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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204141
Party	Plaintiff 32Red Plc, Trafalgar Media Limited
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

32RED PLC., and)	
TRAFALGAR MEDIA LIMITED)	
)	
Opposers,)	
)	
v.)	Opposition No. 91204141
)	
BAYSOUND, LLC)	
)	
Applicant.)	

RE: Application No. 85/404063
MARK: 32x
Applicant: Baysound, LLC
Filed: August 22, 2011
Published: February 7, 2012

MOTION REQUESTING DECISION IN FAVOR OF OPPOSERS

Opposers, 32Red Plc. and Trafalgar Media Limited, by and through their attorneys, hereby respectfully request an order by the Board terminating Opposition No. 91204141 in favor of Opposers. The grounds for this motion are:

1. Applicant Baysound LLC (“Baysound”) has (a) failed to engage in the requisite discovery conference, (b) failed to engage in discovery, and (c) failed to present any trial testimony or evidence. Baysound has not done anything other than file an Answer in this Opposition; and
2. Baysound has stated that Baysound has no interest in this Opposition and does not intend to use the mark 32x.

Accordingly, to avoid undue delay and unnecessary utilization of Board resources, Opposers request the Board to issue an Order terminating Opposition No. 91204141 in favor of Opposers.

OPPOSERS' USE AND REGISTRATION OF THE MARK 32RED

32Red Plc. is a public company organized and existing under the laws of Gibraltar. It was incorporated on January 8, 2002. Since 2002, 32Red Plc. has used the mark 32RED in foreign commerce, in advertising, trade publications and on the internet. Trafalgar Media Limited is a wholly owned subsidiary of 32Red Plc. and the assignee of U.S. Application Serial No. 78/654867 for the mark 32RED. Opposers have registered the mark 32RED and variations thereof around the world including Community Trademark Registration No. 2814424 for the word mark "32RED" in international classes 9 and 41 dated August 16, 2002, Community Trademark Registration No. 2907426 for the design mark "32RED" in international classes 9 and 41 dated October 18, 2002, UK Registration No. 2509861 and Community Trademark Registration No. 8398695 for the word mark "32" in international class 41 dated February 27, 2009 and July 1, 2009, respectively. Opposers also own and operate the website www.32RED.com. Opposers have been operating this website since 2002.

Since 2002, Opposers have spent significant resources marketing their 32RED mark, including: (a) primary club sponsor of the UK Premier League Football Clubs Aston Villa from 2006 to 2008 and Swansea City 2010 to date – this sponsorship includes display of Opposers' 32RED mark on the front of all shirts, official replica kits and perimeter boards; (b) advertising on a fleet of 32 London taxis from 2005 whereby

Opposers' 32RED mark is displayed on the inside and outside of each taxi; (c) television campaigns on UK stations and satellite channels from 2008 to the present – each displaying Opposers' 32RED mark; (d) sponsorship of more than 100 televised horse races since 2004 – each displaying Opposers' 32RED mark; and (e) extensive internet advertising of Opposers' services and their 32RED mark.

Opposers have established rights in their 32RED mark through long, continuous and widespread use of the 32RED mark in advertising brochures, trade publications and on the internet. Such use has resulted in establishing a trade identity and has become well-known by a substantial percentage of consumers as associated with Opposers and their services. On September 23, 2005, 32Red Plc. was listed on the Alternative Investment Market for the London Stock Exchange. 32Red Plc.'s ticker symbol on the London Stock Exchange is "TTR", an acronym for Thirty Two Red.

BACKGROUND FACTS

On June 21, 2005, Trafalgar Betting & Gaming Ltd. filed with the USPTO an intent to use application for registration of the word mark 32RED in connection with various goods and services in international classes 9, 16 and 41, Serial No. 78/654867.¹ On August 2, 2012, a request to divide and a statement of use was filed. Opposers' application was divided into Serial Nos. 78/654867 and 78/981533. On December 4, 2012, Serial No. 78/981533 for the mark 32RED for the goods in Classes 9 and 41

¹ This application was subsequently assigned by Trafalgar Betting & Gaming Ltd. to 32Red Plc. In October 2011, 32Red Plc. assigned the application to Trafalgar Media Limited, a related entity, but retained an exclusive license for use and enforcement of the 32RED trademark.

matured to registration. Opposers have filed a request for extension to file a statement of use for Serial No. 78/654867 for the mark 32RED for goods in Class 16.

