

ADMINISTRATIVE PANEL DECISION

Navasard Limited v. Gabin Kouchou
Case No. DSN2024-0001

1. The Parties

The Complainant is Navasard Limited, Cyprus, represented by Šindelka & Lachmannová advokáti s.r.o., Czech Republic.

The Respondent is Gabin Kouchou, Canada, self-represented.

2. The Domain Name and Registrar

The disputed domain name <1xbet-senegal.sn> is registered with Marcaria.com International LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 24, 2024. On April 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 2024, 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 (UNKNOWN) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 6, 2024, providing the registrant and contact information disclosed by the Registrar, and requesting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 8, 2024.

On May 6, 2024, the Center informed the parties in French and English, that the language of the registration agreement for the disputed domain name is French. On May 8, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission within the granted deadline.

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 in both English and French, and the proceedings commenced on May 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 6, 2024. The Respondent sent email communications to the Center on May 17, 22, 23, and June 7, 10 and 19, 2024.

On June 25, 2024, the Complainant sent an unsolicited Supplement Filing.

The Center appointed Fabrice Bircker as the sole panelist in this matter on June 19, 2024. 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

It is undisputed that the Complainant is a company incorporated in Cyprus since 2015 and operating an online betting platform under the 1XBET brand. This platform is notably available through the <1xbet.com> domain name.

The Complainant's activities are notably protected through the following trademarks registrations:

1XBET, European Union trademark registration No. 14227681 filed on June 8, 2015, registered on September 21, 2015, and protecting services of classes 35, 41, and 42,



International trademark registration No. 1672896 registered on April 6, 2022, designating among others United States of America, Republic of Korea, Norway and African Intellectual Property Organization (OAPI), and covering services of classes 41 and 42.

The disputed domain name, <1xbet-senegal.sn>, was registered on September 25, 2022.

It resolves to a French-drafted website reproducing the 1XBET verbal and semi-figurative trademarks, and purporting offering online betting and gambling services in Senegal.

Very little is known about the Respondent excepting that he is reportedly located in Canada as per the information disclosed by the Registrar, and controls a United Kingdom-based company as per the extracts from the United Kingdom register of companies provided by the Complainant.

5. Parties' Contentions

A. Complainant

First, the Complainant requests that the proceedings be conducted in English, even though French is the language of the registration agreement of the disputed domain name. To that end, it puts forward elements intended to demonstrate that the Respondent can communicate in English.

Then, the Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

In this respect, the Complainant submits that the disputed domain name is confusingly similar to its 1XBET trademark, because it reproduces the later, and the added elements do not prevent it from being recognizable.

Besides, the Complainant argues that the Respondent has no rights or legitimate interests in respect with the disputed domain name, in substance because:

- the Complainant has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to the Complainant in any form,
- there is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks,
- the Respondent has neither been using the disputed domain name in connection with a bona fide offering of goods or services, nor making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue, because the composition of the disputed domain name and the content of the related website suggest affiliation with the Complainant, in particular in conveying the false impression that it is the official website of the Complainant for Senegal.

Then, the Complainant contends that the disputed domain name has been registered in bad faith, notably because:

- the Respondent registered the disputed domain name many years after the introduction of the 1XBET brand on the market (in 2007) and the first registration of the Complainant's 1XBET trademark (in 2015),
- the 1XBET trademark is widely known,
- by conducting a mere online search on popular search engines for the term "1xbet", the Respondent would have detected the Complainant's trademark,
- the composition of the disputed domain name shows that the Respondent registered it with the Complainant's trademarks in mind,
- the disputed domain name resolves to a website repeatedly reproducing the 1XBET trademark.

Besides, the Complainant submits that the disputed domain name has being used in bad faith, in particular because it resolves to a website that passes itself for the Complainant's official website for Senegal. Therefore, the Respondent is using the disputed domain name to unduly attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such website.

At last, in its unsolicited Supplemental Filing, the Complainant notably states that: "this unsolicited filing is necessary to address the Respondent's incorrect claim: '1xbet has never prohibited the use of its image for affiliation. The proof is on its affiliate site, and it is written that when you use 1xbet for affiliation, you receive a 10% commission, which is what I receive.' If the Respondent was indeed a member of the affiliate program, he would be obliged to adhere to its terms (...) which [prohibit] the use of the Complainant's trademark for website registration, and (...) the creation of pages that could be misrepresented as belonging to the Complainant."

B. Respondent

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

However, he sent several communications to the Center.

On May 17, 2024, he first indicated: "Hello, I don't understand. the problem is that I have a site 1xbet-Sénégal.sn which does affiliation for 1xbet? 1xbet has never prohibited the use of its image for

affiliation. The proof is on its affiliate site. and it is written that when you use 1xbet for affiliation you receive 10% commission and that is what I receive.”

