

ADMINISTRATIVE PANEL DECISION

Binance Holdings Limited v. Kirill Zalipaev
Case No. DAE2023-0008

1. The Parties

The Complainant is Binance Holdings Limited, Cayman Islands, United Kingdom, represented by Bird & Bird ATMD LLP, Singapore.

The Respondent is Kirill Zalipaev, of United Arab Emirates (UAE), self-represented.

2. The Domain Name and Registrar

The disputed domain name <binance.ae> is registered with AE Domain Administration (.aeDA).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 9, 2023. On October 9, 2023, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the disputed domain name. On October 12, 2023, AE Domain Administration (.aeDA) transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 30, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was November 19, 2023. The Respondent submitted a Response on November 9, 2023.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on December 12, 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 limited company established under English law in the Cayman Islands in September 2017, with a registered business address in George Town, Grand Cayman, Cayman Islands. The Complainant claims both registered and common law rights in the mark BINANCE, a combination of the English words “binary” and “finance”. This is an invented term for a cryptocurrency exchange business founded by Chanpeng Zhao in June 2017, as evidenced by a “Binance Whitepaper” published in that month and announced at a conference, as well as a “Binance Exchange” article published in December 2018. These documents are included in the record of this proceeding. The Complainant operates websites in multiple languages (including Arabic and Russian) using the BINANCE mark in the domain names, including “www.binance.com” and “www.binance.us”. The Complainant’s principal website at “www.binance.com” advertises that over 170 million users employ the Complainant’s cryptocurrency exchange platform online or via mobile app and use the Complainant’s various blockchain-based digital asset products and services. The Complainant currently services clients in more than 100 countries, with more than 7,500 employees, and the BINANCE Exchange reported an average daily volume of USD 65 billion in 2022. As reflected in the Wikipedia article on the company, the Complainant has attracted attention (both favorable and otherwise) since the beginning of its operations in 2017 from media and from national financial regulators.

The Complainant has over 600 trademark registrations or applications worldwide for BINANCE, BINANCE CHAIN, and BINANCE DEX as word marks or stylized marks in International Classes 9 (software), 35 (business management), 36 (financial services), 41 (education and training), and 42 (software as a platform or service). These include United Kingdom Trade Mark Registration Number 3296697 for BINANCE, filed on March 14, 2018 and registered on June 8, 2018, and United Arab Emirates Trademark Registration Number 340782 for BINANCE, filed on December 9, 2020 and registered on April 22, 2021.

The Complaint includes evidence that BINANCE achieved recognition as an unregistered mark before the first trademark registrations in 2018. On August 27, 2017, just 45 days after the launch of the online BINANCE Exchange, the number of users surpassed 120,000 and was growing at a rate of 4,000 to 6,000 new users a day. Media and financial reports attached to the Complaint indicate that within 180 days of its launch, the BINANCE Exchange had become the largest cryptocurrency exchange in the world by trading volume and users. *Forbes Magazine*, for example, featured the Complainant’s founder and CEO on the cover of its February 28, 2018, edition, along with an article titled, “From Zero To Crypto Billionaire In Under A Year: Meet The Founder Of Binance”.

In addition to the BINANCE Exchange, the other products and services in the BINANCE “blockchain ecosystem and product suite” are all marketed with the BINANCE mark. These include “Binance Labs” (an investment fund launched in 2018), “Binance Pay”, “Binance Live”, “Binance Academy” (an education portal launched in 2018 and available in 15 languages), “Binance Card”, “Binance Charity” (established in 2018), “Binance Research” (also established in 2018). The record shows that the BINANCE marks also appear on multiple online sites, channels, and social media accounts established before the Respondent’s registration of the disputed domain name. The Complainant also promotes the BINANCE mark through other advertising and sponsorships, such as a Formula 1 racing car team, the African Cup of Nations (AFCON) tournament, the Lazio Italian soccer club, the inaugural non-fungible token (NFT) launch for soccer star Cristiano Ronaldo, and the international “After Hours Till Dawn” concert tour of “The Weeknd’s”.