On July 12, 2011, Opposer learned of Baysound's use of the confusing similar mark 32X and sent Baysound a letter notifying Baysound of Opposers' mark and prior use (Opposers' use predates Baysound's purported date of first use by more than four years). In the letter, Opposers requested that Baysound cease use of its confusingly similar mark.

On August 22, 2011, in response to Opposers' letter, Baysound filed the Application to register the mark 32X. The Application is a blatant attempt by Baysound to capitalize on the goodwill and tremendous name recognition of Opposers. Consumers who see the mark 32X are likely to think that the mark is affiliated with Opposers or that the mark and its related services and website are sponsored by Opposers. The Application lists October 5, 2006 as the date of first use in commerce.

On February 24, 2012, Opposers filed a complaint with the World Intellectual Property Organization Arbitration and Mediation Center ("WIPO") against Baysound.

On March 5, 2012, Opposers filed a Notice of Opposition in this action.

On April 16, 2012, Baysound filed an Answer to the Notice of Opposition.

On May 2, 2012, WIPO issued a ruling in favor of Opposers (Exhibit 1).

Following receipt of the WIPO decision, Fred Hill, executive of Baysound, told Opposers that Baysound did not intend to pursue the Opposition or use the mark 32X (see Decl. of Mark Quayle). Since filing of its Answer, Baysound has not taken any action or

responded to any requests by Opposers (see Decl. of Ellie Hourizadeh). Baysound has effectively abandoned its position and use of the mark 32X.

**THE BOARD SHOULD ISSUE AN ORDER TERMINATING
THE OPPOSITION IN FAVOR OF OPPOSERS**

32 CFR § 2.120(g) permits the Board to enter appropriate sanctions when a party fails to comply with an order of the Board. Sanctions that may be entered by the Board include entering judgment against the disobedient party. *See* TBMP § 527.01(a) and *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000).

On March 5, 2012, the Board issued an Order stating the deadline for a discovery conference, initial disclosures, trial periods, etc. Baysound failed to comply with the Order. Baysound refused to engage in the requisite discovery conference. Baysound failed to produce initial disclosures. Baysound failed to produce expert disclosures. Baysound failed to engage in discovery. Baysound failed to produce pretrial disclosures. Baysound failed to produce any trial evidence or testimony.² Baysound's trial period ended on March 9, 2013. Baysound has willfully disregarded the Board's Order. Baysound has also stated that it does not intend to pursue this Opposition or use or registration of the mark 32X (See Decl. of M. Quayle).

² See Decl. of E. Hourizadeh.

Accordingly, to avoid unnecessary delay and the unnecessary use of Board resources, Opposers respectfully request that the Board grant this motion and issue an order terminating the Opposition in favor of Opposers.

The requisite filing fee prescribed by 37 C.F.R. § 2.6(a)(17) should be charged to Deposit Account No. 501946. If there are any additional fees due in connection with this Notice of Opposition, they should also be charged to Deposit Account No. 501946, and any excess fees should be credited to same. All correspondence relating to this matter should be directed to the undersigned attorneys for Opposers.

Respectfully submitted,

Dated: May 7, 2013

By: _____/s/_____
Ellie Hourizadeh
Attorneys for
32Red Plc. and Trafalgar Media Limited

MCDERMOTT WILL & EMERY LLP
2049 Century Park East, 38th Floor
Los Angeles, CA 90067-3208
Telephone: (310) 551-9321


I, Mark Quayle, declare as follows:

1. I am the Head of Marketing for 32Red Plc., a public company organized and existing under the laws of Gibraltar. I have personal knowledge of the facts set forth herein and, if called upon, could and would competently testify thereto under oath.

2. On or about May 2, 2012, 32Red Plc. received a copy of the ruling by WIPO. Attached hereto as Exhibit 1 is a true and correct copy of the WIPO decision.

3. On or about May 15, 2012, I had an online exchange with Fred Hill, an executive of Baysound LLC. Mr. Hill stated that upon receipt of the WIPO decision, Baysound could "no longer work in this field" and indicated that he had no further interest in the Opposition or use of the mark 32X.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this document was executed at Gibraltar on April 30, 2013.



