

ADMINISTRATIVE PANEL DECISION

American Multi-Cinema, Inc. v. hadeMali, Jecaterina Dvorjanska,
Fedorovich Anna, Coleman Carter
Case No. D2022-1405

1. The Parties

The Complainant is American Multi-Cinema, Inc., United States of America (“United States” or “US”), represented by Husch Blackwell LLP, United States.

The Respondents are hadeMali, Hong Kong, China, Jecaterina Dvorjanska, Fedorovich Anna, Latvia, and Coleman Carter, Netherlands.

2. The Domain Names and Registrars

The disputed domain name <theamctoken.com> is registered with Nicenic International Group Co., Limited.

The disputed domain name <theamctoken.net> is registered with Eranet International Limited.

The disputed domain name <theamctoken.org> is registered with Dynadot, LLC.

The disputed domain names are each referred to in this decision as a “Disputed Domain Name” and together as the “Disputed Domain Names”.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 20, 2022, the Center transmitted by email to the Registrars requests for registrar verification in connection with the Disputed Domain Names. On April 21, April 23, and April 24, 2022, the Registrars transmitted by emails to the Center their verification responses disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on April 28, 2022, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 3, 2022.

The Center verified that the Complaint together with the amended 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 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 5, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was May 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 29, 2022.

The Center appointed Nick J. Gardner, Douglas M. Isenberg, and Marina Perraki as panelists in this matter on June 21, 2022. 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.

4. Factual Background

The Complainant is a United States company. It and its parent company AMC Entertainment Holdings Inc own and operate movie theaters throughout the United States and internationally. The Complainant’s business is at least 50 years old. Currently, the Complainant and its parent company have nearly 600 movie theatre locations throughout the United States and over 900 locations worldwide, serving approximately 200 million customers annually.

The Complainant owns over 100 trademarks and service marks throughout the world incorporating the term “AMC”, including the mark AMC. See for example US registration no 1,435,012 for “AMC” registered on March 31, 1987, in class 41 in respect of “movie theater services”. These trademarks are referred to collectively in this decision as the “AMC trademark” or the “AMC trademarks”.

Some of the AMC trademarks include a design element made up of the letters AMC in stylised form. (the “AMC Logo”)

The Disputed Domain Names were registered as follows:

<theamctoken.com> - registered on November 26, 2021;
<theamctoken.org> - registered on April 14, 2022;
<theamctoken.net> - registered on April 14, 2022.

When reviewed by the Panel, none of the Disputed Domain Names resolved to an active website. The filed evidence establishes that <theamctoken.com> and <theamctoken.org> have in the past each resolved to websites that appear to be substantially identical (the “Respondents’ Websites”). The Disputed Domain Name <theamctoken.net> has redirected to the website linked to <theamctoken.com>.

The Respondent’s’ Websites each contain a logo at the top of the landing page which is similar to the AMC Logo. Underneath this logo appears the text “The Apes Movement Community Token” and under this in larger text the words “The AMC token”. Various other content is present on the landing page including prominent links to a “white paper”. A copy of this “white paper” is in evidence. It is referred to in this decision as the “White Paper”. It makes reference to AMC Entertainment Holdings Inc and matters concerning dealings in its shares. It then describes a blockchain based scheme whereby “AMC Tokens” will be produced as follows:

“The Amc Token will have the same amount of tokens as shares circulating of the company.

The Amc Token 513,960,784
AMC Entertainment Holding Inc. 513,960,784

The Amc Token Team, the community of retail investors, and the token holders will work together to create a situation where the company may want to acquire the tokens and grant them as a symbolic award to each

stockholder in the proportion of their holdings for their loyalty.” The White Paper contains a timetable which indicates that by “Q2 2022” there will be an “Exchange Listing” and this will “achieve \$100m in Market-Cap”.

On April 14, 2022, the Complainant sent a cease and desist letter in respect of the Disputed Domain Name <theamctoken.com>. It appears the other two Disputed Domain Names were registered following receipt of that letter. A further cease and desist letter was sent on April 18, 2022.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions are set out in detail but can be summarized as follows.

The Disputed Domain Names are confusingly similar to the Complainant’s AMC trademarks.

The Respondents have no rights or legitimate interests in the term “AMC”.

The Disputed Domain Names were registered and are being used in bad faith. The Complainant says the use of the Disputed Domain Names in connection with the scheme described in the White Paper (see above) is clear evidence of bad faith. It says, “Respondent is deliberately leveraging the power of the AMC Marks in an attempt to sell unlicensed and unauthorized crypto tokens for its own pecuniary benefit”. It also alleges that named Respondent Jecaterina Dvorjanska was recently a respondent in a prior UDRP proceeding decided on December 27, 2021, in *KMD Partners, LLC v. Jecaterina Dvorjanska/James Slavin*, Claim Number: FA2111001973392. The claim was decided against her and the Complainant says this shows a pattern of conduct.

B. Respondent

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

Procedural Matters – Consolidation

A complaint is allowed to proceed with multiple respondents when “the domain names are registered by the same domain-name holder”. Rules, para. 3(c). See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section. 4.11.2, where it states: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.”

