

ADMINISTRATIVE PANEL DECISION

Merryvale Limited v. Sommai Jongsuebpan
Case No. D2022-3484

1. The Parties

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

The Respondent is Sommai Jongsuebpan, Thailand.

2. The Domain Name and Registrar

The disputed domain name <38betway.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2022. On September 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 (Privacy Service Provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 September 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 September 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2022.

The Center appointed Oleksiy Stolyarenko as the sole panelist in this matter on November 2, 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 is a company active in the online gaming and sport betting sector and is part of the Super Group, which is listed on the New York Stock Exchange. The Complainant notes that companies included in the Super Group have operated a number of online gaming websites under the brand name BETWAY since 2006 engaging over 1.98 million unique users worldwide in 2021 via its website at the domain name <betway.com>. Furthermore, the current monthly average number of registered and active customers accessing the Betway branded services is approximately 489,808 customers.

The Complainant owns a number of trademarks which include the term “Betway”, including:

- European Union Trademark BETWAY (word), registered under number 004832325 on January 26, 2007, in classes 9 and 41;
- Australian trademark BETWAY (word), registered under number 1094468 on January 13, 2006, in classes 9 and 41;
- Thai trademark BETWAY (figurative), registered under number 933520 on December 6, 2016, in class 9; and
- Indonesian trademarks BETWAY (figurative), registered under numbers IDM000637248 and IDM000694263, on December 26, 2018, and April 27, 2020, in classes 9 and 41 respectively.

The Complainant actively promotes its activities offline and online on the website corresponding to the domain name <betway.com>, which was registered in 2002.

The Respondent appears to be an individual located in Thailand. According to the Whois, the disputed domain name was registered in the name of the Respondent on May 27, 2022. At the time of the decision the disputed domain name links to a webpage with only one word “closed”. The Complainant provided evidence showing that the disputed domain name resolved to what appeared to be a gaming and gambling website branded with the words “betway sexy gaming”.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has strong rights in BETWAY trademark by virtue of its longstanding use and registration of the marks in a number of jurisdictions around the world including use online. Also, the Complainant indicates that its activities and initiatives receive attention in media in many countries worldwide.

A number of previous UDRP panels have recognized the value of the Complainant’s trademark and its association with the Complainant.

The Complainant contends that the disputed domain name is nearly identical and confusingly similar to its BETWAY trademark, as it consists only of the word “betway” with the addition of the number “38” and the generic Top-Level Domain (“gTLD”) “.com”. The Complainant claims that these additions do not prevent a finding of confusing similarity between the disputed domain name and its BETWAY trademark, and do not create an overall different impression.

The Respondent has no rights or legitimate interests in the disputed domain name as the BETWAY trademark precedes the registration of the disputed domain name for years.

The Complainant has not authorized the Respondent to use the BETWAY mark in the disputed domain name.

The Respondent is not commonly known by the disputed domain name.

The Respondent is using the disputed domain name for a website offering gaming and gambling services similar to those offered by companies within the Super Group. The Complainant contends that the Respondent is attempting to attract, for commercial gain, Internet users to the disputed domain name, by creating a likelihood of confusion with the BETWAY mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name and corresponding website.

The Respondent was fully aware of the Complainant's reputation and the Complainant's trademark rights on the BETWAY mark when the Respondent registered the disputed domain name. The BETWAY mark is well known in the sphere and it is inconceivable that the Respondent is operating in the same area of commerce without knowing of the Complainant's trademark rights.

The disputed domain name was registered in bad faith by the Respondent for the purpose of creating confusion with the Complainant's marks to divert or mislead third parties for the Respondent's illegitimate profit.

Therefore, the disputed domain name has been registered by the Respondent in an unfair manner and in bad faith. It is also inconceivable that the Respondent had any good faith intentions at the point of registering the disputed domain name.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has proved its rights in the BETWAY mark in, amongst others, the European Union, Australia, Thailand, and Indonesia, dating at least back to 2006.

Therefore, the Panel considers that the Complainant has satisfied the threshold requirement of having trademark rights in the BETWAY mark.

The disputed domain name is comprised of the number "38" and the word "betway", and combined with the gTLD ".com".

The Panel notes that the addition of the number "38" to the BETWAY mark in the disputed domain name does not prevent a finding of confusing similarity because the Complainant's trademark remains clearly recognizable in the disputed domain name.

The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Therefore, the Panel disregards the gTLD for the purposes of this comparison.

For all the foregoing reasons, the Panel finds that the first element of paragraph 4(a) of the Policy has therefore been satisfied by the Complainant.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to establish that the respondent has no rights or legitimate interests in the domain name. Once the complainant establishes a *prima facie* case against the respondent under this ground, the burden of production shifts to the respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#). In this case, the Respondent did not rebut the Complainant's *prima facie* case regarding the lack of rights or legitimate interests.

