Panel Decision for dispute CAC-ADREU-006391

Case number	CAC-ADREU-006391
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Domain names	1bets10.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Realm Entertainment Limited

Respondent

Name	John Smith

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

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

FACTUAL BACKGROUND

The Complainant, Realm Entertainment Limited, is a limited liability company which is incorporated in Malta.

Complainant is holder of a Community Trademark “BETS10” (registration no. 009941139), with application date May 4, 2011. The trademark is registered for the following Nice Classes:

Class 36: financial sponsorship of competitions, films and TV-programs; financial affairs; monetary affairs.

Class 38: computer-aided transmission of messages and images; communications by computer terminals; electronic mail; providing telecommunications connections to a global computer network; providing user access to a global computer network (service providers); providing of user access to computer databases.

Class 41: entertainment services; organizations of competitions (education or entertainment); gaming services; entertainment information services, casino facilities (gambling); providing amusement arcade services; operating lotteries; game services provided on-line (from a computer network); betting services.

Complainant also runs a website with domain name “bets10.com” where a wide range of online gambling products and games is provided.

Respondent has registered the domain name “1bets10.eu” on June 8, 2012.

A cease and desist letter was sent to the Respondent by the Complainant on July 12, 2012, which remained without any reaction.

A. COMPLAINANT

Complainant submitted the following complaint via the online platform on November 21, 2012:

“A. The domain name 1bets10.eu is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The Complainant is the holder of the following trademark:

• Community Trademark BETS10, reg. no. 009941139, with application date May 4, 2011, registered in the following classes:

Nice class number: 36
Financial sponsorship of competitions, films and TV-programs; financial affairs; monetary affairs.

Nice class number: 38
Computer-aided transmission of messages and images; communications by computer terminals; electronic mail; providing telecommunications connections to a global computer network; providing user access to a global computer network (service providers); providing of user access to computer databases.

Nice class number: 41
Entertainment services; organizations of competitions (education or entertainment); gaming services; entertainment information services, casino facilities (gambling); providing amusement arcade services; operating lotteries; game services provided on-line (from a computer network); betting services.

A copy of the registration certificate for the trademark listed above is provided as Annex 1.

Consequently, it is shown that the Complainant has registered rights to the wording BETS10. The domain name 1bets10.eu is confusingly similar to the prior rights mentioned above. The domain name contains the trademark in its entirety, apart for the mere addition of the number 1. The addition of a top level domain, for example ".eu", is irrelevant for the assessment of confusing similarity between a trademark and a domain name. Due to the confusing similarity between the trademark BETS10 and the domain name, the requirements of paragraph B (10) (A) are fulfilled.

B. The Respondent has no rights or legitimate interests in respect of the domain name(s);

The Respondent does not have any rights in the trademark BETS10, nor is the Respondent a licensee of the Complainant. The Complainant has not given the Respondent any permission to register the trademark as a domain name.

Controls made on the website of the disputed domain name at http://www.1bets10.eu / have lead to the conclusion that the site is used for information in Turkish related to the Complainant's trademark. The links are related to the same kind of services as the Complainant's trademark comprises. The trademark BETS10 is used frequently. This strongly suggests that the domain was registered with the mark BETS10 in mind and to commercially profit from misleading consumers searching for information about the Complainants' business.

There is no evidence that the Respondent has been commonly known by the domain name or is making a legitimate non-commercial or fair use of the domain name.

Considering all of the above, it is obvious that the Respondent has no right or legitimate interest in respect of the disputed domain name subject of the Complaint.

C. The domain name was registered and is being used in bad faith.

As explained under section above, it is obvious that the Respondent was well aware of the Complainant's trademarks, and business when registering the domain name. The fact that the website of the disputed domain includes information for services related to those provided by the Complainant implies knowledge of the Complainant's trademarks and business. Additionally, the trademark BETS10 is being used frequently on the website. The knowledge of a complainant's mark as a compelling evidence of bad faith has been expressed by the NAF panel in, for example, NAF case No FA124506 Digi International Inc. v. DDI Systems.

A cease and desist letter was sent to the Respondent by the Complainant on July 12, 2012, without receiving any answer. The cease and desist letter is attached hereto as Annex 3.

As shown in the Whois database information (Annex 4), the disputed domain name was registered on June 8, 2012, which is after the Complainant's trademark was registered.

The above mentioned circumstances strongly indicate that the domain name was registered, primarily for the purpose of preventing the Complainant from being able to register and use the domain name and disrupting the business of the Complainant.