Then, still on May 17, 2024, he sent another communication, in French, apologizing for the delay in replying to the Center and requesting the Complaint be communicated in French so that he may better understand the situation (“Désolé du retard mais quand vue je me suis dit que c’était un spam de quelqu’un qui voulait mon nom de domaine. Alors tout d’abord je tenais à m’excuser mais j’aimerais avoir la plainte en français pour mieux comprendre de quoi je suis accusé”).

On May 22, 2024, the Respondent requested again, in English, a French copy of the Complaint.

On May 23, 2024, the Respondent sent the following communication “I would like to speak with the [C]omplainant. I think we can find common ground because my site only does affiliation for their company and since I use their brand I earn 10% commission which is normal”.

On June 7, 2024, after the Center sent the Commencement of Panel Appointment Process notification, the Respondent sent the following communication: “I responded but I haven’t heard back from you. I said I will make arrangements with the opposing party” and then “Look and I don’t speak very well English. Can you write in French please”.

On June 10, 2024, the Respondent indicated that “I would first have to be able to get in touch with the complainant and discuss with him so that we can find common ground. I am an affiliation for the company 1xbet and I receive 10% commission because I use the company brand as mentioned in the 1xBet partner agreements.”

6. Discussion and Findings

6.1. On the procedure

A. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is French. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the facts that:

- the Respondent is a resident of Canada where English and French are the co-official languages,
- the Respondent is the director of a company based in the United Kingdom, and United Kingdom is an English-speaking country,
- a part of the Respondent’s LinkedIn profile is contains some English explanations,
- the website associated with the disputed domain name contains several English terms,
- the disputed domain name includes the term “bet”, which is an English word.

The Respondent requested a French copy of the Complaint claiming that the does “not speak very well English”.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

Indeed, the following elements conduct the Panel to consider that, on the contrary of the Respondent's allegations, he is well in a position to communicate in English:

- he is reportedly located in Canada, where English is an official language along with French. In this respect, one could object that English is not widely spoken in all Canadian provinces, some of them being French speaking (and vice versa). Therefore, the Panel exercised his - limited - investigation power¹ to search on publicly-available websites whether French may be a common spoken language at Ottawa, where the Respondent is located. Not only these searches shown that bilingualism is the official policy for Ottawa, but also that in practice, English is the most widely spoken language in this city,
- in any case, the Respondent i) appear to head and control a United Kingdom-based company, and , ii) has drafted a part of his LinkedIn profile in English, iii) has mentioned in this part of his LinkedIn profile to be in charge with the maintenance of the website of an organization, and when visiting this website², it appears that it is English-French bilingual iii) He has already sent email communications to the Center in English and was able to submit a response in French if he wanted to. All these elements necessarily involve that the Respondent is well in a position to communicate in English.

In view of the above and of the fact that the Respondent was notified in both English and French by the Center of the nature and deadlines pertaining to the proceeding as well as the issue of the language of the proceeding, the Panel does not consider it prejudicial to the Respondent if English was adopted as the language of the proceeding, as in all likelihood the Respondent is clearly able to understand and communicate in this language.

Therefore, the proceeding would be unduly delayed if the Complaint and annexes thereto had to be translated into French. In keeping with the Policy aim of facilitating a relatively time and cost-efficient procedure for the resolution of domain name disputes, the Panel accordingly determines that it is appropriate for English to be the language of the proceeding.

B. The Respondent's proposal of settlement

The Respondent has expressed twice his willingness to settle this case.

Usually, panels consider that where the Respondent unilaterally expresses genuine and unequivocal consent to the relief sought by the Complainant, this constitutes a sufficient basis for granting such relief without having to consider the requirements of paragraph 4(a) of the UDRP Policy (see [WIPO Overview 3.0](#), section 4.10, *Ligue de Football Professionnel (LFP) v. Hartout Mourad*, WIPO Case No. [D2014-0013](#); or *Mr Bricolage v. Medard Claude Kogue*, WIPO Case No. [D2016-1326](#)).

In the present case, the Panel finds that the Respondent has merely indicated that he is interested in a settlement and not that he consents to the transfer of the disputed domain name as requested by the Complainant.

In addition, the Complainant, in not replying to the Respondent's proposal, has not agreed with a settlement of the case.

¹ and ² It is well established that the general powers of a panel as articulated inter alia in paragraphs 10 and 12 of the Rules include, among others, the possibility to undertake limited factual research into matters of public record if the panel considers such information useful to assessing the case merits and reaching a decision. (see for instance, [WIPO Overview 3.0](#), section 4.8).

As a consequence, the Panel finds that this case has to be decided through a substantive decision on the merits.

C. Unsolicited Supplemental Filing

On June 25, 2024, the Complainant sent an unsolicited Supplement Filing.

Paragraphs 10 and 12 of the Rules grant the Panel sole discretion to determine the admissibility of unsolicited supplemental filings.

