

Decision for dispute CAC-UDRP-105694

Case number **CAC-UDRP-105694**

Time of filing **2023-08-11 09:19:46**

Domain names **bwin-pt.com**

Case administrator

Organization **Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization **Entain Operations Limited**

Complainant representative

Organization **Mr Kostas Retzopoulos (Stobbs IP)**

Respondent

Name **Nikolas Ioannis Thrasyvoulou**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous BWIN trademarks, including:

- International word trademark No 886220, registered on February 3, 2006; or
- International figurative trademark No 896530, registered on March 16, 2006.

The Complainant also owns domain name <bwin.com> registered on August 22, 2005.

The disputed domain name <bwin-pt.com> was registered on January 12, 2023.

PARTIES CONTENTIONS

The Complainant is an international sports-betting and gaming group, operating both online and in the retail sector, employs a workforce of over 24,000 individuals in 20 offices across 5 continents and owns a comprehensive portfolio of established brands including BWIN and domain name <bwin.com> registered on August 22, 2005.

The Complainant has traded on the Alternative Investment Market (AIM) of the London Stock Exchange (LSE) since May 24,

2010 and as of August 7, 2023 has a market capitalisation value (the market value of a company's outstanding shares) of £8.92 billion. For the relevant financial year ending 31 December 2022, the Complainant's underlying operating profit for the online gaming business was £541.8 million. It is clear from this that the Complainant's brand has been a significant commercial presence for a long period of time and continues to have the same, strong presence today.

The Complainant's BWIN brand has a significant reputation and has built up a vast amount of goodwill in the sign in the UK in relation to a wide range of goods and services. The Complainant received significant endorsement for their BWIN brand on social media.

1) Provided the Complainant has a registered trademark at the time of commencing proceedings, the panellist will satisfy the threshold of holding 'rights', for the purpose of Policy, Paragraph 4(a)(i) - WIPO Overview 3.0, Paragraph 1.1.2. The Complainant further relies on prior domain dispute decisions, where Panels have found the Complainant has rights in the BWIN brand.

The disputed domain name wholly incorporates the trade mark "BWIN" in its entirety, with the addition of a hyphen and 'pt'. The inclusion of the term "pt" alongside the BWIN trade mark does nothing to alter the impression in the eyes of the average internet user. Prior panelists have reached the same conclusions regarding the addition of non-distinctive terms in paragraph 4(a)(i). A recent example can be seen in the case between Boehringer Ingelheim Pharma GmbH & Co.KG Fundacion Comercio Electronico. CAC Case No. 103973 <boehringeringelheimequinerebate.com>.

The use of 'BWIN' in conjunction with '-PT' is confusingly similar to the Complainant's trade mark. Connotations associated with BWIN and the disputed domain name create the overall impression that the goods and services offered under both terms would likely relate to the BWIN brand in Portugal to be online betting or bingo services. Even an internet user searches 'BWIN pt' or 'BWIN in Portugal', the Complainant's business and branding appear in all of the searches. This shows the scale of the Complainant's reputation and business in the sports betting gambling market. It further shows that 'Bwin-pt' is likely to be associated with the Complainant's brand.

2) The Complainant submits that the disputed domain name is identical to the Complainant's BWIN trade mark, or at the very least, confusingly similar. The Complainant further submits that the gTLD suffix (.com), is an integral technical part of the disputed domain name, may be disregarded in the determination of confusing similarity.

The Complainant submits that the Respondent does not have any rights or legitimate interests in the disputed domain name. Bearing in mind the considerable reputation of the BWIN brand and the Complainant's operations in the online betting industry since as early as 2000, there is no believable or realistic reason for registration or use of the disputed domain name other than to take advantage of the Complainant's established rights and notoriety. The disputed domain name was registered on January 12, 2023. By this point, the Complainant already had extensive rights in the BWIN brand dating back over fifteen years ago.

The Respondent's use of the disputed domain name or a name corresponding to the disputed domain name is not in connection with a bona fide offering of goods or services. The disputed domain name resolved to a live sports-betting related site until at least March 12, 2023 and is still registered by the Respondent. Specifically, the Respondent has used content that imitates the Complainant's genuine website. In doing so, the Respondent has sought to attract unsuspecting consumers to engage in online betting services under the guise of being an official BWIN domain. Use of the BWIN brand to imitate the Complainant's genuine website cannot constitute a bona fide offering of goods or services.

Nothing from the content of the disputed domain name domain name suggests that the Respondent is making a legitimate non-commercial or fair use. The disputed domain name is being used to exploit and capitalise on the success and recognisability of the distinctive BWIN trade mark, in addition to the advertisement of services related to online gambling and sports betting.

3) The disputed domain name has been registered and has been used in bad faith The BWIN trade mark, as well as the trading and commercial activities of the business, significantly pre-date the registration of the disputed domain name. The BWIN brand at the date of the registration of the disputed domain name undoubtedly had widespread recognition, supported by social media activity, endorsements, collaborations, and partnerships. Indeed, a simple check on any of the most used Internet search engines would have revealed the Complainant's BWIN brand and business.

