

ADMINISTRATIVE PANEL DECISION

foundCom Limited v. marcelo lopes geraldo, global987
Case No. D2023-1024

1. The Parties

The Complainant is foundCom Limited, Cyprus, represented by TB Business Support, LLC, Latvia.

The Respondent is marcelo lopes geraldo, global987, Brazil.

2. The Domain Name and Registrar

The disputed domain name <brazinobingo.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 March 8, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 2023, the Registrar transmitted by email to the Center its verification response:

- (a) confirming it is the Registrar for the disputed domain name;
- (b) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (DomainsByProxy.com LLC, a privacy or proxy service) and contact information in the Complaint;
- (c) stating the registration agreement is in English;
- (d) confirming that the registration agreement included an acknowledgement that the disputed domain names were registered subject to the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”).

The Center sent an email communication to the Complainant on March 13, 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 March 18, 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 March 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 12, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on April 19, 2023. 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 wholly owned subsidiary of Alpha Games NV which, together with other members of the corporate group, provides online gaming or gambling services under a number of brands including "Brazino777" which operates from "brazino777.com".

According to the Complaint, the Complainant (or its parent) has been operating the online gaming site "Brazino777" since 2018. In addition to its use in the URL, the website includes a header "BRAZINO 777". There is also a rotating banner which includes on one screen "BRAZINO 777 Plinko" and "Play Exclusive Game Brazino Plinko". At least as included in the Annexes to the Complaint, most of the games are presented in English. At least one game, however, is identified in Portuguese. A whole section of games promoted on the website are for the "Bingo" category. The visible prizes are expressed in Euros.

The Complainant is the owner of two registered European Union Trade marks ("EUTM"):

- (a) EUTM No. 018731200, BRAZINO, which was filed on July 11, 2022 and registered on November 9, 2022, in respect of a range of computer software and casino, gambling and entertainment services in International Classes 9 and 41; and
- (b) EUTM No. 018763876, BRAZINO777, which was filed on September 16, 2022 and registered on January 19, 2023, also in respect of a range of computer software and casino, gambling and entertainment services in International Classes 9 and 41.

The disputed domain name was registered on March 2, 2022.

So far as the record in this proceeding shows, the disputed domain name does not resolve to an active website and has not otherwise been used.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

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.

A. 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 the two registered trademarks BRAZINO and BRAZINO777.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ([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.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark, BRAZINO and the term "bingo". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See *e.g.* [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

The Panel reaches the same conclusion in respect of the BRAZINO777 EUTM. Although the disputed domain name does not include the "777" of that trademark, the "Brazino" component is, so far as the record in this proceeding discloses, an invented and distinctive term. It is the first and prominent element of the trademark and likely to be particularly memorable. Therefore, the Panel considers it can fairly be said that the Complainant's BRAZINO777 EUTM is visually and aurally recognizable within the disputed domain name also.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or

(iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it or its corporate group.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. So, the circumstances set out in paragraph 4(c)(ii) of the Policy do not appear to apply.

So far as the record in this proceeding shows, the disputed domain name is not in use and has not been used. There is also no claim, let alone evidence, before the Panel to support a claim that the Respondent has made demonstrable preparations for use in connection with a good faith offering of goods or services. See e.g. [WIPO Overview 3.0](#) section 2.2. Accordingly, there is no evidence before the Panel to support a finding that either paragraph 4(c)(i) or paragraph 4(c)(iii) of the Policy applies.

While the disputed domain name was registered before the Complainant registered its trademarks, it appears that the Complainant (or its parent) has been operating the BRAZINO777 online gaming website since 2018.

Bearing in mind that "brazino" appears to be an invented term and not a dictionary term or otherwise in common usage and there is no apparent connection between the Respondent and the term, therefore, it appears likely that the Respondent registered the disputed domain name with knowledge of the Complainant's use. That conclusion is reinforced by the inclusion of "bingo" in the disputed domain name. That reinforces the apparent connection with "gambling" both generally and because the Complainant's website offers a range of bingo games for play. In addition, the Whois record identifies the registrant organisation as "Global987". Global987 is an online gaming site based in Brazil. See <global987.com.br> offering a wide range of bets on global sporting matches in the fields of football, basketball, boxing and UFC.

The Complainant's proven trademark rights are registered in the European Union. However, the Internet is not limited by national borders and the Complainant's website is directed to a global audience (with some countries excluded where online gaming is not authorised) and at least one game on the Complainant's website, if not more, is directed to a Portuguese language audience.

The Panel therefore finds that the Respondent has registered the disputed domain name to target the Complainant's trademark.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

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.

For the reasons indicated in section 5B, the Panel considers it is most likely that the Respondent was well aware of the Complainant's trademark, at least BRAZINO777:

- (a) it is or appears to be an invented or coined term and not descriptive;
- (b) the Complainant (or its parent) adopted and has been using it several years before the Respondent registered the disputed domain name; and
- (c) the Respondent is operating in the online gaming or gambling market.

Having regard to these matters, therefore, it appears that the Respondent has adopted the disputed domain name because of its significance or resemblance to the Complainant's trademarks. In circumstances where the Respondent has not sought to claim, let alone establish, that it has rights or legitimate interests in the disputed domain name, therefore, the Panel finds the Respondent has registered it in bad faith.

Although the Respondent does not appear to have used the disputed domain name, that is not necessarily a bar to a finding of use in bad faith. See e.g. *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. [D2000-0003](#). In the present case, the registration of the disputed domain name by the Respondent prevents the Complainant from registering it should it be minded to do so and bearing in mind that many bingo games are offered through the Complainant's website. Further, the use of the disputed domain name in connection with bingo (which is naturally suggested the content of the disputed domain name) or other gambling activities by the Respondent would create a likelihood of confusion with the Complainant and its corporate group's activities. In these circumstances and having regard to the reasons for finding the disputed domain name has been registered in bad faith, therefore, the Panel also finds that the Respondent has used the disputed domain name in bad faith.

Accordingly, the established all three requirements under the Policy.

6. 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, <brazinobingo.com>, be transferred to the Complainant.

/Warwick A. Rothnie/
Warwick A. Rothnie
Sole Panelist
Date: May 3, 2023