BET365 mark. First, no evidence whatsoever has been provided by the Respondent in support of its inherently improbable assertion that it acts for an unconnected entity known as “bet365india”. Second, the screenshots of the Respondent's website provided by the Complainant establish not only use by the Respondent of the Complainant's BET365 mark but also that such use was deliberately intended to mislead Internet users into believing that its website was that of the Complainant. Third, the fact that the Respondent has, for the moment at least, changed its website and removed reference to the Complainant's business and mark is of little significance: the Respondent's website could easily revert to its original form if the disputed domain name is left in its hands.

Having regard to the confusing similarity between the Complainant's BET365 mark and the disputed domain name, coupled with the use to which the disputed domain name has been put following registration, the Panel finds that the Respondent was aware of the Complainant as at the date of registration of the disputed domain name and registered it in order to take unfair advantage of the Complainant's mark. It is well-

established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and where the domain name is put to a misleading use establishes bad faith. The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

Turning to bad faith use, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. In addition to the inherently confusing nature of the Respondent's website, Internet users aware of the Complainant's BET365 brand who visited it will have been apt to assume from the confusing similarity between the disputed domain name and the Complainant's BET365 mark, that it was owned by the Complainant or that it was operated with its authority. The Respondent's conduct accordingly falls within the circumstance of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. Furthermore, several hyperlinks published on the website at the disputed domain name redirecting to the Complainant's own website are concerned, see section 3.1.4 of the [WIPO Overview 3.0](#) which indicates that using a domain name to redirect Internet users to a complainant's website is one of the indicia on which a finding of bad faith may be made.

As for the current, effectively inactive, status of the disputed domain name, the Panel finds that such change of the use of the disputed domain name is further evidence of the Respondent's bad faith.

For the above reasons, the Panel finds the Respondent's registration and use of the disputed domain name is in bad faith and that the third element of the Policy has been established.

## 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, <bet365india.net>, be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: August 31, 2023