



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

DOMAIN NAME DISPUTE

ADMINISTRATIVE PANEL

DECISION

CIIDRC case number:	16135-CDRP	Decision date: November 30, 2021
Domain Name:	Unibet.ca	
Panel:	James Plotkin	
Complainant:	KINDRED IP LIMITED	
Complainant's representative:	SILKA AB/Cecilia Borgenstam	
Registrant:	Patrick Lanier	

1. PROCEDURAL HISTORY

This matter is conducted pursuant to the Canadian Dispute Resolution Policy (the "**CDRP**") and the Canadian Dispute Resolution Rules (the "**Resolution Rules**") of the Canadian Internet Registry Authority ("**CIRA**").

The procedural history was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel:

- 1.1. On October 12, 2021, Cecilia Borgenstam of Silka Law filed a Complaint pursuant to the CDRP and the Resolution Rules. The identity of the Registrant is not published in the public WHOIS database; therefore, the Registrant's name was not included in the Complaint.
- 1.2. CIRA was notified of this proceeding on October 12, 2021, and on the same date, CIRA transmitted by email to CIIDRC its verification response informing who is the Registrant of the disputed domain name. CIRA also confirmed that the < unibet.ca > domain name (the "**Domain Name**") was placed on a Registrar LOCK.
- 1.3. On October 12, 2021, CIIDRC, as Service Provider, confirmed the Complainant's compliance and commencement of the dispute resolution process.

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- 1.4. The Complainant did not file any further submissions with respect to the issue of the Registrant's legitimate interest (or lack thereof) in the disputed domain name, as permitted by section 11.1 of the CIRA Domain Name Dispute Resolution Rules Version 1.5.
- 1.5. The Complaint with the attachments was filed exclusively online; therefore, CIIDRC delivered the Complaint to the Registrant by email and by express post to the address provided by CIRA.
- 1.6. Pursuant to Resolution Rule 4.4, CIIDRC notified the Registrant of this administrative proceeding and forwarded a Notice with a login information and the link to the Complaint to the Registrant on October 12, 2021.
- 1.7. The Registrant failed to file its response by the due date of November 3, 2021.
- 1.8. The Complainant in this administrative proceeding has elected for a Panel consisting of a single member.
- 1.9. On November 11, 2021, the CIIDRC appointed me as sole panelist.

2. THE PARTIES' CONTENTIONS

- Complainant

In summary, the Complainant's position is as follows:

- It owns several active Canadian trademark registrations for UNIBET, which is identical to the Domain Name [**Complainant Annex 2**].
- The registration agreement [**Complainant Annex 6**] the Registrant entered into upon registering the Domain Name incorporates the CDRP.
- With respect to CDRP paragraph 3.1(a) (rights and confusing similarity):
 - The Complainant is one of the largest online gambling companies in the world with nearly 30 million customers worldwide as of year-end 2020.
 - The Complainant produced an annual report [**Complainant Annex 8**] in which it reported a gross revenue of GBP 1,130.2 million (\$1,933.14 million CDN) and a profit before tax of GBP 193.1 million (\$330.3 million CDN).
 - UNIBET is the Complainant's premium all-product brand under which it offers all manner of sports betting and casino games, including poker and bingo, in 20 languages across more than 100 countries.
 - The Complainant also holds a number of domain names consisting of the mark UNIBET, such as <unibet.eu> [**Complainant Annex 13**] and <unibet.fr> [**Complainant Annex 14**].
 - As noted, the Complainant's several active Canadian trademark registrations for UNIBET are identical to the Domain Name. the Complainant references the decision in *FanDuel Group Inc.*

v Cody Tritter, CIIDRC File No: 13944-CDRP as support for the proposition that an identical domain name meets the CDRP paragraph 3.1(a) threshold.

