

ADMINISTRATIVE PANEL DECISION

Merryvale Limited v. Registration Private, Domains By Proxy, LLC / Narubeth Sangkaew

Case No. D2022-1385

1. The Parties

The Complainant is Merryvale Limited, Guernsey, represented by Herzog, Fox & Neeman, Israel.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / Narubeth Sangkaew, Thailand.

2. The Domain Name and Registrar

The disputed domain name <betwaydooball.com> 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 April 19, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 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 April 26, 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 April 28, 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 May 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 26, 2022. The Respondent did not submit any substantive response but sent two brief emails to the Center on May 10 and 13, 2022 respectively. Accordingly, on June 1, 2022, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Evan D. Brown as the sole panelist in this matter on June 22, 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, a member of the Betway Group, is in the business of providing services relating to online gaming and sport betting via the website at “www.betway.com”. It owns the trademark BETWAY, which it has registered in a number of jurisdictions, including the European Union (Reg. No. 004832325, registered on January 26, 2007).

According to the Whois records, the disputed domain name was registered on April 13, 2021. The Respondent has used the disputed domain name to set up a website using the Complainant’s trademarks, and purporting to offer live football broadcasting services, which are complementary services to the services provided by the Complainant, without any authorization from the Complainant. The Respondent did not reply to cease and desist communication the Complainant sent concerning the disputed domain name and related infringing activities.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not file a substantive Response to the Complaint, but sent two email communications to the Center on May 10 and 13, 2022 respectively indicating that the disputed domain name was registered with the Registrar, and asked what the issue was regarding the disputed domain name.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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 finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and, second, whether the disputed domain name is identical or confusingly similar to that mark.

The Complainant undoubtedly has rights in the mark BETWAY, as evidenced by its trademark registrations. The disputed domain name incorporates the BETWAY mark in its entirety with the term “dooball”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s BETWAY mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8. The BETWAY mark remains sufficiently recognizable for a finding of confusing similarity under the Policy.

Additionally, the content of the website associated with the disputed domain name (namely, content similar to that provided by the Complainant) confirms confusing similarity. See [WIPO Overview 3.0](#), section 1.15 (“In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears *prima facie* that the respondent seeks to target a trademark through the disputed domain name.”). Based on the content of the website found at the disputed domain name, it appears, *prima facie*, that the Respondent sought to target the Complainant’s mark through the disputed domain name.

The Complainant has established this first element under the policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Respondent is not affiliated with the Complainant and has never been licensed or otherwise authorized to use the BETWAY mark, (2) the Respondent has not used, or made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services, and (3) neither the Respondent nor any business operated by it, is or has ever been commonly known by the disputed domain name.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent’s bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent’s] website or other online location, by creating a likelihood of confusion with complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [respondent’s] website or location or a product or service on [the respondent’s] website or location.”

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. Establishing a website to offer complementary services to the services provided by the Complainant, replicating the Complainant’s mark, and using the disputed domain name that incorporates the Complainant’s mark, is a clear example of bad faith registration and use under the Policy.

The lack of response by the Respondent to the cease-and-desist letter sent by the Complainant supports a finding of bad faith. Past UDRP panels have held that failure to respond to a cease-and-desist letter may be considered a factor in finding bad faith registration and use of a domain name. See *Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/k/a Country Walk a/k/a Cupcake Party*, WIPO Case No. [D2000-0330](#).

Accordingly, the Panel finds that the Complainant has established this third element under 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 <betwaydooball.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: July 6, 2022