

## **ADMINISTRATIVE PANEL DECISION**

Rillius Holding Limited v. Yuliia Makovska, Abudantia B.V.  
Case No. D2022-2242

### **1. The Parties**

The Complainant is Rillius Holding Limited, Cyprus, represented by Bohdan Skrypachov, Cyprus.

The Respondent is Yuliia Makovska, Abudantia B.V., Netherlands.

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

The disputed domain name <paribahis.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 June 21, 2022. On June 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 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 June 24, 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 amendment to the Complaint on June 28, 2022.

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 June 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 19, 2022. On July 13, 2022, the Respondent sent an email communication to the Center requesting an extension of the Response due date. An automatic four-day extension of the Response due date was granted until July 23, 2022, under paragraph 5(b) of the Rules. On July 21, 2022, the Respondent requested a further extension citing the fact that its representatives were based in Ukraine. The Center in accordance with paragraph 5(e) of the Rules, exceptionally granted the Respondent an extension of time until July 29, 2022. The Response was filed with the Center on July 29, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 5, 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.

On August 23, 2022, the Panel issued Administrative Panel Order No. 1 pursuant to paragraph 12 of the Rules inviting the Complainant to address issues raised in the Response by supplemental filing to be filed by August 30, 2022. The Panel Order also permitted the Respondent to make a supplemental filing in reply by September 6, 2022.

The Complainant filed a supplemental filing on August 30, 2022 and the Respondent filed a supplemental filing on September 7, 2022.

#### **4. Factual Background**

Both parties operate online gambling sites: the Complainant from “www.parimatch.com”; the Respondent from “paribahis.com”.

On November 3, 2020, the Respondent registered the disputed domain name.

On November 27, 2020, a company called Fastron Limited, a company registered in Hong Kong SAR, granted the Respondent a non-exclusive, non-transferable licence to use figurative versions of the Complainant’s trademark corresponding to (what is now) International Registration No. 1580872. The terms of the Trademark Licensing Agreement will be discussed further below.

On November 28, 2020, the Complainant was incorporated in Cyprus.

On December 7, 2021, Fastron Limited terminated, or purported to terminate, the Trademark Licensing Agreement.

On February 10, 2022, the Respondent applied to register European Union Trademark No. 018651225, PARIBAHIS for a range of services in International Classes 41 and 42. The application was registered on May 26, 2022.

On July 26, 2022 (that is, a bit more than one month after the Complaint was filed), the Respondent commenced proceedings in the High Court of Justice, London in the United Kingdom against Fastron Limited and the Complainant arising out of what the Respondent contends is the wrongful termination of the Trademark Licensing Agreement.

#### **The Complainant’s Trademarks**

The Complaint includes evidence that the Complainant now owns a number of registrations for figurative versions of the trademark PARI MATCH. The earliest of which is Ukraine Registered Trademark No. 178808:



, which was registered on November 25, 2013.

There is a corresponding International Registration, No 1298964, which was registered on October 26, 2015 for a range of relevant goods and services in International Classes 25 and 41. This registration designated Azerbaijan, Curaçao, Cyprus, Poland, Romania, Tajikstan, and Uzbekistan.

The Complainant also holds other International Registrations, Nos 1534210, 1580872, and 1630588. International Registration No. 1630588 is for PARIMATCH in plain text; the others are for figurative versions of the mark.

International Registration No. 1534210 was registered on April 29, 2020; No. 1580872 on January 19, 2021 and No. 1630588 on August 17, 2021.

International Registration No. 1580872 is for:



Each of the International Registrations is registered in respect of a range of relevant services in International Classes 35 and 41 and based on earlier registrations in Ukraine. They all designated some 19 countries around the world: Australia, New Zealand, Brazil, Canada, Mexico, India, the United Kingdom, Norway, Ghana, Uzbekistan, Armenia, Azerbaijan, Belarus, Switzerland, Cyprus, Kenya, Kazakhstan, and Tajikistan. International Registration No. 1534210 also designated Ireland.

There is also evidence of registered trademarks for the figurative versions in Cyprus, Ukraine, and Kazakhstan shortly before the registration of the corresponding International Registrations.

Obviously, with the exception of International Registration Nos 1580872 and 1630588, the Complainant was not the owner of the trademarks when the Respondent registered the disputed domain name. No doubt, some other person or persons were. However, the Complainant has not disclosed how it came to be the owner of the trademarks and what relationship, if any, it had with the prior owner(s).

#### **The Trademark Licensing Agreement**

According to the terms of the Trademark Licensing Agreement, the Respondent was licensed to use the trademarks in:

“the Turkish speaking audience worldwide excluding United States of America. Aruba, Bonaire. Curacao, France, Netherlands, Saba[,] Singapore, Statia, St. Maarten, Iran, Israel, United Kingdom, Spain, Denmark and such other countries as may be excluded by the Licensor from time to time by giving a writing notice to the Licensee.”