The Complainant acquired the BWIN trade mark in the European Union and registered under its subsidiary entity on December 10, 2009 in Classes 9, 16, 35, 36, 38, 41 and 42, covering computer software; advertising; financial and monetary services related to sports betting and gaming; message sending via the internet in connection with sports betting and gaming; and entertainment in the field of

sports betting and gaming, among other things. The Complainant submits the disputed domain name until recently operated a website promoting online gambling and betting activities. The website at the disputed domain name uses the Complainant's BWIN trade mark. Upon accessing the website, the disputed domain name, the user was presented with promotional offers inferring an authorisation provided on behalf of the Complainant and its subsidiaries, when no such authorisation has been provided: BONUS DE BOA-VINDAS BWIN (Translation: WELCOME BONUS BWIN) -FROM €5 AND A 1ST RISK FREE BET UP TO €50."

The intention of the Respondent was to divert consumers (intended for the Complainant) to the Respondent's website. The content at the disputed domain name was setup with the intention to harvest personal and/or financial information from the Complainant's customers and gain access to accounts held with the Complainant and its subsidiaries. The behaviour of the Respondent is commonly known as "phishing".

The intention of the Respondent was therefore to attract users for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website, constituting bad faith. The Respondent has engaged in a pattern of bad faith conduct through the registration of the disputed domain name in order to prevent the Complainant from reflecting the mark in disputed domain names. In view of the distinctive nature of the BWIN trade mark, and the colossal scope of the Complainant's business, there is no way in which the Respondent could use the disputed domain name in question without falling foul of Paragraph 4(b) of the Policy.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED. P

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
2. The respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

I. Identical or Confusingly Similar

The Complainant has established the fact that it has valid rights for the numerous BWIN trademark registrations while the first trademark registrations are from 2006. The disputed domain name <bwin-pt.com> was registered on January 12, 2023, i.e. more than 15 years after the first of the BWIN trademark registrations, and fully incorporates the Complainant's trademark

BWIN in its first part. It is therefore confusingly similar to the trademark for purposes of UDRP (WIPO Jurisprudential Overview 3.0, Section 1.7).

The term “PT” and the hyphen used between words “BWIN” and “PT” seems to be an abbreviation or country code for the Portugal. This term is, therefore, a geographical term that does not distinguish the disputed domain name from the Complainant’s trademark. The term “BWIN” used in the disputed domain name is placed in the beginning of the domain name and is the dominant element of the domain name. The addition of the geographical term “PT” does not change the overall impression of the designation as being connected to the Complainant or its trademark and more likely could lead to the connection of the Complainant or its business to Portugal territory. Moreover, according to presented evidence, the disputed domain name resolved (at least on March 12, 2023) to a webpage in Portuguese language with the explicit text “BWIN PORTUGAL” and the copy of the graphic version of the Complainant’s trademark BWIN.

The addition of the generic top-level domain “.COM” does not change the overall impression of the designation as being connected to Complainant’s trademark.

The Panel therefore considers the disputed domain name <bwin-pt.com> to be confusingly similar to the Complainant’s trademark BWIN which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

As stated in the WIPO Jurisprudential Overview 3.0 at Section 2.1, while 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 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.

The Complainant has established a prima facie case (not challenged by the Respondent who did not file any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain name.

There is no available evidence that the Respondent is engaged in, or have engaged in any activity or work, i.e. legitimate or fair use of the disputed domain name, that demonstrates a legitimate interest in the disputed domain name. Moreover, the disputed domain name resolved to a webpage in Portuguese language with the explicit text “BWIN PORTUGAL” and the copy of the graphic version of the Complainant’s trademark BWIN.

There is further no evidence, that the Respondent is known by the disputed domain name or that it has a legitimate interest over the disputed domain name. It has not been proved by the Respondent that he has rights or legitimate interests in the disputed domain name or the Respondent is related with the Complainant. Neither license nor authorization has been proven to be granted to the Respondent to make any use of the Complainant’s trademark or apply for registration of the disputed domain name.

The Panel therefore considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name <bwin-pt.com> within the meaning of paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

The Respondent has registered the disputed domain name which consists of the full content of the Complainant’s trademark “BWIN” and generic term “PT” that refers to the territory of Portugal. There are no doubts that the Respondent had the Complainant and its trademark in mind when registering the disputed domain name as he redirected the disputed domain name to the webpage with the official Complainant’s BWIN logo and with the text offering the registration and the online games and bets, i.e. the areas of activities of the Complainant.

Therefore, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site by creating a likelihood of confusion with the Complainant's (Paragraph 4(b)(iv) of the Policy).

The Complainant has established the fact, that the disputed domain name creates direct association to the Complainant and is therefore capable of creating a likelihood of confusion of the internet users. The registration and usage of the disputed domain name could therefore potentially harm Complainant's business.

Considering the confusing similarity between the Complainant's trademark and the disputed domain name, long time between the registration of the Complainant's trademark and the disputed domain name, resolving of the disputed domain name to a webpage with the official Complainant's BWIN logo offering the online gambling and betting, distinctiveness of the Complainant's trademark and failure to submit a response in the UDRP proceedings and to provide any evidence of good faith use, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

The Panel therefore considers that the disputed domain name <bwin-pt.com> has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

The Panel finally considers that the Complainant has shown that the disputed domain name <bwin-pt.com> is confusingly similar to a trademark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the disputed domain name and the disputed domain name has been registered and is being used in bad faith. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. **bwin-pt.com**: Transferred

PANELLISTS

Name	Petr Hostaš
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DATE OF PANEL DECISION 2023-09-18

Publish the Decision