Mark Quayle

I, Ellie Hourizadeh, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a partner at the law firm of McDermott Will & Emery LLP, attorneys for 32Red Plc. and Trafalgar Media Limited. I have personal knowledge of the facts set forth herein and, if called, could and would competently testify thereto under oath.

2. Attached hereto as Exhibit 2 is a true and correct copy of my email to John Berryhill, counsel for Baysound LLC.


3. In addition to Exhibit 2, I also left a message for Mr. Berryhill requesting a discovery conference. I did not receive a response from Mr. Berryhill or Baysound to my requests for a discovery conference.

4. I have never received any discovery requests, documents, trial testimony or expert disclosures from Baysound.

5. Aside from filing an Answer to the Notice of Opposition, Baysound has not otherwise participated in this Opposition or otherwise complied with the Board's Order of March 5, 2012.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 7, 2013, at Los Angeles, California.



Ellie Hourizadeh

EXHIBIT 1

ADMINISTRATIVE PANEL DECISION

32Red Plc., Trafalgar Media Limited v. Baysound LLC
Case No. D2012-0378

1. The Parties

The First Complainant is 32Red Plc of Gibraltar, Overseas Territory of the United Kingdom of Great Britain and Northern Ireland and the Second Complainant is Trafalgar Media Limited of Gibraltar, Overseas Territory of the United Kingdom of Great Britain and Northern Ireland (together 'the Complainant), represented by Adlex Solicitors, United Kingdom.

The Respondent is Baysound LLC of San Pablo, California, United States of America, represented by John Berryhill, Ph.D. Esq., United States of America.

2. The Domain Name and Registrar

The disputed domain name <32x.com> ('the Domain Name') is registered with Network Solutions, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 24, 2012. On February 24, 2012, the Center transmitted by email to Network Solutions, LLC a request for registrar verification in connection with the Domain Name. On February 24, 2012, Network Solutions, LLC transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the 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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced February 29, 2012. In accordance with the Rules, paragraph 5(a), the due date for Response was March 20, 2012. The Response was filed with the Center March 20, 2012.

The Center appointed Karen Fong, Richard W. Page and Sir Ian Barker as panelists in this matter on April 11, 2012. The Panel finds that it was properly constituted. Each member of 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.

On April 4, 2011, the Complainant submitted a supplemental filing to the Center in reply to the Response.

The Rules grant the Panel sole discretion to determine the admissibility of unsolicited supplemental filings. The Consensus View on this issue as set out in paragraph 4.2 in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0") states as follows:

"Panels have discretion whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting its filing would normally need to show its relevance to the case and why it was unable to provide that information in the complaint or response. Most panels that have allowed unsolicited filings have also tended to require some showing of "exceptional" circumstances. Panels which accept supplemental filing from one side typically allow the other party the opportunity to file a reply to such supplemental filing."

The Panel rules to refuse to accept the supplemental filing of the Complainant as it does not believe that it adds anything to its case and also because the Respondent did not file additional submissions. The supplemental submission has not been taken into account by the Panel in reaching its decision.

The Panel notes that in August 2011 the Respondent applied to register the trade mark 32X in the United States. This trade mark has been opposed by the Complainant. The Panel does not regard the United States opposition proceedings as domain name proceedings that is the subject of this complaint. This decision under the Policy is not intended to have any collateral estoppel or other preclusive effect upon the US trade mark opposition proceedings, and is in no way binding thereon. The Panel notes that both parties have adduced extensive arguments in relation to the nature and timing of the United States opposition proceedings. The Panel finds these arguments are irrelevant in the determination of the case in accordance with the Policy and the Panel does not intend to comment further on them.

4. Factual Background

The Complainant carries on business as a provider of online gambling services and has done so since 2002 under the trade mark 32RED. The Second Complainant is a wholly owned subsidiary of the First Complainant. The First Complainant was incorporated on January 8, 2002 under the name Trafalgar Betting and Gaming Limited. It changed its name to 32Red Plc and re-registered as a public limited company in August 2005. The Second Complainant was incorporated in July 2010. The Complainant has a current market capitalization of GBP 27.6 million. Whilst its customers are located principally in the United Kingdom, it also has customers from many other countries in the world including the United States of America. By 2006, the Complainant had already created 17,700 accounts for customers with addresses in the United States.