While paragraph 10(d) states that: “The Panel shall determine the admissibility, relevance, materiality and weight of the evidence”, paragraph 12 provides that: “In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.”

The principles which the Panel should apply in deciding whether or not to admit unsolicited supplemental filings have been considered in many cases under the Policy and have meanwhile been widely agreed among UDRP panels, in that such supplemental filings should be generally discouraged and only be accepted in “exceptional circumstances” ([WIPO Overview 3.0](#), section 4.6).

In the case at hand, the Supplemental Filing:

- has been communicated to the Center on June 25, 2024, and intends to reply to arguments submitted by the Respondent in his communication of May 17, 2024,
- aims at clarifying the relationship between the Complainant and the Respondent.

Given the timeframe between the Supplemental Filing and the Respondent’s communication it addresses (i.e. more than one month) and the fact that in this Panel’s view a complainant reasonably knows the nature of its relationships with a complainant before the introduction of a procedure, this Panel does not find here exceptional circumstances liable to conduct him to accept the Supplemental Filing.

Consequently, the Complainant’s Supplemental Filing will not be taken into consideration.

6.2. Substantive Issues

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain name, the Complainant must establish each of the following three elements:

- (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 names has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules provides that “[a] Panel shall decide a 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”.

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

It is well accepted that 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.

Based on the available record (Annexes 8a, 8b and 8c of the Complaint) and on the Panel's verifications, the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Indeed, although the addition of other terms (here, an hyphen and "senegal") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy because the 1XBET trademark remains recognizable within said disputed domain name. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In the present case, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain name.

In addition, the Complainant contends that it has not given its consent for the Respondent to use its 1XBET trademark in a domain name registration or in any other manner.

Besides, the Complainant claims that the Respondent is not affiliated to it in any form, whereas on the contrary, the Respondent submits that his website is affiliated to the Complainant and that he even earns commissions from the Complainant.

In this respect, the Panel finds that the Respondent's contentions consist in mere conclusory allegations unsupported by any document, and therefore cannot be taken into account ([WIPO Overview 3.0](#), section 4.2).

In addition, assuming the Respondent's allegation true, this would put the Respondent in a position comparable to a reseller or a distributor of the Complainant.

In this respect, there is a consensus view (see [WIPO Overview 3.0](#), section 2.8) that a reseller or a distributor using a domain name containing the complainant's trademark to propose the complainant's goods or services makes a bona fide offering of goods and services and thus has a legitimate interest in the domain name if the following cumulative requirements are met:

- (i) the respondent must actually be offering the goods or services at issue;
 - (ii) the respondent must use the site to sell only the trademarked goods or services;
 - (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder;
- and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

Here, in the assumption that the Respondent's claims are true, the Panel notably finds that the Respondent's website offers the Complainant's services but does not disclose its (lack of) relationship with the Complainant. On the contrary, the composition of the disputed domain name (in as far it consists in the Complainant's trademark associated with the name of the country Senegal) and the related website (in as far it notably prominently and massively reproduces the 1XBET trademark and logo) create an impression of association with the Complainant. Indeed, the disputed domain name and the corresponding website are of a nature to be perceived by the Internet users as the Complainant's domain name and website for Senegal.

In these conditions, and on the basis of the record of the case, even assuming that the Respondent would be proposing genuine 1XBET services, the Respondent would not be in a position to claim any legitimate fair use of the disputed domain name.

In view of the above, the Panel finds that the Respondent is, more likely than not, using the disputed domain name for commercial gain and that this use is not made in connection with a bona fide offering of services.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds that:

- the disputed domain name reproduces the Complainant's distinctive trademark,
- because of its composition (reproduction of the Complainant's trademark followed by the name of a country i.e. Senegal), the disputed domain name will be perceived as the Complainant's official domain name for Senegal,
- the website to which the disputed domain name resolves purports to offer gambling services while impersonating the Complainant, notably because it i) massively reproduces the 1XBET trademark and logo, ii) displays phrases such as "site web de paris sportifs et de casino en ligne 1XBET au Senegal" (i.e. "1XBET betting website and online casino in Senegal") or "Bienvenue sur 1xBet SN ou 1xBet Sénégal" (i.e. "welcome to 1xBet SN or 1xBet Senegal"), and iii) provides information about the Complainant and the characteristics of its services.

It necessarily results from these circumstances that the Respondent registered the disputed domain name being fully aware of the Complainant's rights, and that he is intentionally using the disputed domain name for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website and of the services offered therein. In sum, this case clearly falls within the scope of paragraph 4(b)(iv) of the Policy.

Therefore, the Respondent registered and is using the disputed domain names in bad faith.

The Panel finds that the Complainant has established the third element of the Policy.

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 <1xbet-senegal.sn> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: July 3, 2024