

ADMINISTRATIVE PANEL DECISION

Optibet, SIA v. Mysar Mykhailo

Case No. D2023-5233

1. The Parties

The Complainant is Optibet, SIA, Latvia, represented by Abion AB, Sweden.

The Respondent is Mysar Mykhailo, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <optibetkazino.top> (the “Domain Name”) is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2023. On December 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing the registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 20, 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 amendment to the Complaint on December 20, 2023.

The Center verified that the Complaint together with the amendment to the 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 December 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 28, 2024.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on February 2, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant operates within the gaming and betting industry, providing worldwide online casinos, sports betting, and games.

The Complainant has been using the trademark OPTIBET since the beginning of its business operations in 1999. It is the owner of several trademark registrations for the trademark OPTIBET, such as European Union trademark registration number 017445982 registered on February 26, 2018. The Complainant's trademarks predate the registration of the Domain Name. The Complainant registered the domain name <optibet.com> on January 16, 2001.

The Domain Name was registered on April 25, 2023. The Complainant has documented that the Domain Name resolves to a website for online games, casino games, and betting services, substantially imitating the business of the Complainant. At the time of drafting the Decision, the Domain Name still resolved to a website for online games, casino games, and betting services in the in Latvian language.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations and contends that the Domain Name is confusingly similar to the Complainant's trademark as the Domain Name incorporates the trademark. The only difference is the addition of the word "kazino", which, when seen in the context of the Complainant's business, can only be interpreted as an attempt to mislead consumers into thinking that the Domain Name derives from the Complainant.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant asserts that the Respondent is not affiliated with the Complainant. The Respondent has not been granted any license to use the trademark nor was the Respondent otherwise authorized by the Complainant to use the trademark. There is no evidence of the Respondent's use of the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services.

The Complainant believes the Respondent was aware of the Complainant's trademarks and business when the Respondent registered the Domain Name. It must be interpreted as an attempt to mislead the public into believing that the Domain Name is linked to the Complainant's trademark. The Respondent's motive in relation to the registration, the use of a confusingly similar domain name where consumers are faced with services identical to the Complainant's services, was to capitalize and take advantage of the Complainant's trademark rights, aiming to unlawfully profit through this use. The Respondent's use of a privacy service provider may also indicate bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. As the Respondent's mailing address is stated to be in Ukraine, subject to

an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should.

The Panel notes that the courier was not able to deliver the written notice to the Respondent's address in Ukraine. However, the Notification of Complaint was delivered to the Respondent's email address provided by the Registrar without receiving any delivery failure response, and the Respondent has not opposed to the continuation of the proceedings.

The Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer the Domain Name shall be referred to the jurisdiction of the courts of the location of the concerned registrar, which is Hong Kong, China.

Moreover, as described below, the Panel has no doubt that the Respondent registered and has used the Domain Name in bad faith to target the Complainant and mislead consumers.

6. 2 Substantial Issues

A. Identical or Confusingly Similar

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 trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has rights in the trademark OPTIBET. In this case, the Domain Name incorporates the Complainant's trademark with the addition of "kazino". The addition does not prevent a finding of confusing similarity between the Domain Name and the trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the gTLD; see [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a 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. [WIPO Overview 3.0](#), section 2.1.

Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. The Panel finds that the composition of the Domain Name, carries a risk of implied affiliation with the Complainant.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that 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.

The Respondent most likely knew of the Complainant when he registered the Domain Name. It follows from the composition and use of the Domain Name. The Respondent's use of the Domain Name is clear evidence of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established 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 the Domain Name <optibetkazino.top> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: February 15, 2024