The Complainant advertises and promotes its "32 Red" brand extensively. This includes sponsorship deals and TV campaigns on terrestrial and satellite channels and sponsorship of televised UK horse races since 2004. The Complainant has also won numerous awards including the Best Casino award from Casinomesiter. The Complainant contends that it is commonly known by its customers and the industry as "32".

The Complainant owns the following registered trade marks:

32RED (word) under European Community trade mark number 2814424, registered on August 16, 2002;

32RED (figurative) under European Community trade mark number 2907426, registered on October 18, 2002;

32 (word) under United Kingdom trade mark number 2509861, registered on June 5, 2009

32 (word) under European Community trade mark number and 8398695, filed on July 1, 2009 and registered on January 21, 2010.

The Complainant has operated its main website at "www.32red.com" since 2002.

The Domain Name was first registered on June 4, 1996 by the company 32X Corporation in relation to web development services. The Domain Name was acquired by Fred Hill on or about July 16, 2006. It was then transferred to the Respondent on or about August 1, 2006. Mr. Hill appears to own and manage the Respondent. In 2006, the website connected to the Domain Name ('the Website') was an online gaming site branded "The Online Casino". As of October 2007, the Website included links to the Complainant's competitors such as 888.com and Party Poker.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy have been met and the Domain Name should be transferred.

Identical or Confusingly Similar

Ignoring the generic suffix ".com" when considering identity and confusing similarity, the Complainant contends that the Domain Name is confusingly similar to the Complainant's trade mark "32" as it differs only by the addition of one letter, "x". The Complainant further contends that the Domain Name is confusingly similar its "32 Red" trade mark as the substitution of "red" for "x" does not affect the overall visual and aural impact of the mark given that "32" is the dominant part of the Domain Name. The Complainant cites a United Kingdom Court of Appeal Case that it was successful in, *WHG (International) Limited (A Gibraltar Company) & Ors v. 32 Red Plc (A Gibraltar Company) (2012) [2012]EWCA Civ 19* in support of its proposition.

Rights or Legitimate Interests

The Complainant has no association with the Respondent and has not entered into any licensing arrangements with the Respondent. The Respondent is not commonly known by the Domain Name. It's pending United States trade mark application was filed after receipt of the Complainant's cease and desist letter and therefore not registered in connection with a *bona fide* offering of goods. Further, the Complainant contends that the Respondent cannot have rights or legitimate interests in the Domain Name as the Respondent has registered the Domain Name in bad faith with the intention to misleadingly divert consumers for commercial gain.

Registered and Used in Bad Faith

The Complainant contends that the Respondent registered the Domain Name for the purpose of eliciting a very substantial payment of USD 100,000 from the Complainant. The Respondent also registered the Domain Name for the purpose of disrupting the business of the Complainant by intentionally diverting business intended for the Complainant as well as for financial gain by creating a likelihood of confusion with the Complainant's trade mark. To support this contention, the Complainant notes that the Respondent operates in and is familiar with the online gaming industry and consequently is likely to have been aware of the Complainant's business and trade marks, which had an established presence in the United States at the time when the Respondent acquired the Domain Name. The Complainant further submits that the Respondent has failed to provide any coherent or plausible justification for choosing the Domain Name and concludes that the choice was motivated by knowledge of the Complainant's business and trade mark.

B. Respondent

Identical or Confusingly Similar

The Respondent contends that the only trade mark relevant to the Complaint is European Community trade mark 32RED (word), registration no. 2814424 as it is the only trade mark pre-dating the registration of the Domain Name by the Respondent. The Respondent contends that the Complainant had no rights in the number 32 in 2006, evidenced by the fact that there exist numerous trade marks which include the number 32. The Respondent contends that of the remaining portion "x" is not a typographical variant of "red", does not share any common letters, and is a different length. Accordingly, the Respondent's contention is that there is no confusing similarity between the Domain Name and the Complainant's trade mark.

Rights or Legitimate Interests

The Respondent contends that the Domain Name was acquired in 2006 due to its association with online gaming, as Mr. Hill has a background in digital technology and '32X' is a well-known gaming system in the field of computer technology. The Respondent contends that it has built up legitimate expectation interests in use of the Domain Name by using the Domain Name for a *bona fide* purpose for six years prior to notice of a dispute.