- The Complainant notes CDRP paragraph 1.2 provides that for the purposes of the policy, "domain name" means "*the domain name excluding the "dot-ca" suffix.*"
- With respect to CDRP paragraph 3.1(b) (lack of legitimate interest in the Domain Name):
 - The Complainant has not authorized the Registrant to use its Mark for any reason or in any manner, including in or as part of the Domain Name. Likewise, the Complainant is not affiliated or otherwise connected with the Registrant.
 - Nobody other than the Complainant owns a trademark registration in Canada for the term "unibet".
 - The Domain Name is not a clearly descriptive name, a generic name or a geographical name in either English or French.
 - The Domain Name is not the geographical name of the location of the Registrant's non-commercial activity or place of business.
 - The Complainant has found no evidence that the Registrant is commonly known by the Domain Name.
 - The Registrant has not used the Domain Name in good faith or for a non-commercial Activity.
 - The Domain Name resolves to a website displaying pay-per-click ("**PPC**") links exclusively in relation to betting services, as well as a "contact us" form in relation to the Domain Name. This is not a *bona fide* offering because such links compete with or capitalize on the reputation and goodwill of the Complainant's trademark, or otherwise mislead internet users.
 - The Domain Name solely comprises the term "unibet", which is a Complainant's Mark and also an identifier of its online presence.
 - The Domain Name generates a high risk of implied false affiliation with the Complainant and its activities.
- With respect to CDRP paragraph 3.1(c) (bad faith registration):
 - The Complainant's trademark registrations predate the Domain Name's registration by many years. The prevalence of the UNIBET mark on search engines, social media, etc. make it implausible that the Registrant was unaware of the Complainant's UNIBET mark when the Domain Name registered.
 - The Domain Name is almost identical to the domain names <unibet.com> or <unibet.eu> under which the Complainant establishes its online presence [**Complainant Annexes 11, 13 and 14**].

- The Domain Name resolves to a website displaying PPC links exclusively in relation to betting services, making it clear the Registrant chose the Domain Name specifically because of the Complainant's sphere of commercial offerings.
- It is reasonable to infer, based on the above, that the Registrant was aware of the Complainant's UNIBET Mark and anticipated the Complainant would be interested in reflecting said Mark under the .ca extension for Canada. Thus, the Registrant deliberately registered the Domain Name to deny the Complainant the opportunity to register the Domain Name, disrupting the Complainant's business.
- The "contact us" form of the Domain Name creates a plausible inference that the Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee.
- The Domain Name was offered for sale for USD \$2,000 shortly after it was registered, displaying links directly related to the Complainant. It has displayed PPC links most of the time ever since.
- The Domain Name resolves to a website displaying PPC links exclusively in relation to betting services. Taking into consideration that the Domain Name is identical to the Complainant's UNIBET Mark and simply substitutes the ".ca" ccTLD for .com in the Complainant's website www.unibet.com (for example), it is clear the Registrant registered the Domain Name to intentionally attempt to attract, for commercial gain, internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's mark.
- The Complainant points out that MX servers are configured in the Domain Name, which indicates a risk that Registrant potentially uses the Domain Name to create an email address, with the suffix "@unibet.ca", for deceiving purposes [**Complainant Annex 23**].

- **Registrant**

As noted above, the Registrant did not submit a response by the deadline in accordance with the Resolution Rules and did not seek an extension of time. The Panel will determine the complaint on the basis of the Complainant's unopposed submissions.

- **Remedy Sought**

The Complainant seeks an order to have the Domain Name transferred.

3. DISCUSSION AND FINDINGS

Although the Registrant filed no materials in response to the complaint, the Complainant must nonetheless establish the complaint's eligibility (i.e., that the Canadian Presence Requirement is satisfied), and meet the three-part test set out in CDRP paragraph 3.1.

For the reasons that follow, the Panel is satisfied the Complainant has succeeded in doing so.

3.1 Eligibility

The Panel finds the Complainant meets the eligibility requirement under CDRP paragraph 1.4 and the “Canadian Presence Requirement for Registrants” (the “CPR”).

CDRP paragraph 1.4 reads:

The person initiating a Proceeding (the “Complainant”) must, at the time of submitting a complaint (the “Complaint”), satisfy [the CPR] in respect of the domain name that is the subject of the Proceeding unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of the trade-mark.

The Complainant has furnished evidence that it owns several Canadian trademark registrations comprising or including the term UNIBET, including TMA577367, which was registered on March 3, 2003 [**Complainant Annex 4**].

The threshold CPR requirement is therefore met.

3.2 Requirements

In accordance with Paragraph 3.1 of the CDRP, the Complainant must show:

The Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has rights prior to the date of registration of the domain name and continues to have such Rights;

The Registrant has no legitimate interest in the Domain Name; and

The Domain Name has been registered in bad faith.

The onus is on the Complainant to prove the Domain Name is confusingly similar and was registered in bad faith. The Complainant must also provide “some evidence” that the Registrant has no legitimate interest. The onus then shifts to the Registrant to prove it does in fact have a legitimate interest.

The Panel will consider each of these requirements in turn.

3.3 Analysis

4.3.1 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

On the first limb of the analysis, the Complainant must establish two things: 1) that it has rights to a “mark” preceding the Domain Name’s registration that remain active; and 2) that the Domain Name is confusingly similar to that mark. CDRP paragraph 3.2 defines “Mark”, inter alia as follows:

(a) a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person’s predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person.

