

ADMINISTRATIVE PANEL DECISION

Atom Tickets LLC v. Lei Gao
Case No. D2022-2345

1. The Parties

The Complainant is Atom Tickets LLC, United States of America (“United States”), represented by SafeNames Ltd, United Kingdom.

The Respondent is Lei Gao, China.

2. The Domain Names and Registrar

The disputed domain names <atomtikes.com> and <atomtickets.com> are registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 30, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On June 30, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On June 30, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 and 4, the Center formally notified the Respondent in English and Japanese of the Complaint, and the proceedings commenced on July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2022.

The Center appointed Masato Dogauchi as the sole panelist in this matter on August 12, 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

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is an American-based company founded in 2012, operating in the entertainment industry as a movie ticketing service provider. The Complainant's services enable users not only to purchase tickets from theatres located in multiple cities across the United States of America and Canada, but also to invite people from their contact list to join a movie or share screen timings straight from the website. The Complainant has ATOM trademarks in respect of certain categories as follows:

- United States Registration No. 4919102, registered on March 15, 2016;
- International Registration No. 1435801, registered on September 26, 2018; and
- Canadian Registration No. TMA 1106605, registered on August 11, 2021.

The Complainant has registered multiple domain names featuring the ATOM trademark, such as <atomtickets.com>, <atomtickets.co>, and <atomtickets.in>. The Complainant's main website resolved by its domain name <atomtickets.com> attracts averaging over 1.5 million monthly visits in March through May 2022. The Complainant has also established a social media presence and uses the ATOM trademark, in particular, on the Facebook, Twitter, and Instagram.

Both of the disputed domain names <atomtickes.com> and <atomtikets.com> were registered on June 21, 2019. The former one redirects users to a third-party website and the latter one does not resolve to an active webpage.

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

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant contends that the words "atomtickes" and "atomtikets" in the disputed domain names contain the Complainant's ATOM trademark, and the latter part of them are obvious misspelling of the second part of the Complainant's domain name, <atomtickets.com>, *i.e.* the omission of the letter "t" between "e" and "s" in the former case and omission of "c" between "i" and "k" in the latter case. Hence, the disputed domain names are confusingly similar to the registered trademarks of the Complainant.

Second, the Complainant asserts that there is no evidence that the Respondent has trademark rights to the terms "atom" or "atom tickets" or retains unregistered trademark rights to these terms. Further, the Complainant contends that the Respondent is not its licensee and the Complainant does not grant any permission or consent to the Respondent to use their trademark, and that the Respondent has not shown any demonstrable preparation to use the disputed domain names in connection with a *bona fide* offering of goods and services. Hence, the Respondent has no rights and legitimate interest in the disputed domain names.

Third, the Complainant asserts that the Respondent's activity is a typical typosquatting which is intended to trick users seeking to locate an official website of the Complainant into visiting the disputed domain names. Hence, the disputed domain names have been registered in bad faith and are being used in bad faith.

B. Respondent

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

6.1. Preliminary Issue: Language of Proceedings

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complainant's request to that effect;
- the Respondent did not reply to the Center's Language of Proceedings email or Notification of Complaint in English and Japanese;
- the disputed domain names are in Latin script and not in Japanese script; and
- the use of Japanese language would produce undue burden on the Complainant in consideration of the absence of a Response from the Respondent.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any substantive arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (i) the disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (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 that the Complainant has registered rights in the ATOM trade mark, but not in the ATOM TICKETS trade mark. However, the Complainant is operating in the entertainment industry as a movie ticketing service provider using the brand name of ATOM TICKETS as shown in the domain names such as

<atombtickets.com> and the name used on social media. The Panel finds that the brand of ATOM TICKETS has become a distinctive identifier which consumers associate with the Complainant's service in consideration of the field of the Complainant has been in the Internet where brand names in general can acquire relatively rapid recognition. In fact, in March through May 2022, the Complainant's main website resolved by its domain name <atombtickets.com> attracts averaging over 1.5 million monthly visits. See section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Accordingly, the Panel finds that the Complainant has unregistered rights in ATOM TICKETS at least for the purposes of the Policy.

The last part of the disputed domain names, *i.e.* ".com", represents a generic Top-Level Domain, which may be disregarded in the determination of the confusing similarity between the disputed domain names and the Complainant's trade marks.

The first part of the disputed domain names, *i.e.* "atom" is identical with the Complainant's trade mark ATOM. The second part thereof is different from term "tickets" used in the Complainant's brand ATOM TICKETS. However, the difference is found in the omission of the letter "t" between "e" and "s" in one of the disputed domain name "tickes", and the omission of "c" between "i" and "k" in the other one of the disputed domain name "tikets". These are typical examples of typosquatting and the minor difference does not prevent a finding of confusing similarity. A dominant feature of the brand ATOM TICKETS is recognizable in these disputed domain names. Moreover, the disputed domain names are confusingly similar to the Complainant's registered trade mark ATOM as that trade mark is clearly recognizable in the disputed domain names and the addition of other terms do not prevent a finding of confusing similarity.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trade mark or service mark in which the Complainant has rights. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence that shows the Respondent is commonly known by the names "atombtickes" or "atombtickets", or that the Respondent is affiliated with the Complainant or authorized or licensed to use the Complainant's trade marks.

One of the disputed domain name <atombtickes.com> redirects users to a third-party website and the other one of the disputed domain name <atombtickets.com> does not resolve to an active webpage. In the circumstances of this case, these facts suggest that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or for any legitimate noncommercial or fair use.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds on the available record that the Complainant has established an unrebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

The Complainant was founded in 2012, and registered the ATOM trade mark on March 15, 2016 as the United States Registration No. 4919102 and on September 26, 2018 as the International Registration No. 1435801 with regard to its business as a movie ticketing service provider. In consideration of such facts, it is highly unlikely that the Respondent would not have known of the Complainant's rights in the trade mark or its use of its brand name at the time of the disputed domain names' registration on June 21, 2019. In addition, in light of the fact that nothing in the disputed domain names bears a reasonable relevance to the name of the Respondent, there can be found no reasonable possibility of fortuity in the Respondent's registration of the disputed domain names. The Respondent's intentional misspelling of the Complainant's brand ATOM

TICKETS in the disputed domain names and the fact that the disputed domain names are almost identical to the Complainant's domain name <atomtickets.com> support a finding of bad faith.

Noting the above, the facts that the disputed domain name <atomtickes.com> redirects users to a third-party website and that the disputed domain name <atomtikets.com> resolves to an inactive page do not prevent a finding of bad faith. See sections 3.1.4 and 3.3 of the [WIPO Overview 3.0](#).

Since the Respondent did not reply to the Complaint in this proceeding, based on the available record the Panel finds that the disputed domain names have been registered in bad faith and are being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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, <atomtickes.com> and <atomtikets.com>, be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: August 26, 2022