With reference to the above, the Panel agrees with the Complainant that the Disputed Domain Names are more likely than not under common control. The Disputed Domain Names <theamctoken.com> and <theamctoken.org> have in the past each resolved to websites that appear to be substantially identical, and the Disputed Domain Name <theamctoken.net> has redirected to the website linked to <theamctoken.com>. These facts suggest it is more likely than not that the Disputed Domain Names are under common control and the Panel concludes that consolidation would be fair and equitable to all parties. Furthermore, the two Disputed Domain Names <theamctoken.org> and <theamctoken.net> were registered on the same day, namely April 14, 2022, which is the day Complainant sent a cease and desist letter concerning the Disputed Domain Name <theamctoken.com>. Last, the Disputed Domain Names share the same structure, while in Respondent’s Websites, the same White Paper appeared in a link.

Procedural Matters – No response

The Panel notes that no communication has been received from the Respondents. However, given the Complaint was sent to the relevant email addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondents’ failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Names are identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and,
- (iii) the Disputed Domain Names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds the Disputed Domain Names are confusingly similar to the AMC trademarks. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662). It is established that, where a mark is recognizable within a disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark ([WIPO Overview 3.0](#), section 1.7).

It is also established that the addition of other terms (such as here “the” and “token”) to a disputed domain name would not prevent a determination of confusing similarity between the disputed domain name and the mark ([WIPO Overview 3.0](#), section 1.8).

It is also well established that the Top-Level Domain (“TLD”), in this case “.com”, “.org”, and “.net”, is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11).

Accordingly, the Panel finds that each of the Disputed Domain Names is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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 the respondent has acquired no trademark or service mark rights; or

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

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondents to register or use the Disputed Domain Names or to use the AMC trademark. The Complainant has prior rights in the AMC trademarks which precede the Respondents' acquisition of the Disputed Domain Names. The Complainant has therefore established a *prima facie* case that the Respondents do not have any rights or legitimate interests in the Disputed Domain Names and thereby the burden of production shifts to the Respondents to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Names (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

The Panel finds that the Respondents have failed to produce any evidence to establish their rights or legitimate interests in the Disputed Domain Names and the Complainant's *prima facie* case is un rebutted. Accordingly, the Panel finds the Respondents have no rights or any legitimate interests in the Disputed Domain Names and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

It is clear to the Panel that the Disputed Domain Names were deliberately created as references to the Complainant or its parent company. The Panel does not know why the Respondents' Websites contain reference to "The Apes Movement Community Token" – the remaining content of those websites including the use of a logo similar to the AMC Logo and the content of the White Paper clearly show the Respondents are targeting the Complainant or its parent company. There is no other evidence before the Panel supporting the existence of anything relating to "The Apes Movement". Accordingly, it appears as if these references may be nothing more than "an after-the-fact pretext intended only to justify misuse of Complainant's mark" - see *National Organization for the Reform of Marijuana Laws v. Industry Internet, LLC*, WIPO Case No. [D2002-0938](#). It seems to the Panel that the scheme described in the White Paper is intended to derive commercial gain by promoting a blockchain related investment and that it is using the Complainant's AMC trademarks to do so, including by incorporating the trademark in each of the Disputed Domain Names in a way that creates a likelihood of confusion. The Panel concludes that factor (iv) above applies. The Panel also notes that the Respondents have not filed a Response and hence have not availed themselves of the opportunity to present any case of good faith that they might have. The Panel infers that none exists.

Furthermore, as noted above, Respondents have lost a previous decision under the Policy, *KMD Partners, LLC v. Jecaterina Dvorjanska / James Slavin*, Forum Claim No. 1973392. This history, especially when also combined with the fact that the instant proceeding relates to three domain names, is further evidence of bad faith, under paragraph 4(b)(ii) of the Policy. See, e.g., *Inter-Continental Hotels Corporation v. James Alex, Design Factory*, WIPO Case No. [D2010-0974](#) (finding bad faith where complainant alleged that “two domain names... indicate[] a ‘pattern’ of conduct by Respondent”); *General Electric Company v. Normina Anstalt a/k/a Igor Fyodorov*, WIPO Case No. [D2000-0452](#) (“[t]he registration of several names corresponding to Complainant’s trademarks is sufficient to constitute a pattern of such conduct, and thus to constitute bad faith within the meaning of paragraph 4(b)(ii) of the Policy”); and *Telstra Corporation Limited v. Ozurls*, WIPO Case No. [D2001-0046](#) (“[a] ‘pattern of conduct’ as required in Paragraph 4.b.(ii) typically involves multiple domain names directed against multiple Complainants, but may involve multiple domain names directed against a single Complainant”).

Accordingly, the Panel finds that each of the Disputed Domain Names has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Names <theamctoken.com>, <theamctoken.org>, and <theamctoken.net> be transferred to the Complainant.

/Nick J. Gardner/
Nick J. Gardner
Presiding Panelist

/Douglas M. Isenberg/
Douglas M. Isenberg
Panelist

/Marina Perraki/
Marina Perraki
Panelist
Date: July 5, 2022