The Trademark Licensing Agreement included a definition of “Website” in the following terms:

“Website: means [www.paribahis.com](http://www.paribahis.com), [www.parimatchturkiye.com](http://www.parimatchturkiye.com), [www.parimatchtr.com](http://www.parimatchtr.com) and others to be created by the Licensee but which shall be wholly owned by the Licensor at all times.”

By clause 25 of the Trademark Licensing Agreement, the governing law is English law and the courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the licence agreement.

#### **The disputed domain name resolves to a website**

The disputed domain name resolves to a website offering sports betting and online gambling. The Complainant says the website is available in Turkish only and via a VPN. The print-out of the website annexed to the Response is in English. When the Panel entered the disputed domain name into a browser, the website loaded in Turkish. However, there was a “button” at the foot of the page to display the website in English.

## **There is some sort of relationship between the Complainant and Fastron Limited**

According to the Complainant's supplemental filing, the "PMI group" negotiated a joint venture arrangement with the Respondent. The PMI group's vehicle for the implementation of that arrangement was Fastron Limited. The Complainant describes the PMI group as "the Complainant group's partner and franchisee".

In conjunction with that arrangement, the Complainant's group (the supplemental filing says the Complainant but obviously it did not exist at the time) permitted the PMI group to use the Complainant's trademarks in the joint venture agreement. There was no formal agreement between the Complainant's group and the PMI group, but an oral agreement involving their "then-current top-management". Further, according to the supplemental filing, "The said permission was limited in time and was to remain effective during the effective term of the said joint venture project."

According to Google Translate, "pari" translates from French into English as "bet" and "bahis" translates from Turkish into English as "to bet" or "to wager".

## **5. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

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

### **A. The supplemental filings**

Save in one respect, the Panel accepts both supplemental filings into the record in this proceeding.

The Respondent's supplemental filing includes a witness statement of Mr. Maksym Liashko, who is described by the Respondent as the CEO of Parimatch Tech and one of the shareholders of the Complainant's group.

According to the Respondent, this witness statement was filed in the English court proceedings on August 15, 2022 and may legitimately be used in this proceeding in accordance with the English Civil Procedure Rules, Rule 32.12(2)(c).

Rule 32.12(1) provides that a witness statement may be used only for the purposes of the proceeding in which it is served. Rule 32.12(2) provides exceptions to that rule including where a witness has given consent, the Court has given permission for the use, or the witness statement has been put in evidence in a public hearing.

It is not immediately clear to the Panel that any one or more of those exceptions applies in this case. Accordingly, the Panel has not read or taken into account the witness statement in this proceeding.

## **B. Complainant's request to suspend the proceeding**

In its supplemental filing, the Complainant for the first time acknowledges the existence of some sort of relationship between it and Fastron Limited. In light of the commencement of proceedings by the Respondent in the English High Court, the Complainant requests suspension of the proceeding pursuant to paragraph 18(a) of the Rules pending resolution of the court proceeding (which of course had not been initiated when the Complaint was filed.)

Paragraph 18(a) of the Rules provides:

“(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.”

Thus, the Panel has a discretion whether to proceed to a decision or suspend or terminate the proceeding.

The Complainant contends that suspension is appropriate as the Court's findings whether or not the Respondent's right to use the Complainant's trademark has been terminated is directly relevant to the second and third requirements under the Policy.

On the other hand, the Respondent opposes suspension or termination. It contends the English court proceedings relate to the use of “Pari Match”, not “Pari Bahis” and so do not concern the subject matter of this dispute. It also points to the Complainant's failure to disclose the Trademark Licensing Agreement in the Complaint as indicating bad faith.

The general approach under the Policy is not to suspend proceedings where there is an overlapping court proceeding because of the potential for indeterminate delay. That is particularly the case here where the English court proceedings have been initiated only recently and their scope, let alone duration, is far from clear. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.14. For example, while the Respondent contends the court case relates only to “Pari Match”, that does not sit comfortably with the apparent acknowledgement in the Trademark Licensing Agreement that Fastron Limited owns (amongst other things) the “paribahis.com website”.

In addition, the Complainant is seeking an exercise of discretion in its favour. As the Respondent points out, the Complainant failed to disclose the Trademark Licensing Agreement in the Complaint and the nature of the Complainant's relationship with Fastron Limited. Nor has the Complainant provided any explanation for that failure. It is true the publicly available Whois record did not disclose the Respondent's identity. First, however, the Complainant through Fastron Limited already had awareness of the Respondent's use of the disputed domain name. In addition, the Complainant knew the Respondent's identity when it filed an Amended Complaint in response to the Registrar's verification report.

In these circumstances, the Panel declines to exercise the power under paragraph 18(a) of the Rules to suspend the proceeding.

## **C. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of numerous registered trademarks for PARI MATCH, mostly in figurative forms.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual (and appropriate in this case) to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10.

Disregarding the “.com” gTLD, the disputed domain name consists of the “pari” element of the Complainant’s registered trademark and the term “bahis”.

The Complainant contends that “pari” is one of the dominant features of its trademark and so “pari bahis” is confusingly similar based on a side by side comparison as “bahis” is descriptive in Turkish meaning “to bet” or “to wager” and so should be disregarded or at least the “pari” element is the dominant feature.

