

ADMINISTRATIVE PANEL DECISION

GWM Group Holding S.A. v. Adelaja Ricketts, ModavCress Case No. D2022-3294

1. The Parties

The Complainant is GWM Group Holding S.A., Luxembourg, represented by Ganado Advocates, Malta.

The Respondent is Adelaja Ricketts, ModavCress, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <gwmholdings.com> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2022. On September 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 6, 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 September 7, 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 September 10, 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 September 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2022. The Respondent did not submit a formal response. However, on September 13, 2022, the Center received an email communication from the Respondent.

The Center appointed Marilena Comanescu as the sole panelist in this matter on October 21, 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 GWM Group Holding S.A. is a public limited liability company registered in Luxembourg, providing services in the field of financial management, financial analysis, financial advise, investment services, asset and portfolio management, and other financial affairs and services. The Complainant operates through its main offices located in London, Luxembourg, Malta, Milan and Rome.

The Complainant holds trademark registrations for GWM, such as the following:

- the European Union Trade Mark No. 017642232 for GWM word filed on December 28, 2017 and registered on May 31, 2018, covering services in the International Class 36; and
- the European Union Trade Mark No. 02969830, for GWM logo, filed on December 2, 2002 and registered on January 8, 2004, covering services in the International Class 36.

The Complainant holds the domain name <gwmholding.com> and uses it to promote its services.

The disputed domain name <gwmholdings.com> was registered on June 13, 2018, and, at the time of filing the Complaint it resolved to a web page presenting its registrant as “GWM Group Holdings - Progressive Financial Asset Management” and reproducing significant portions of the content provided on the Complainant’s official website, including *inter alia*, its mission statement, goals, and objective, and listing a part of the Complainant’s executives.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its trademark; the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

On September 13, 2022, the Center received an email communication from the Respondent stating that the registrant disclosed following the Registrar’s verification is not the current holder of the disputed domain name, that such entity is an agency providing services in the field of buying and selling domain names and its contact details appears in the Whois as they use their default Whois reseller account details for their pending clients and “the Whois information was not showing the client information as expected when we update it with the client details”. Also, the Respondent informed the Center that the disputed domain name and the web hosting have been suspended. Further, it claims that one of their sub-reseller contacted it in October 2018 to transfer the disputed domain name to its client, which they did and have correspondence supporting such allegations. However, no evidence was provided. Further, the contact details of the purported client of this sub-reseller were listed, as received via WhatsApp, and the Center is advised to redirect the documents related to the current proceeding to this said individual, whose company listed has a similar name with the Complainant’s company name. Moreover, the Respondent claims to have contacted the sub-reseller asking them to seek clarification from his client regarding the allegations of the Complainant and if the client can provide any evidence to show a right of ownership of the disputed domain name, but as of the sending of their email communication no information had been received from the client.

The Rules indicate that a respondent is the holder of a domain-name registration against which a complaint is initiated. On the record before the Panel, the Panel considers the Respondent to be “Adelaja Ricketts,

ModavCress” (as confirmed by the concerned Registrar in its verification). However, the Panel notes that the existence of a potential underlying registrant would not alter the analysis in this case, and that the findings would remain equally applicable if such an underlying registrant does in fact exist.

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

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

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the GWM trademark.

The disputed domain name incorporates the Complainant’s trademark with one additional term, “holdings”. However, such addition does not prevent a finding of confusing similarity as the Complainant’s trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain (“gTLD”) (e.g., “.com”, “.info”, “.org”) may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark GWM, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use, or a *bona fide* offering of goods and services.

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See section 2.1 of the [WIPO Overview 3.0](#).

Although properly notified with regard to the present procedure, the Respondent failed to provide a substantive Response to invoke any circumstances which could demonstrate any rights or legitimate interests in the disputed domain name.

The mere allegations that the disputed domain name does not belong to it or that the status of the Whois was not updated since October 2018, are inadequate since the information in the Whois (including telephone number and email address), confirmed by the Registrar, indicates the Respondent as the registrant of record for the disputed domain name, the registrant being ultimately the person in control of the disputed domain name. Further, there is no supporting evidence provided and the details of the alleged client of the Respondent's sub-reseller indicates the name of the Complainant's company, which leads the Panel to believe that it is very likely false contact information.

According to the record before the Panel, the Respondent has used the disputed domain name in connection with a web page promoting services competing with those provided by the Complainant. This use cannot constitute fair use as it effectively impersonates and suggests sponsorship or endorsement by the trademark owner.

For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds trademark rights for GWM since at least 2002 and promotes its business under the domain name <gwmholding.com>.

The disputed domain name was registered in 2018 and incorporates the Complainant's mark together with the word "holdings", a word included in the Complainant's company and domain name. Also, under the disputed domain name, the Respondent is providing identical services to those offered by the Complainant, also copying information from the Complainant's official website.

From the above, the Panel infers that the Respondent was aware of the Complainant, its business, and trademark at the registration of the disputed domain name.

At the time of filing the Complaint, the disputed domain name resolved to a page providing services similar to those provided by the Complainant.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "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" is evidence of registration and use in bad faith.

The Respondent was using, without permission, the Complainant's trademark in order to get traffic on its web portal, and thus to obtain commercial gain from the false impression created with regard to a potential affiliation or connection with the Complainant.

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <gwmholdings.com> be transferred to the Complainant.

/Marilena Comănescu/

Marilena Comănescu

Sole Panelist

Date: November 4, 2022