The Registrar shows that the disputed domain name was registered on November 13, 2021, to the Respondent Kirill Zalipaev, listing an address in a free trade zone in Dubai, United Arab Emirates and using a Gmail contact email address. The Respondent furnishes evidence that he acquired the disputed domain name by auction on that date. It does not appear that the disputed domain name has ever been used for an active website.

The record includes email correspondence between the parties through the Registrar, acting as intermediary. The Respondent approached the Complainant on July 12, 2022, offering to sell the disputed domain name to the Complainant for USD 1,447,000 (including the Registrar’s fees). Nearly a year later, on June 23, 2023, the Respondent again approached the Complainant through the Registrar with an offer to

sell, but for a higher price, USD 1,466,677. The Complainant contacted the Respondent directly by email, and the Respondent suggested a price of “1,1kk usd”, stating, “The domain is not used for now, any rights do not violate. I can sale if it can be useful for your business.” The Complainant asked for clarification of the price but received no response. This proceeding followed. At that time, the Registrar advertised annual registration fees for .ae domain names starting at USD 62.99.

5. Parties’ Contentions

A. Complainant

The Complainant observes that its registered BINANCE mark is a well-known, invented name, not a dictionary word, and the disputed domain name is identical. The Complainant asserts that the Respondent had no permission to use the mark, and there is no indication that the Respondent is known by a corresponding name or has made any legitimate business use of the disputed domain name but appears to be merely cybersquatting.

The Complainant argues that its marks are well publicized and globally recognized and that the Respondent “was certainly aware of the BINANCE Trademarks and service name at the time he acquired/registered the Disputed Domain Name, in bad faith.” The Complainant suggests that the registration of the disputed domain name represents trademark infringement and passing off, as well as a violation of the Policy. “With such knowledge of the Complainant’s reputation and rapid growth trajectory, the Respondent acquired the Disputed Domain Name in bad faith and purely for the purpose of squatting on the Disputed Domain Name for financial gain.” Specifically, the Complainant charges, this is reflected in the Respondent’s demands to transfer the disputed domain name to the Complainant for more than USD one million, an amount far in excess of the Respondent’s out-of-pocket costs.

In addition, the Complainant points to the “passive holding” doctrine first articulated in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) (*Telstra*), a case decided under the similar Uniform Dispute Resolution Policy (“UDRP”). Following the reasoning of this decision, panels have found bad faith in registering and holding a domain name identical or confusingly similar to a distinctive and well-established trademark when there was no plausible legitimate use for the domain name.

B. Respondent

The Respondent furnishes a copy of an invoice or payment request showing that he purchased the disputed domain name through an online auction on November 13, 2021, for an amount substantially below the offer made to the Complainant. The Respondent does not contest the Complainant’s trademark claims but argues that the .ae Domain Name Policy “does not condition the title of ownership of a domain based on the principle of ownership of trademarks”. Hence, the Respondent (who is not represented by legal counsel) states his belief that he has not violated the Complainant’s intellectual property rights.

The Respondent does not deny prior awareness of the Complainant or its BINANCE mark but says he did not learn that the BINANCE mark was registered in the UAE until this proceeding.

The Respondent states that he has not had time to start using the disputed domain name “for its intended purpose” but uses it in good faith “without the intention of commercial gain” or to mislead consumers or to tarnish the Complainant’s trademarks. The Respondent says he is “ready” to assign the right to use the disputed domain name to the Complainant or “back to the” Registrar but believes he is entitled to be compensated for his costs in purchasing the disputed domain name (USD 300,000).

6. Discussion and Findings

Paragraph 6(a) of the Policy provides that a Complainant must establish three elements in a mandatory administrative proceeding in order to divest a respondent of a domain name (“you” refers to the respondent):

- i) your Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii) you have no rights or legitimate interests in respect of the Domain Name; and
- iii) your Domain Name has been registered or is being used in bad faith.

