

ADMINISTRATIVE PANEL DECISION

Newton Management Limited v. Andrew Sergeev and Svetlana Medvedeva Case No. D2022-3616

1. The Parties

The Complainant is Newton Management Limited, United Kingdom, represented by Reed Smith LLP, United States of America.

The Respondents are Andrew Sergeev, and Svetlana Medvedeva, Russian Federation.

2. The Domain Names and Registrars

The disputed domain name <newton-corp.com> is registered with NameCheap, Inc, and the disputed domain name <newton-corp.net> is registered with NameSilo, LLC. (Collectively the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2022. On September 29, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On September 29, 2022, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information for multiple underlying registrants disclosed by the Registrars (Privacy Service Provided by Withheld by Privacy ehf and See PrivacyGuardian.org), and inviting the Complainant to either amend the Complaint adding the Registrar-disclosed registrants as the formal Respondents and provide relevant arguments or evidence demonstrating that all the named Respondents are, in fact, the same entity and/or that all disputed domain names are under common control or indicate which domain names will no longer be included in the current Complaint. The Complainant filed an amended Complaint on September 30, 2022, including arguments on the consolidation.

The Center verified that the Complaint together with 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 Respondents of the Complaint, and the proceedings commenced on October 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2022. The Respondents did not submit any response.

Accordingly, the Center notified the Respondents' default on October 25, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on November 1, 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 subsidiary of the Bank of New York Mellon Corporation, a global investment management firm that provides investment advice to institutional clients, including pension funds, sovereign wealth funds, central banks, and charities. Bank of New York Mellon Corporation is one of the world's largest custodian banks and asset servicing companies. With more than 500 employees and GBP 89.7 billion assets under management as of June 30, 2022, the Complainant has developed a global reputation.

The Complainant owns trademark registrations for NEWTON, such as European Union trademark registration number 000268169, registered November 24, 1998, and United Kingdom trademark registration number UK00001511884, registered July 19, 1996. The Complainant has developed goodwill in its trademark and it is well known in the financial industry. The Complainant also owns domain names that include the Complainant's trademark.

The disputed domain names were registered on October 6, 2022 (<newton-corp.com>), and on August 4, 2022 (<newton-corp.net>). At the time of Complaint and the time of drafting the Decision, the disputed domain names resolved to an error page and a warning page. The disputed domain names have also both recently resolved to the same webpage, a webpage that purports to be a bank.

5. Parties' Contentions

A. Complainant

The disputed domain names have earlier resolved to the same webpage. Both are hosted on the same name servers. The Whois records indicate that both records were last updated on the same date, the same date the Financial Conduct Authority issued a notice warning consumers that the Respondent is a clone firm that has been impersonating the Complainant to carry out a scam. The Complainant argues that the listed names for the two disputed domain names are aliases for the same individual or organization, and the disputed domain names are subject to common control or ownership.

The Complainant provides evidence of trademark registrations and argues that the addition of generic descriptor "corp" does not prevent a finding of confusing similarity with the Complainant's trademark.

The Complainant asserts that the Respondents are not authorized to use the Complainant's trademark. The Respondents cannot establish rights in the disputed domain names, as it has not made any use of, or demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services. On the contrary, the Complainant submits that the Respondents' use is fraudulent and evidence of bad faith.

The Complainant argues that i) mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can, by itself, create a presumption of bad faith; (ii) the Respondents knew of the Complainant's rights in Newton Marks prior to the registration of the disputed domain names; (iii) the Respondents have used the disputed domain names to impersonate and create a false association with the Complainant; and (iv) the Respondents have taken steps to switch hosting providers to continue to make the associated website accessible to the public. As mentioned above, on August 4, 2022, the FCA issued a notice warning consumers that the individual or entity behind the <newton-corp.com> domain name

is a fraudster targeting consumers by impersonating the Complainant.

B. Respondents

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

6. Discussion and Findings

A. Procedural matters

The Complainant argues that the disputed domain names are under common control. The Panel has carefully examined the evidence, and notes that the Respondents have not – despite being given the opportunity – argued or filed any evidence to rebut the Complainant's case for consolidation. The Panel notes in particular the use of the disputed domain names to the same website, hosted on the same name servers, and updated on the same date. Based on the evidence and consideration of procedural efficiency, the Panel orders consolidation of the disputed domain names. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2. The Panel will therefore refer to “the Respondent” below.

B. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark NEWTON. The test for confusing similarity involves a comparison between the trademark and the disputed domain names. The domain names incorporate the Complainant's trademark, with the addition of “corp”. This addition does not prevent a finding of confusing similarity between the disputed domain names and the trademark.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the “.com” and “.net” generic Top-Level Domains (“gTLDs”), see [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register the disputed domain names containing the Complainant's trademark or otherwise make use of the Complainant's mark. There is no evidence that the Respondent has registered the disputed domain names as a trademark or acquired unregistered trademark rights. The Respondent has not made use of, or demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering. The Respondent's use of the disputed domain names is clearly not *bona fide*, but rather evidence of bad faith.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names in accordance with paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The Panel finds it evident from the use of the disputed domain names that the Respondent must have been aware of the Complainant and its trademarks when the Respondent registered the disputed domain names. The Respondent's use of the disputed domain names to resolve a webpage that purports to be a bank indicates an attempt to attract Internet users for commercial gain, by creating confusion with the Complainant's trademark as per paragraph 4(b)(iv) of the Policy.

Furthermore, with respect to the domain name <newton-corp.com>, it seems likely that the Respondent has used the disputed domain name in phishing or other fraudulent activity, which is supported by the warning from Financial Conduct Authority.

For the reasons set out above, the Panel concludes that the disputed domain names were registered and are being used in bad faith, within the meaning of 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 names <newton-corp.com> and <newton-corp.net> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: November 5, 2022