

ADMINISTRATIVE PANEL DECISION

IMC B.V. v. 陈凯 (chen kai)

Case No. D2022-3256

1. The Parties

The Complainant is IMC B.V., the Netherlands, represented by Merkenbureau Knijff & Partners B.V., the Netherlands.

The Respondent is 陈凯 (chen kai), China.

2. The Domain Names and Registrars

The disputed domain names <cimc-tank.net> and <imccq.com> are registered with Alibaba Cloud Computing (Beijing) Co., Ltd. The disputed domain name <imccp.com> is registered with Gname.com Pte. Ltd. Alibaba Cloud Computing (Beijing) Co., Ltd and Gname.com Pte. Ltd are referred to below separately and collectively as “the Registrar”.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 2, 2022, the Registrar transmitted by email to the Center its verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. On the same day, the Center sent an email communication to the Complainant, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent an email communication to the Parties in English and Chinese regarding the language of the proceeding. On September 5, 2022, the Complainant requested that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding. On September 6, 2022, the Complainant filed an amended Complaint in English.

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 September 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 6, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on October 11, 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.

On October 19, 2022, at the Panel's request, the Center sought information from the Registrar regarding the dates on which the Respondent acquired the registrations of the disputed domain names. On the same day, the Registrar provided its response regarding the disputed domain names <cimc-tank.net> and <imccq.com>. On October 25, 2022, the Registrar provided its response regarding the disputed domain name <imcyp.com>.

4. Factual Background

The Complainant is a trading firm that develops technology and algorithms to trade in all major asset classes in over 100 trading venues. It was founded in 1989 as "International Marketmakers Combination" and now has offices in Amsterdam, Chicago, Hong Kong, China, Mumbai, New York, Seoul, and Sydney. It owns multiple registrations for multiple trademarks including International registration number 929842 for IMC, registered on June 26, 2007, designating multiple jurisdictions, and specifying financial services; investment services; asset management; monetary affairs; and real estate services in class 36. That trademark registration remains current. The Complainant has also registered the domain name <imc.com> that it uses in connection with a website in English where it provides information about itself and its services. One particular version of that website is shown to Internet users located in the Asia-Pacific region (the "Asia-Pacific website").

The Respondent is an individual resident in China.

The disputed domain name <cimc-tank.net> was created on November 15, 2006 and acquired by the Respondent on January 15, 2022. The disputed domain name <imcyp.com> was registered on March 10, 2011 and acquired by the Respondent on April 26, 2022. The disputed domain name <imccq.com> was registered by the Respondent on October 17, 2014.

At the time of the Complaint, the disputed domain name <cimc-tank.net> resolved to a website that reproduced the format, images and contact details on the Complainant's Asia-Pacific website, but with the text translated into Chinese. The Respondent's website prominently displayed the Complainant's IMC mark in the same font, color and position as shown on the Complainant's website. The Respondent's website offered the same trading services as those offered by the Complainant but, among the contact details, it added a Taipei office accompanied by information including a QR code to download the Line communication app, which offers a mobile payment platform. The Respondent's website translated the warning notice on the Complainant's website to beware of imposter websites but added the disputed domain name <imccq.com> to the list of official or trusted domain names.

The evidence presented by the Complainant includes an online chat dated August 18, 2022 that it exchanged with a consumer who had been misled into believing that a stock trading website in Taipei associated with the disputed domain name <cimc-tank.net> and another domain name was associated with the Complainant. The consumer in question later posted a YouTube video describing how the operator of the website posed as an IMC special analyst as part of a "Fake IMC Taiwan scam".

It is not disputed that the disputed domain names <imcyp.com> and <imccq.com> recently redirected to the disputed domain name <cimc-tank.net>. According to evidence presented by the Complainant, all three disputed domain names are listed as scam websites by the Global Anti-Scam Organization. At the time of this Decision, none of the disputed domain names resolves to any active website.

5. Parties' Contentions

A. Complainant

The disputed domain names are confusingly similar to the Complainant's IMC mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is misleadingly imitating the Complainant and diverting traffic. The Complainant has not authorized the registration and use of the disputed domain names or use of its trade name or trademarks by the Respondent and there has never been a business relation or affiliation with the Respondent.