Registered and Used in Bad Faith

The Respondent contends that it was not aware of the existence of the Complainant or its website when it acquired the Domain Name.

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has clearly established registered rights in the trade marks 32RED and 32. The Panel is also satisfied that it has established unregistered rights in the trade mark 32 RED, however, the evidence submitted to establish unregistered rights in the mark 32, i.e. that it was commonly known by customers and the industry as "32" was rather thin.

For the purposes of the first limb of the UDRP test, the Consensus View in Paragraph 3.1 of the WIPO Overview 2.0 states that '*a trade mark can form a basis for a UDRP action under the first element irrespective of its date*'. (emphasis added), and indeed at least the first element of the UDRP does not impose any requirement as to the timing of the relied-upon rights. The Panel is therefore able to consider both of the Complainant's trade marks under this paragraph 6.B. regardless of the fact that the registrations for the mark 32 post date the registration of the Domain Name by the Respondent.

The trade marks are not identical to the Domain Name. The question is whether the mark is confusingly similar to the Domain Name. The test for confusing similarity under the UDRP as stated in paragraph 1.2 of the WIPO Overview 2.0 is as follows:

“The threshold test for confusing similarity under the UDRP involves a comparison between the trade mark and the domain name itself to determine likelihood of Internet user confusion. In order to satisfy the test, the relevant trade mark would generally need to be recognizable as such within the domain name, with the addition of common, dictionary, descriptive, or negative terms typically being regarded as insufficient to prevent threshold Internet user confusion. Application of the confusingly similarity test under the UDRP would typically involve a straightforward visual or aural comparison of the trade mark with the alphanumeric string in the domain name. Whilst each case must be judged on its own merits, circumstances in which a trade mark may not be recognizable as such within a domain name may include where the relied upon mark corresponds to a common term or phrase, itself contained or subsumed within another common term or phrase in the domain name.”

The WIPO Overview 2.0 also makes it clear that the applicable top-level suffix in the Domain Name, in this case “.com”, is generally to be disregarded under the confusingly similarity test. The content of the website should also be disregarded in the threshold assessment of risk of confusingly similarity under the first element of the UDRP.

The Panel considers that the addition of the letter “x” does not negate the confusing similarity encouraged by the Respondent’s complete appropriation of the 32 trade mark in the Domain Name.

The Complainant cites a United Kingdom Court of Appeal decision finding that “32” is the dominant part of the 32RED trade mark, to bolster its case. The Panel finds this argument irrelevant under this head. The test under English law in connection with the question of likelihood of confusion test is different from the UDRP test which is generally a one step test i.e. a comparison between the trade mark and domain name itself to determine likelihood of Internet user confusion. There is no regard to the goods or services in connection with which the respective marks are applied as in the case of trade mark law.

Applying the test under the UDRP, the Panel has to consider the likelihood of Internet user confusion when comparing 32 and 32RED with <32x.com> or 32 with “32x” and 32RED with “32x” as the .com suffix may be disregarded in the case. The common elements in the two marks are “32”. “32” is the first and dominant feature of both the Complainant’s trade marks as well as the Domain Name. The additional elements “red” in one of the trade marks and “x” in the Domain Name are common descriptive words and therefore insufficient to prevent threshold Internet user confusion.

The Panel finds that the Domain Name is confusingly similar to both the 32 and 32RED trade marks in which the Complainant has rights.

C. Rights or Legitimate Interests

The Panel is satisfied that the Complainant has no association with the Respondent and has not entered into any licensing arrangements with the Respondent. The Respondent’s case is that it has “expectation interests in the use of the Domain Name for a *bona fide* purpose” prior to the notice of the dispute. From what the Panel understands, the “32x” name being one associated with the Sega gaming console has particular significance in the computer technology field and hence the reason for the Respondent’s acquisition of the name to use it for casino gaming services. The Panel finds the argument difficult to follow. Had the “32x” name been acquired and used for computer gaming use, then perhaps the argument has some persuasive force. However, casino gaming and computer games services are very different services. Further in the area of casino gaming services, there is a major player that also uses the mark 32. It seems too much of a coincidence. Such use would not be considered a *bona fide* offering of goods or services since the services offered are competitive with someone who has rights to a trade mark which is confusingly similar to the Domain Name.