...

(c) a trade-mark, including the word elements of a design mark, that is registered in CIPO.

CDRP paragraph 3.3 states that in determining whether a domain name is “Confusingly Similar” to a Mark, the Panel shall only consider whether the domain name “so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark”.

the CDRP also states that the “.ca” suffix is excluded from the confusion analysis [**CDRP paragraph 1.2**]. That the Complainant does not possess trademark registrations including “.ca” is therefore irrelevant to the analysis.

The Domain Name is <Unibet.ca>. This is identical to several of the Complainant’s trademark registrations. The Panel also notes several of these registrations, including the aforementioned TMA577367, predate the Domain Name’s registration date, which, according to the WHOIS information, is July 29, 2015 [**Complainant Annex 2**]. The Complainant’s relevant trademark registrations are also active.

With respect to the second prong, the Domain Name and the Complainant’s trademarks are identical (less the irrelevant “.ca” suffix). Given the identity between the Domain Name and the Complainant’s Marks, the Panel need not make any further comments on confusing similarity.

In light of the foregoing, the Panel is satisfied the Complainant has met the threshold under CDRP paragraph 3.1(a) on a balance of probabilities.

4.3.2 That the Registrant has No Legitimate Interest in the Domain Name

The CDRP places the initial onus on the Complainant to establish that the Registrant lacks a legitimate interest in the Domain Name. Given the difficulty inherent in proving a negative, the CDRP only requires the Complainant to lead “some evidence” sufficient to establish a lack of legitimate interest. The Registrant may then attempt to rebut that evidence by establishing a legitimate interest on a balance of probabilities [**CDRP paragraph 4.1; [14541-CDRP \(calvinkleincanadaoutlet.ca\)](#), para. 53**].

CDRP paragraph 3.4 sets out a non-exhaustive list of six “legitimate interests”:

- (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
- (b) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;
- (c) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;
- (d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;

(e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or

(f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

The Complainant argues none of these circumstances apply. The Panel is satisfied the Complainant has met its burden of leading "some evidence" supporting this conclusion. The Registrant's non-response means this is enough for the Complainant to succeed on this limb of the analysis. Specifically, the Panel finds:

- There is no evidence the Registrant used UNIBET in good faith. As discussed in the following section, the Complainant has established the contrary on a balance of probabilities.
- UNIBET is a coined term and is therefore not "clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business".
- Again, given UNIBET is a coined term, it is not the generic name in Canada of any wares, services or business.
- The Registrant's use of the Domain Name to resolve to a PPC "domaining" page is commercial in nature. This precludes any argument that the Domain Name was registered in good faith for a non-commercial activity.
- The Registrant's name is not UNIBET, and there is no reason to believe he is commonly identified by that coined term.
- The Domain Name is not a geographical name or location.

In light of the foregoing, the Panel is satisfied the Complainant has provided "some evidence" that the Registrant lacks a legitimate interest in the Domain Name, which the Registrant, given his silence, has failed to rebut on a balance of probabilities.

4.3.3 That the Registrant has Registered the Domain Name in Bad Faith

CDRP paragraph 3.5 provides a non-exhaustive list of circumstances representing bad faith registration. Paragraph 3.5(a) reads:

The Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration.

The landing page to which the Domain Name resolves offers the Domain Name for a sale price of USD \$2,000. This is obviously an amount far in excess of the Registrant's actual registration costs. Although there is no evidence that the Registrant *directly* solicited the Complainant or a competitor, the Panel is

prepared to consider the *general offer* to sell the Domain Name for USD \$2,000 as falling within CDRP paragraph 3.5(a).

This is only one step away from the classic cybersquatting archetype in which a registrant actively solicits the complainant or a competitor to purchase the Domain Name for a disproportionate sum. In the Panel's view, the difference between the Registrant's conduct here and the classic cybersquatter's conduct is immaterial.

In light of the Panel's finding that the Registrant's conduct falls under CDRP paragraph 3.5(a) the Panel need not address the balance of the Complainant's submissions on this limb of the analysis.

The Panel concludes the Complainant has established, on a balance of probabilities, that the Registrant registered the domain name in bad faith.

5 DECISION and ORDER

For the above reasons, in accordance with paragraph 4 of the CDRP and paragraph 12 of the Resolution Rules, the Panel finds in the Complainant's favour and orders the Domain Name **TRANSFERED**.

Made at Ottawa, Ontario on November 30, 2021

SIGNATURE OF PANEL

James Plotkin