However, the overall burden of proof remains with the Complainant. Paragraph 4(c) of the Policy provides circumstances that demonstrate the respondent's rights or legitimate interests to the disputed domain name, and that the complainant frequently addresses to show that the activities of the respondent does not fall under the *bona fide* offering of goods or services (paragraph 4(c)(i) of the Policy), that the respondent is not commonly known by the disputed domain name (paragraph 4(c)(ii) of the Policy) and that the respondent is not making a legitimate noncommercial or fair use of the disputed domain name (paragraph 4(c)(iii) of the Policy).

According to the Complainant, the Respondent is not authorized or licensed to use the Complainant's BETWAY trademark in the disputed domain name, as well as not in any way affiliated with the Complainant.

The Panel finds that the Respondent has used the disputed domain name for offering gaming and gambling services similar to those offered by the Complainant and has used the Complainant's BETWAY trademark on the website associated with the disputed domain name, which suggests that the Respondent has attempted to attract, for commercial gain, Internet users to the website at the disputed domain name, by creating a likelihood of confusion with the BETWAY trademark. Such use could not be considered as a *bona fide* offering of goods or services.

The Panel also notes that the Respondent has failed to come forward with any relevant evidence showing use or demonstrable preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

Taking into account the reputation and long period of use of the Complainant's BETWAY trademark, and in the corresponding Complainant's domain name and website, and in the absence of evidence to the contrary, the Panel finds that the Respondent is not involved in a *bona fide* offering of goods or services (under paragraph 4(c)(i) of the Policy) and the Respondent's activities does not fall under a legitimate noncommercial or fair use (under paragraph 4(c)(iii) of the Policy).

Furthermore, according to the Registrar's confirmation, "Sommai Jongsuebpan" is the registrant of the disputed domain name. The Panel did not find any evidence that the Respondent is commonly known by the disputed domain name. The Panel concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

Thus, the Panel finds that the Complainant has satisfied the second element of the Policy, namely paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

As the Panel established above, the Complainant's BETWAY trademark was used in commerce well before the registration of the disputed domain name on May 27, 2022.

Previous UDRP panels have already recognized the wide reputation of the BETWAY trademark and found it as a well-known trademark. See, e.g., *Merryvale Limited v. Sg Group*, WIPO Case No. [D2020-3008](#); *Merryvale Limited v. reza biabangard*, WIPO Case No. [D2021-2691](#); *Merryvale Limited v. Privacy service*

provided by Withheld for Privacy ehf / WorldWide 360, 360 Blogger, WIPO Case No. [D2021-4205](#);
Merryvale Ltd. v. Nunnapat Ekouru, WIPO Case No. [D2022-1088](#).

The Panel agrees and considers that the well-known character of the BETWAY trademark is established.

The Panel finds with a high degree of certainty that the Respondent knew of the Complainant's BETWAY trademark when registering the disputed domain name. This conclusion is supported by the well-known character of the mark, and that the Respondent has used the disputed domain name for offering exactly the same type of services for which the Complainant is well known, and has used the Complainant's BETWAY trademark on the website associated with the disputed domain name. Therefore, it is highly unlikely that the Respondent has registered the disputed domain name without knowing of activities of the Complainant.

The Panel concludes that the Respondent's intent for registering the disputed domain name, which reproduces the Complainant's trademark along with the number "38", has always been to capitalize on the goodwill of the Complainant's trademark.

Furthermore, the Panel finds it implausible that the disputed domain name could be used by the Respondent in good faith considering that it is confusingly similar to the Complainant's trademark. The Respondent has attempted to use the disputed domain name to attract, for commercial gain, Internet users to the website at the disputed domain name, by creating a likelihood of confusion with the BETWAY trademark. The Panel finds that the fact that the disputed domain name does not currently resolve to an active website does not change the Panel's finding of bad faith in these circumstances.

Moreover, the Respondent failed to submit a response to provide any evidence of good-faith use of the disputed domain name or to show rights or legitimate interests in the disputed domain name.

Therefore, based on the confirmed reputation, long-term and worldwide use of the Complainant's BETWAY trademark, and in the absence of the response from the Respondent providing any explanation or evidence of actual or contemplated good-faith use, the Panel finds the Respondent has registered and used the disputed domain name in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii).

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 <38betway.com> be transferred to the Complainant.

/Oleksiy Stolyarenko/

Oleksiy Stolyarenko

Sole Panelist

Date: November 16, 2022