Because the .ae Dispute Resolution Policy is closely modeled on the UDRP, the Panel will refer to UDRP decisions and the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”). The Panel notes, however, that the .ae Policy allows Complainants to more readily establish the third element, bad faith, as it requires a showing of bad faith in registration *or* use, rather than the UDRP’s requirement of proof of bad faith in both the registration *and* use of the disputed domain name.

A. Identical or Confusingly Similar

As in UDRP proceedings, the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7. The Complainant has registered BINANCE, BINANCE CHAIN, and BINANCE DEX trademarks. The disputed domain name is identical to the BINANCE mark and the distinctive portion of the BINANCE CHAIN and BINANCE DEX marks. Therefore, the Panel finds that the first element of the Complaint has been established.¹

B. Rights or Legitimate Interests

Paragraph 6(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. While the overall burden of proof in UDRP proceedings, and similarly in .ae dispute resolution proceedings, is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not known by a corresponding name, has not made any use of the disputed domain name, and has not offered evidence of any plans for such use. He states that he has not had time to put the disputed domain name to its “intended use” but does not say what that is. Trying (twice) to sell the disputed domain name to the Complainant cannot be considered a legitimate commercial use or noncommercial fair use, as contemplated by Paragraph 6(c) of the Policy.

The Panel concludes, therefore, that the Respondent has met its burden of production, and the Complainant prevails on the second element of the Complaint.

¹ The Respondent mistakenly contends that trademark is irrelevant. He points to the .ae Domain Name Policy and argues that the absence of a “condition” therein regarding trademark ownership means that he was free to register a domain name that included the trademark of a third party. Of course, this overlooks the .ae Domain Name Dispute Resolution Policy, which the UAE adopted precisely as a mandatory procedure to administer disputes when someone such as the Respondent registered a .ae domain name that was arguably identical or confusingly similar to a trademark or service mark in which another party held rights.

C. Registered or is Being Used in Bad Faith

The Complainant has demonstrated that its BINANCE mark, an invented term, is well-established online and internationally, and one that achieved renown very quickly. The Respondent does not deny that he was aware of this mark in 2021 when he registered the identical domain name. He says only that he did not know the trademark was registered in the UAE, which is not essential to establishing the likelihood that he that he meant to target the Complainant's well-known, distinctive, and highly successful brand. This probability is reinforced by the fact that the Respondent seems to have paid a large sum for the disputed domain name and then proceeded to try to sell it to the Complainant for more than USD 1 million, an amount that exceeds the Respondent's costs for the acquisition of the disputed domain name.

The Policy, paragraph 6(a)(iii), lists non-exclusive circumstances that "if found by the Panel to be present, shall be evidence of the Registration or use of a Domain Name in bad faith". These include

"i) circumstances indicating that you [the Respondent] have registered or you have acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name Registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Domain Name ..."

That appears to be the case here. The Respondent approached the Complainant about selling the disputed domain name for more than USD 1 million, obviously far more than registration costs and several times more even than the large auction price the Respondent paid for it. The Respondent's emails show that he recognized the value of the disputed domain name to the Complainant. From his Response, it seems that the Respondent was under the mistaken impression that he was operating in a trademark-free zone, but he was not. He would have been better advised to be, well, better advised.

Moreover, this is a case that also accords with the rationale of the passive holding decisions, as in *Telstra*. See WIPO Overview, section 3.3. The Respondent has not used the disputed domain name for a website, but given the distinctiveness and renown of the Complainant's mark, it is hard to imagine a plausible legitimate use for the disputed domain name, and the Respondent has not offered one.

The Panel finds that the Respondent both registered and used the disputed domain name in bad faith, and either for the Complainant to prevail under the third element of the .ae Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 6(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <binance.ae> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Panelist

Date: December 26, 2023