

ADMINISTRATIVE PANEL DECISION

Atomico Investment Holdings Limited v. Privacy Protection / LIUQINGRU Case No. D2022-2333

1. The Parties

The Complainant is Atomico Investment Holdings Limited, United Kingdom, represented by SafeNames Ltd, United Kingdom.

The Respondent is Privacy Protection, United States of America (“United States”) / LIUQINGRU, China.

2. The Domain Name and Registrar

The disputed domain name <atomicoventures.xyz> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2022. On June 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 30, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 30, 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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 22, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on August 2, 2022. The Panel finds that it was properly constituted. 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 European venture capital firm that invests in innovative technology companies globally, established in 2006. The Complainant, headquartered in London, United Kingdom, also operates from offices in Paris, Beijing, San Paulo, and Tokyo.

The Complainant is the owner of ATOMICCO trademarks registered in the United States (reg. no. 3679910) on September 8, 2009, in the European Union (trade mark no. 005446067) on March 10, 2008 and in Australia (trade mark no. 1260386) on February 20, 2008.

The disputed domain name was registered on February 21, 2022 and currently redirects to a third party website where the disputed domain name is listed for sale at a “buy now” price of USD 1,455.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is confusingly similar to the ATOMICCO trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

The Complainant submits the Respondent has clearly registered the disputed domain name to target the Complainant's trademark intentionally. It is inconceivable to believe the Respondent has chosen to register the disputed domain name, which comprises of the Complainant's fanciful trademark ATOMICCO with the word “ventures”, for any reason other than to target the Complainant's trademark. The addition of the word “ventures” clearly shows that the Respondent targeted the Complainant, and chose a word closely related to their business offerings.

The Complainant submits that the Respondent uses the disputed domain name to redirect to a third party website where the disputed domain name is listed for sale at a “buy now” price of USD 1,455. Such a price is far beyond what would reasonably be expected within the Respondent's out-of-pocket costs related to the disputed domain name. While the offer for sale has not been made directly to the Complainant, the circumstances surrounding the registration and use of the disputed domain name indicate bad faith and suggest the Respondent is aware of the value of the disputed domain name as a trademark, as the term “atomico” has no inherent meaning beyond its status as an already established brand of the Complainant.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

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

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid ATOMICO trademark registrations, which precede the registration of the disputed domain name.

The disputed domain name is confusingly similar to the Complainant's trademarks since it merely reproduces the ATOMICO trademark in its entirety with the addition of the term "ventures".

As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

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

- (i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks which precede the Respondent's registration of the disputed domain name. The Respondent is not using the disputed domain name, which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered and used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

As explained in the Complaint, the Complainant's trademark has been in use 13 years before the registration of the disputed domain name. These circumstances, along with the choice of additional term "ventures", which is related to the Complainant's area of business, tend to suggest that the Respondent knew of and intentionally targeted the Complainant and its trademark when registering the disputed domain name. Moreover, the Complainant submitted evidence that the disputed domain name is offered for sale at the price of USD 1,455. In accordance with paragraph 4(b)(i) of the Policy, this shall be evidence of both the registration and use in bad faith of the disputed domain name for the purposes as set out in paragraph 4(a)(i) of the Policy.

In addition, the Respondent has been a respondent in five (5) UDRP proceedings all of them involving domain names incorporating third party trademarks and the ".xyz" generic Top-Level Domain, and resolving to websites offering the relevant domain names for sale. In all those cases, it was held that Respondent registered and used those domain names in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

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 name <atomicoventures.xyz> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: August 16, 2022