The disputed domain names have been registered and are being used in bad faith. The Complainant's rights predate the registration and use of the disputed domain names by the Respondent. The Respondent currently presents itself as an imitation of the Complainant's website and misleads consumers for traffic. This use has already caused reputational and financial damage to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreements for the disputed domain names <cimc-tank.net> and <imccq.com> are in Chinese, while the Registration Agreement for the disputed domain name <imcyp.com> is in English.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the Complainant is not acquainted with the Chinese language; the Respondent translated the contents of the Complainant's website from English to Chinese on his own website, which shows that he has sufficient knowledge of English; and the Registration Agreement for one disputed domain name is in English.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. The Registration Agreement for the disputed domain name <imcyp.com> is in English, from which it is reasonable to infer that the Respondent understands that language. Moreover, despite the Center having sent an email regarding the language of the proceeding, and the Written Notice, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in

otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Analysis and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (i) the disputed 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the IMC mark.

The disputed domain names <imcyp.com> and <imccq.com> wholly incorporate the IMC mark as their respective initial elements. Although they add other letters (either “yp” or “cq”), the mark remains clearly recognizable within each of these disputed domain names.

The disputed domain name <cimc-tank.net> wholly incorporates the IMC mark. It adds the letter “c” before the mark but, as “cimc” is not a word, the letters “imc” are not subsumed visually or aurally within a larger element and they remain recognizable within the disputed domain name. The disputed domain name also adds the word “tank” after the mark, separated from it by a hyphen. Given that the mark remains recognizable within the disputed domain name, the addition of this word does not prevent a finding of confusing similarity either. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), sections 1.7 and 1.8.

The disputed domain names also incorporate a generic Top-Level Domain (“gTLD”) extension (either “.com” or “.net”). As a standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain names and the Complainant’s trademark. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

- (ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] 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 [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

With respect to the first and third circumstances set out above, the disputed domain name <cimc-tank.net> resolved to a commercial website that was presented as the Chinese version of the Complainant's website. It reproduced the Complainant's IMC mark and the format, images and contact details on the Complainant's Asia-Pacific website, but with the text translated into Chinese. It also added the contact details of a Taipei office. However, the Complainant submits that there has never been a business relation or affiliation between it and the Respondent and that it does not have a Taipei office. The other two disputed domain names redirected to this disputed domain name and one of them (<imccq.com>) was listed on the Respondent's website as an official or trusted domain name. At the time of this Decision, none of the disputed domain names resolves to any active website. In view of these circumstances, the Panel finds that the Respondent is not using any of the disputed domain names in connection with a *bona fide* offering of goods or services, nor that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

With respect to the second circumstance set out above, the Respondent's name is shown in the Registrar's Whois database as “陈凯 (chen kai)”, not any of the disputed domain names. Nothing in the evidence shows that the Respondent has been commonly known by any of the disputed domain names.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent did not rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.

As regards registration, the Panel will assess bad faith as of the date on which the current registrant registered, or acquired the registration of, each disputed domain name. See [WIPO Overview 3.0](#), section 3.9. The Panel notes that the Respondent registered, or acquired the registration of, all the disputed domain names years after the registration of the Complainant's IMC trademark in 2007. The Respondent acquired the registration of the disputed domain name <cimc-tank.net> in 2022 and used it in connection with a website that prominently displayed the Complainant's IMC mark in the same font, color and position as shown on the Complainant's website and that was falsely presented as a Chinese version of the Complainant's website (the “IMC imposter website”). The Respondent acquired the registration of the disputed domain name <imcyp.com> in 2022 and used it to redirect to the disputed domain name <cimc-tank.net>, which resolved to the IMC imposter website. Although the disputed domain name <imccq.com> was registered in 2014, there is no evidence on the record or in the Internet archive that it has ever been used for any other purpose besides redirecting to the disputed domain name <cimc-tank.net>, which resolved to the IMC imposter website. In view of these circumstances, the Panel has reason to find

that the Respondent had the Complainant and its IMC trademark in mind when it registered, or acquired the registration of, the disputed domain names.

As regards use, the Respondent has used the disputed domain name <cimc-tank.net> in connection with the IMC imposter website, with contact details for a Taipei office of the Complainant that does not exist. The Respondent's website falsely listed the disputed domain name <imccq.com> as an official domain name of the Complainant. The evidence shows that at least one consumer has been misled by the operator of the Respondent's website into sending money. The disputed domain names <imccq.com> and <imcyp.com> have been used to redirect to the disputed domain name <cimc-tank.net>, which resolved to the IMC imposter website. The Respondent provides no explanation for its use of any of the disputed domain names. In view of these circumstances, the Panel finds that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a service on the Respondent's website within the terms of paragraph 4(b)(iv) of the Policy.

The Panel notes that the use of the disputed domain names has now changed and that they no longer resolve or redirect to any active website. This recent change in use does not alter the Panel's conclusion; if anything, it may be a further indication of bad faith.

Therefore, the Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 names <cimc-tank.net>, <imccq.com>, and <imcyp.com>, be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: October 25, 2022