The Panel has some difficulty with this argument as “pari” is French for “bet” or “wager” and, according to Google Translate, also the Ukrainian word for “bet” represented in Roman characters.

The Complainant also contends that, to the extent there is any doubt, it is appropriate to have regard to the content of the Respondent’s website. See e.g., [WIPO Overview 3.0](#), section 1.15. As the Respondent’s website is directed to providing gambling services like the Complainant’s licensees, the Complainant contends that the Respondent is therefore targeting the Complainant and its trademark and so confirms confusing similarity.

The Panel has considerable difficulty with the Complainant’s contentions in this case where the element common to the Complainant’s trademark and the disputed domain name is an ordinary dictionary word in (at least) French and (it appears) Ukrainian descriptive of the gambling activities both the Complainant and the Respondent engage in.

It is clear, however, that the Complainant does have trademark rights and at least an arguable case against the Respondent. As this requirement under the Policy is essentially a standing requirement, therefore, the Panel is prepared to accept at least provisionally that the disputed domain name is confusingly similar to the Complainant’s trademarks.

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

In the circumstances of this case, it is appropriate to consider next the third requirement under the Policy.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

On the record in this case, there cannot be any doubt that the Respondent was aware of the trademarks relied on by the Complainant as the Respondent was licensed to use figurative versions of the trademark by Fastron Limited in November 2020, about three weeks after the Respondent registered the disputed domain name.

On the terms of the licence agreement with Fastron Limited, however, it would appear that the Respondent was permitted to “create” a website at the disputed domain name. If that is so, there could be a strong case that the disputed domain name was not registered in bad faith at least on the basis that Fastron Limited accepted the Respondent’s registration of the disputed domain name even if it did not expressly authorise that registration and, it appears clear from the Complainant’s supplemental filing, Fastron Limited was acting with the authority of “the Complainant’s group” at that time.

The definition of “Website” in the Trademark Licensing Agreement does provide that the website [at] “www.paribahis.com” shall be wholly owned by Fastron Limited at all times. That may give rise to a question of construction whether ownership of the website extends to the domain name. If so, it might lead to an argument that the Respondent held, and holds, the disputed domain name on trust for Fastron Limited.

These are not matters which, in the circumstances of this case, it is appropriate to form a view about. What appears to be clear is that the Respondent registered the disputed domain name with the approval of Fastron Limited or, at the very least, its acquiescence. In that connection, it would have been a simple matter for Fastron Limited to have required the disputed domain name to be transferred to it and then the Respondent permitted to use it during the term of the Trademark Licensing Agreement.

These matters have further potential significance in that this is at least arguably not a typical case of cybersquatting where the Respondent has registered the Complainant’s trademark as a domain name or some obvious variant. As “pari” has a significant descriptive connotation in the present context, the Panel cannot confidently assume use of the disputed domain name would infringe the Complainant’s trademark. In that connection, the Panel notes that the Respondent has secured registration as a European Union Trademark apparently in the face of the Complainant’s registration extending to Ireland. On the other hand, as the Complainant points out, the primary landing page for the Respondent’s website is in Turkish and may not be directed to the European Union.

In these circumstances, the Panel finds that the Complainant has not demonstrated the Respondent registered the disputed domain name in bad faith.

Accordingly, the Complainant cannot establish all three requirements under the Policy and the Complaint must fail.

### **E. Reverse Domain Name Hijacking**

The Respondent contends that the Complaint has been brought in bad faith and, accordingly, the Complainant should be sanctioned by a finding of Reverse Domain Name Hijacking.

Paragraph 15(e) of the Rules provides, in part:

“If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”

Paragraph 1 of the Rules defines “Reverse Domain Name Hijacking” to be “using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name”.

The fact that a Complaint has failed is not in itself sufficient to warrant a finding of Reverse Domain Name Hijacking.

Having regard to the convoluted circumstances outlined above, it is possible that the Complainant will be vindicated in the English court proceedings. There may also be genuine matters in dispute about the ownership not just of the disputed domain name but of the trademark "Pari Bahis".

However those things may be, the salient consideration in this proceeding is the Complainant's complete failure to disclose in the Complaint and even the Amended Complaint the existence of some sort of licensing arrangement between first the Complainant's group and the PMI group (Fastron Limited) and, secondly, between Fastron Limited and the Respondent. Even in its supplemental filing, the Complainant has been less than clear about the nature of its relationship with Fastron Limited. Nor has the Complainant made any attempt to explain that failure.

If the Respondent had not filed a Response, therefore, the case would have had a very different complexion to what it appears to have (insofar as the facts are known) now.

In light of that failure to disclose highly material facts about the dispute and, further, the failure to explain that failure, the Panel considers that a finding of Reverse Domain Name Hijacking is appropriate in this case. The Complainant may or may not be vindicated in the proceedings in the English High Court. However that may be, the failure to disclose the material facts about the licensing arrangements cannot be condoned.

## **6. Decision**

For the foregoing reasons, the Complaint is denied.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: September 13, 2022