All of the above mentioned circumstances strongly suggest that the disputed domain name have been registered and used in bad faith by the Respondent."

B. RESPONDENT

The Respondent did not submit any response to the complaint.

DISCUSSION AND FINDINGS

The Panel has reviewed and considered the Complainant's complaint and annexed documents.

Paragraph B.10(a) of the ADR Rules provides that if a party fails to respond within the given deadlines, the Panel shall proceed to a decision on the Complaint, and may consider the failure to respond as grounds to accept the claims of the counterparty. However, in order for the complaint to succeed, the Complainant must demonstrate that the requirements of article 21.1 of the Commission Regulation (EC) No 874/2004 (hereinafter the "Regulation") and paragraph B.11(d)(1) of the ADR Rules are satisfied.

In accordance with article 21.1 of the Regulation and paragraph B.11(d)(1) of the ADR Rules, in order to succeed, the Complainant must establish that:
a. the disputed domain name is identical or confusingly similar to a name in respect of which a right (of the Complainant) is recognized or established by national and/or Community law; and either
b. the domain name has been registered by the Respondent without rights or legitimate interest in the domain name; or
c. the domain name has been registered or is being used in bad faith.

A:

(Since a domain name itself, such as Complainant's domain name bets10.com, does not fall into the category of names in respect of which a right is recognized or established by national and/or Community law, the Panel will only address the trademark issue.)

The Complainant is holder of a Community Trademark "BETS10" (registration no. 009941139). A Community trademark is without question "a right recognized or established by national and/or Community law".

The Respondent's registration of the disputed domain name "1BETS10.EU" is later than the priority of Complainant's trademark "BETS10".

To assess the possible "confusing similarity", the .eu suffix has to be disregarded.

The domain name contains Complainant's trademark in its entirety, apart for the mere addition of the number 1.

Conclusion:
The Panel is of the opinion that, according to the requirements of article 21.1(a.), the Complainant provided sufficient evidence that the domain name is confusingly similar to the name of Complainant's trademark.

B:

The Complainant explained that the Respondent is not a licensee of the Complainant, neither did the Complainant give permission to the Respondent to register a domain name containing Complainant's trademark.

There is no evidence that the Respondent has been commonly known by the domain name, nor that the Respondent is making a legitimate or fair use of the domain name.

Conclusion:
In the absence of any Respondent's communication or Response, the Panel agrees with the Complainant's arguments and could not determine any fact or circumstances meeting the article 21.1(b) to establish a right or legitimate interest of the Respondent for using the name.

C:

The Complainant also submitted that the Respondent registered and/or uses the disputed domain name in bad faith.

Although there is no need for the Complainant to prove bad faith anymore - given that there is no legitimate interest - the Panel agrees with the Complainant that the combination of the following facts may lead to the conclusion that the domain name was registered with the mark BETS10 in mind and to commercially profit from misleading consumers searching for information about the Complainant's business:

(1) the Respondent uses its website registered under the disputed domain name for information in Turkish related to the same kind of services as the Complainant's trademark;

(2) the Complainant submitted evidence showing that Complainant's trademark BETS10 itself is used frequently on the website registered by the Respondent under the disputed domain name;

Moreover, the combination of the above mentioned circumstances and the fact that the disputed domain name was registered on June 8, 2012, which is after Complainant's trademark, indicates that the domain name was probably registered for the purpose of preventing the Complainant from being able to register and use the domain name and disrupt Complainant's business.

Conclusion:
Given all the circumstances, it is the Panel's opinion that the disputed domain name was indeed registered and used in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name 1BETS10.EU be transferred to the Complainant.

PANELISTS

Name	**M. Didier Deneuter, Attorney at law**

DATE OF PANEL DECISION 2013-02-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: 1BETS10.eu

II. Country of the Complainant: Malta, country of the Respondent: U.K.

III. Date of registration of the domain name: June 8, 2012

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: Word CTM, reg. No. 009941139, for the term Bets10, filed on 4 May 2011, registered on 14 September 2011, in respect of goods and services in classes 36, 38 and 41.

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004): No
Why: The Respondent was not permitted by the Complainant to register the disputed domain name; he is not commonly known by the domain name and does not make a legitimate or fair use of it.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004): Yes
Why: Website used for information on the same services as Complainant offers, the Complainant´s trademark used on the website, the disputed domain name registered after the registration of the Complainant´s trademark.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant: The Respondent did not submit any response to the complaint.

XII. Is Complainant eligible? Yes