The Respondent alleges that the Complainant has delayed bringing a complaint for some six years since the registration and use of the Domain Name by the Respondent. As stated in paragraph 4.2 of the WIPO Overview 2.0, prior UDRP Panels have recognized that the doctrine of the defence of laches does not generally apply under the UDRP and delay in bringing a complaint does not of itself prevent a complainant from being able to succeed under the UDRP. It is not clear why the Complainant did not file the Complaint earlier. In this particular case, the Panel does not think that the fact that the Respondent has been using the Domain Name for six years gives the Respondent rights or legitimate interests in the Domain Name since the use of the Domain Name was not used in connection with a *bona fide* offering of goods or services as will be seen in paragraph 6.D. below.

The Panel does not recognize that the trade mark application filed by the Respondent gives the Respondent rights or legitimate interests in the name. The trade mark application was filed after the Respondent was notified by the Complainant of its objection to the Domain Name.

The question of rights or legitimate interests therefore turns upon the Panel's assessment of whether or not there has been registration and use in bad faith. This is considered in section D below. For reasons given there, the Panel finds that the registration and use of the Domain Name amounts to bad faith and the Respondent has therefore failed to establish that it has rights or legitimate interests in the Domain Name.

D. Registered and Used in Bad Faith

To succeed under the Policy, a Complainant must show that the Domain Name has been both registered and used in bad faith. It is a double requirement.

The date to consider for assessing whether registration was in bad faith under this requirement is the date on which the Domain Name registration was acquired by the Respondent. Paragraph 3.7 of the WIPO Overview 2.0 makes it clear that the transfer of a domain name to a third party does generally amount to a new registration under the Policy. The Panel takes that the view that in assessing whether registration of the Domain Name was made in bad faith, the relevant date for consideration is on or about 16 July 2006.

The Consensus View in Paragraph 3.1 of the WIPO Overview 2.0 states that:

“...when a domain name is registered by the respondent before the complainant's relied upon trade mark right is shown to have been first registered (whether on a registered or unregistered basis), the registration of the domain name would not have been in bad faith because the registrant could not have contemplated the complainant's then non-existent right.”

The Panel is therefore limited to the consideration of the Complainant's 32RED trade mark under this limb of the test as the trade mark registrations for the 32 trade mark post dates the Domain Name and the Complainant has not here established that it has unregistered trade mark rights in 32 prior to the registration of the Domain Name.

The Panel accepts the Complainant's contention that the Domain Name was registered in bad faith. The Complainant's evidence at Exhibit 12 shows that from 2003 to 2008 the Complainant's website had a high profile in the industry and a strong reputation based on numerous awards. Accordingly, it is unlikely that the Respondent, being involved in the online gaming industry and with casino gaming affiliates, was not aware of “www.32red.com” as an online gaming website in 2006 and that the choice of “32x” was merely coincidental. The Panel's view is that the Respondent intentionally acquired the Domain Name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trade mark as to the source of the Respondent's website and the gaming services provided therein. That being the case, the Panel does not need to decide whether the registration of the Domain Name was in bad faith under any other grounds.

The Panel also concludes that the actual use of the Domain Name was in bad faith as the website has links to the competitors of the Complainant.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <32x.com> be transferred to the Second Complainant.

Karen Fong
Presiding Panelist

Richard W. Page
Panelist

Sir Ian Barker
Panelist
Dated: April 23, 2012

EXHIBIT 2

Hourizadeh, Ellie

From: Hourizadeh, Ellie
Sent: Monday, May 07, 2012 8:54 AM
To: john@johnberryhill.com
Cc: Massey, Rohan
Subject: Baysound: Discovery Conference

Mr. Berryhill:

As you know, we represent 32Red PLC and Trafalgar Media Ltd in connection with the Opposition pending before the TTAB. In accordance with the dates set by the TTAB, I am contacting you to arrange for the discovery conference. Are you available to have a discovery conference via telephone on Wednesday, May 9, 2012 at 10:00 am PT/1:00 p.m. ET? If not, can you please propose some other times on Wed. and Thursday? Thank you.

Ellie Hourizadeh

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