



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.:</b>	<b>HK-2001384</b>
<b>First Complainant:</b>	<b>BB IN Technology Co., Ltd</b>
<b>Second Complainant:</b>	<b>Yang Jen-Chieh (楊仁傑)</b>
<b>Respondent:</b>	<b>Vigen Badalyan</b>
<b>Disputed Domain Name:</b>	<b>&lt;bbinpro.com&gt;</b>

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### 1. The Parties and Contested Domain Name

The First Complainant is BB IN Technology Co., Ltd, of 60 Market Square, P.O. Box 364, Belize City, Belize and the Second Complainant is Yang Jen-Chieh (楊仁傑) of 60 Market Square, P.O. Box 364, Belize City, Belize.

The Respondent is Vigen Badalyan, of SC IP Limited, Charter Place, 23-27 Seaton Place, St Helier, Jersey, JE1 1JY, Jersey.

The domain name at issue is <bbinpro.com> (“**Domain Name**”) registered by the Respondent with Eurodns S.A. of 21, rue Léon Laval, L-3372 Leudelange Luxembourg (“**Registrar**”).

### 2. Procedural History

On 4 August 2020, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“**Rules**”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“**Supplemental Rules**”) effective from 31 July 2015. The Complainant chose to have a sole panelist to handle the dispute.

On 4 August 2020, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On 5 August 2020, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On 11 August 2020, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 14 August 2020, the Complainant filed a rectified Complaint.

The ADNDRC formally notified the Respondent of the Complaint and the proceedings commenced on 17 August 2020. The ADNDRC did not receive any formal response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules. Accordingly, on 8 September 2020, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist.

On 12 September 2020, the ADNDRC appointed Ms. Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

### 3. **Factual background**

The First Complainant is a gaming software developer and supplier in Asia founded in 1999. These services are provided under the name “bbin”. The “bbin” trade mark in registered in many countries including Taiwan, the People’s Republic of China, Hong Kong, Japan and Singapore. The trade mark registrations are in the name of the Second Complainant who is the CEO of the First Complainant. The First Complainant is the beneficial owner of the trade marks and it has authorized the Second Complainant to hold the trade marks on its behalf. The “bbin” trade mark is registered and used in a distinctive stylized form. The earliest trade mark registrations submitted in evidence are:

- Hong Kong Trade Mark Registration No. 303248343 for “bbin” (Stylised) in class 41 registered on 23 December 2014; and
- Singapore Trade Mark Registration No. 40201402784Q for “bbin” (Stylised) in class 41 registered on 23 December 2014

(individually and collectively, the “**Trade Mark**”).

For convenience, the First and Second Complainants will hereafter be referred to as the Complainant.

The Complainant’s website, found at the <[www.bb-in.com](http://www.bb-in.com)>, promotes its online gaming products. The Complainant and its group of companies are active participants in the gaming events and exhibitions in Asia including the annual Global Gaming Expo Asia (“**G2E Asia**”) which it has been attending for the past seven years. G2E Asia is a premier Asian trade event and the largest regional sourcing platform for global gaming and entertainment products. Annually, more than 95% of the top Asian gaming operators attend the show. As a result of its activities, the Complainant has acquired goodwill and reputation in the Trade Mark.

The Respondent registered <[bbinpro.com](http://bbinpro.com)> on 13 April 2017. The Domain Name resolves to a website which bear the Complainant’s distinctive stylized Trade Mark prominently on the home page (“**the Website**”). The Website describes itself as an online entertainment platform and provides links to various betting and gaming sites.

### 4. **Parties’ Contentions**

#### A. **Complainant**

The Complainant’s contentions may be summarized as follows:

The Domain Name is identical or confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name has been registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

**B. Respondent**

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

**5. Findings**

**A. General**

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

**B. Identical / Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case the Domain Name consist of the Trade Mark in its entirety and the word "pro". The addition of this term after the Trade Mark does not negate the confusing similarity encouraged by the Respondent's complete integration of the Trade Mark in the Domain Name. *E.g., N.V. Organon Corp. v. Vitalline Trading Ltd., Dragic Veselin / PrivacyProtect.org*, WIPO Case No. D2011-0260; *Oakley, Inc. v. wu bingjie aka bingjie wu/Whois Privacy Protection Service*, WIPO Case No. D2010-0093; *X-ONE B.V. v. Robert Modic*, WIPO Case No. D2010-0207. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement.

The Panel finds that the Domain Name is confusingly similar to trade marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

**C. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“**WIPO Overview 3.0**”) that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that it has not authorised, licensed, sponsored or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose. There is no evidence that the Respondent is commonly known by the Domain Name nor has any trade mark rights to the “bbin” name. The use of the Complainant's distinctive stylised Trade Mark on the Website in an attempt to mislead customers that the Website is associated with the Complainant does not constitute a *bona fide* offering of goods or services or legitimate non-commercial or fair use of the Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent's has not filed a response. The Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

#### **D. Registered and Used in Bad Faith**

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when it registered the Domain Name given that the Trade Mark is well known in the field of gaming in Asia, the Website is used for activities in this same field and the fact that the Complainant's stylised Trade Mark appears prominently on the Website.

In the WIPO Overview 3.0, section 3.2.2 states as follows:

*“Noting the near instantaneous and global reach of the Internet and search*

*engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."*

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the Domain Name is also a significant factor to consider (as stated in section 3.2.1 of the WIPO Overview 3.0). The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.

The Domain Name is also being used in bad faith. The Website which provides links to various online gaming and betting sites was set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the Domain Name into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Name is likely to confuse Internet users trying to find the Complainant's website. Such confusion will inevitably result due to the incorporation of the Trade Mark as the most prominent element of the Domain Name and the stylized Trade Mark appearing on the Website. Such confusion is potentially detrimental to the Complainant given that the Respondent deliberately misleads users that it is associated with the Complainant by using the Complainant's Trade Mark on the Website.

The Respondent employs the fame of the Trade Mark to mislead users into visiting the Website instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Website are authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Name has been registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

## **6. Decision**

For the foregoing reasons, and in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <bbinpro.com> be transferred to the First Complainant BB IN Technology Co., Ltd.



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Karen Fong  
Panelist

Dated: 7 October 2020