

ADMINISTRATIVE PANEL DECISION

Netbet Entreprises Ltd v. Privacy Service provided by Withheld for Privacy ehf / Vladimir Vladimir, Crowd inc
Case No. D2022-1420

1. The Parties

The Complainant is Netbet Entreprises Ltd, Malta, represented by Cabinet Bouchara, France.

The Respondent is Privacy Service provided by Withheld for Privacy ehf / Vladimir Vladimir, Crowd inc., Ukraine.

2. The Domain Name and Registrar

The disputed domain name <net-bet.casino> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 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 22, 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 22, 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 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 25, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on June 20, 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. Further Procedural Considerations

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.

Since the Respondent's mailing address is stated to be in Ukraine (whether this is indeed accurate is not clear), which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel has reached this conclusion in part because the Panel does not believe the Respondent's purported mailing address in Ukraine to be genuine. The Panel notes in particular that that address includes two supposed street names in Kiev, neither of which appears to correspond with any genuine street name in that city. This is corroborated by the fact that the courier used for delivering written notice was also unable to locate the address. The Panel also notes that the website hosted at the disputed domain name is in the Danish language, which may further support an inference that the Respondent is not located in Ukraine. The Panel notes that the Center did, however, successfully send the written notice of the Complaint to the named Privacy Service. The Center also sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar and to a postmaster email address as specified by the Rules. There is no evidence that the case notification email to the first email address was not successfully delivered.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, Namecheap, Inc., is in Arizona, United States of America.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant is a company registered in Malta. It is a provider of gambling services under the name and trademark NETBET, including online casino services, gaming, poker and sports betting.

The Complainant is the owner of various registrations for the trademark NETBET, including, for example, European Union Trademark number 8913614 for the word mark NETBET, registered on February 4, 2021.

The Complainant operates a website at "www.casino.netbet.com". The website is headed with the name "NetBet" in a stylized form, the elements "Net" and "Bet" being shown in contrasting colours.

The disputed domain name was registered on September 20, 2021.

According to evidence exhibited by the Complainant, the disputed domain name has resolved to a website at "www.net-bet.casino". The website is headed with the name "NetBet" in a stylized form which is similar in appearance to that on the Complainant's website. The website is in the Danish language and appears to offer visitors a "100€ bonus" for use in connection with "Netbet Casino". The website also offers "NetBet Casino Login" and a link to "NetBet casino app download".

6. Parties' Contentions

A. Complainant

The Complainant states that it enjoys a high reputation in the field of online gambling. While providing no direct evidence in this regard, it relies on a previous decision under the UDRP, namely *NetBet Enterprises Ltd v. Global Domain Privacy Services Inc. / Tilok Nokar*, WIPO Case No. [D2020-0048](#), in which the panel concluded (on the basis of evidence duly submitted in that case) that the Complainant "has received much recognition internationally", "became a market leader within the online casino and betting industries" and "has international and cross-border renown".

The Complainant submits that the disputed domain name is confusingly similar to its NETBET trademark. It contends that the disputed domain name adopts that trademark in full, and that neither the hyphen between the terms "net" and "bet" nor the additional generic Top-Level Domain ("gTLD") "casino", prevent the NETBET trademark from being recognizable within the disputed domain name.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never authorized the Respondent to use its NETBET trademark and that the Respondent has no independent rights to use that name. The Complainant submits that the Respondent is not making any legitimate use of the disputed domain name because it is using the disputed domain name misleadingly to capitalize on the Complainant's investment and notoriety, including by reproducing the NETBET trademark on its website. The Complainant submits that rights or legitimate interests cannot arise from the Respondent deliberately having chosen a name corresponding to the Complainant's trademark for the purpose of trading off the Complainant's name and reputation.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith. The Complainant contends that the Respondent was obviously aware of the Complainant's trademark and business when it registered the disputed domain name, which combines the mark NETBET with the gTLD "casino", being descriptive of the Complainant's services. Moreover, the Respondent has prominently reproduced the Complainant's trademark on its website, including the stylized "NetBet" heading described above, and also includes a link to download the Complainant's own NETBET mobile app. Additionally, the Complainant highlights the confusing similarity of its website at "casino.netbet.com" and the disputed domain name as further indication of Respondent's intent to confuse and mislead Internet users seeking the Complainant.

The Complainant contends that the Respondent's registration and use of the disputed domain name will inevitably lead Internet users to believe that it relates to services being offered by the Complainant for its customers located in Denmark.

The Complainant states that, while the links contained in the Respondent's website were not active at the date of the Complaint, it is to be assumed that the Respondent intends to derive revenue by way of commission on the "100€ bonus" offer, by redirecting Internet users to a third party website (which is likely to be a competitor of the Complainant) and/or to derive click-through revenue. It contends that the Respondent is therefore using the disputed domain name for the purpose of commercial gain, to mislead Internet users into visiting its website by causing confusion with the Complainant's trademark.

B. Respondent

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

7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it has registered trademark rights in respect of the mark NETBET. The disputed domain name wholly incorporates that trademark, subject to the insertion of a hyphen between the terms "net" and "bet" and the gTLD ".casino". Neither of these matters prevent the Complainant's trademark from being recognizable within the disputed domain name and the Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file any Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. Furthermore, for the reasons set out below, the Panel finds that the disputed domain name is inherently misleading and can only have been intended to target and to take unfair advantage of the goodwill attaching to the Complainant's NETBET trademark. Such use of the disputed domain name cannot give rise to rights or legitimate interests on the part of the Respondent and the Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel notes at this juncture that the Complainant has omitted in this case to submit any direct evidence of the reputation and goodwill said to attach to its NETBET trademark, by way for example of website user numbers, turnover, social media presence or industry and press recognition. While the Complainant relies in this regard on the findings of another panel in an earlier case under the UDRP, every case under the UDRP constitutes an independent proceeding and the findings in a previous case do not absolve the Complainant from providing relevant and up-to-date evidence in support of its present case. In all the circumstances of the case, however, the Panel accepts that the Complainant is the owner of significant commercial goodwill attaching to the NETBET name and trademark, and also to the stylized form of the "NetBet" name which appears on its official website and elsewhere.

Having reviewed the Respondent's website, the Panel has no doubt that that website is intended to refer to the Complainant and its services, and purports to offer visitors a "bonus" and other services in connection with the Complainant's offering, including a link to its mobile app. It is clear in these circumstances that the Respondent was aware of the Complainant and its services when it registered the disputed domain name.

The Panel finds further that the disputed domain name is inherently misleading, as inevitably suggesting to Internet users that it is owned or operated by, or otherwise commercially affiliated with the Complainant. The disputed domain name incorporates the Complainant's trademark NETBET together with the gTLD ".casino", which describes the Complainant's services. The use of the disputed domain name for a website is also likely to cause confusion with the Complainant's authorized website at "www.casino.netbet.com".

The Panel finds that the misleading impression created by the disputed domain name is exacerbated by the Respondent's website content, which prominently adopts the Complainant's stylized "NetBet" name and purports to offer a "bonus" and a login in connection with the Complainant's services, as well as a link to download the Complainant's mobile app. The Panel finds that the Respondent's website therefore takes further unfair advantage of the reputation and goodwill which attaches to the Complainant's trademark.

The Panel further accepts the Complainant's inference that the Respondent's website is most likely to have been intended to provide revenue for the Respondent, whether by way of commission, diversion to a third-party website and/or click-through revenue. The fact that the relevant links appeared to be inactive at the date of the Complainant does not negate this inference and the Panel therefore finds that, by using the disputed domain name, the Respondent 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 or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

8. 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, <net-bet.casino>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: July 5, 2022