

## **ADMINISTRATIVE PANEL DECISION**

IMC B.V. v. Baer Justin

Case No. DCC2022-0011

### **1. The Parties**

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

The Respondent is Baer Justin, Taiwan province of China.

### **2. The Domain Name and Registrar**

The disputed domain names <imc-trading.biz> and <imc-trading.cc> are registered with Gname.com Pte. Ltd.

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 18, 2022, the Registrar 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 in the Complaint. The Center sent an email communication to the Complainant on November 21, 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 in English on November 24, 2022.

On November 21, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 23, 2022, the Complainant submitted 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 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 in English and Chinese of the Complaint, and the proceedings commenced on November 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 21, 2022.

The Center appointed Sok Ling MOI as the sole panelist in this matter on January 6, 2023. 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, a company based in the Netherlands, is one of the world's most active proprietary trading firms and a key market maker in various products listed on exchanges throughout the world. Founded in 1989 as International Marketmakers Combination (IMC), the Complainant owns offices in Amsterdam, Chicago, Hong Kong, New York City, Mumbai, Seoul, and Sydney and employs over 950 people across different countries.

The Complainant uses the trade names "IMC B.V." and "IMC Trading B.V." since 1989 and 1990 respectively. The Complainant owns and operates its website at "www.imc.com" (registered since December 29, 1997) and uses its execution platform to provide liquidity to financial markets globally.

The Complainant owns trade mark registrations for IMC word and figurative marks, for services related to "financial affairs, investment services, trading of options and securities, business and capital management and wealth / asset management", including the following:

- International Registration No. 929842 for IMC (word mark), registered since June 26, 2007; and
- International Registration No. 1488678 for IMC TRADING (word mark), registered since July 23, 2019.

The disputed domain names <imc-trading.biz> and <imc-trading.cc> were registered on September 30, 2022 and September 29, 2022, respectively. According to the evidence submitted by the Complainant, the disputed domain names resolved to websites which appear to offer a platform for cryptocurrency trading.

#### **5. Parties' Contentions**

##### **A. Complainant**

- The Complainant contends that the disputed domain names are confusingly similar to its trade mark.
- The Complainant contends that as the Complainant has not licensed or otherwise authorized the Respondent to use its trade mark, the Respondent has no rights or legitimate interests in respect of the disputed domain names.
- The Complainant contends that the disputed domain names have been registered and used to create confusion and mislead Internet users into believing that the Respondent's websites are in some way connected with or endorsed by the Complainant. The Complainant further claims that the Respondent is seeking to take advantage of the goodwill and reputation of the Complainant in order to conduct fraudulent activities.
- The Complainant therefore contends that the Respondent has registered and is using the disputed domain names in bad faith.
- For all the above reasons, the Complainant requests for the transfer of the disputed domain names 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**

Pursuant to paragraph 11(a) of the Rules, 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.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain names is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The Respondent did not respond on the language issue.

The Panel finds persuasive evidence in the present proceeding to suggest that the Respondent has sufficient knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain names are registered in Latin characters, rather than Chinese script;
- (b) the disputed domain names comprise the English word "trading"; and
- (c) the contents of the websites to which the disputed domain names resolved are entirely in English.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent in both Chinese and English of the proceeding; and
- (b) the Respondent has been given the opportunity to respond on the issue of the language of the proceeding, but did not do so; and
- (c) the Center has informed the Respondent that it would accept a Response in either English or Chinese, but the Respondent has chosen not to file a Response.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to all Parties and is not prejudicial to any of the Parties in their ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint to be translated into Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

In view of all the above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English.

## 6.2 Substantive Findings

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the domain name to be cancelled or transferred:

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

On the basis of the arguments and evidence introduced by the Complainant, the Panel concludes as follows:

### A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in IMC and IMC TRADING by virtue of its use and registration of the same as trade marks.

The disputed domain names each incorporates the Complainant's IMC and IMC TRADING trade marks in their entirety. The addition of the word "trading" and the hyphen symbol "-" does not prevent a finding of confusing similarity between the disputed domain names and the Complainant's trade marks. The addition of the generic Top-Level Domain ".biz" and country code Top-Level Domain ".cc" is a standard registration requirement and does not impact the confusing similarity assessment in this case.

Consequently, the Panel finds that the disputed domain names are identical with the Complainant's trade marks.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the domain name. However, once the complainant makes out a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to establish its rights or legitimate interests in the domain name. It may do so by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it of the dispute, the respondent's 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) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao Internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).

The Complainant has confirmed that the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the IMC or IMC TRADING trade mark or to seek registration of any

domain name incorporating any of its trade marks. The Respondent appears to be an individual by the name of "Baer Justin". There appears to be no independent objective evidence suggesting that the Respondent is commonly known by the disputed domain names or that the Respondent has any rights in the term "imc" or "imc trading".

According to the evidence submitted by the Complainant, the disputed domain names resolved to websites which appear to offer a platform for cryptocurrency trading. The Complainant also asserts that the Respondent's websites contain dubious information seemingly connecting an entity "IMC Capital LLC" with three individuals "Mark Gorton", "Alistair Brown", and "Albert An", whereas an internet search reveals these three individuals to be connected to "Tower Research Capital LLC" instead. The Complainant further asserts that the "White Paper" linked to the Respondent's websites appears to be substantially copied from the Wikipedia page summary on "Tower Research Capital LLC". The Complainant further asserts that the "Terms of Service" linked to the Respondent's websites mention the Complainant's website "www.imc.com" or an email address ending in "[...]@imc.com".

Without any accurate and prominent disclaimer of non-affiliation, the Respondent's websites convey an impression that they are official websites of the Complainant. Such use would not be a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use.

The Panel is satisfied that the Complainant has made out a *prima facie* showing that the Respondent lacks rights or legitimate interests in the disputed domain names. The burden of production thus shifts to the Respondent to establish his rights or legitimate interests in the disputed domain names. Since the Respondent has failed to respond, the *prima facie* case has not been rebutted.

Consequently, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain names.

Accordingly, the Complainant has satisfied the requirements of the second element under paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the domain name in bad faith, namely:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the 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.

The Complainant uses the trade names "IMC B.V." and "IMC Trading B.V." for more than 30 years. The Panel accepts that the Complainant's IMC or IMC TRADING trade mark is a well-known mark which also

enjoys a strong Internet presence. The Panel is satisfied that the Respondent was actually aware of the Complainant's trade marks when he registered the disputed domain names, especially since the "Terms of Service" linked to the Respondent's websites mention the Complainant's website "www.imc.com" or an email address ending in "[...]@imc.com".

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel is therefore satisfied that the Respondent's purpose of registering the disputed domain names was to trade on the reputation of the Complainant and its trade marks by diverting Internet users seeking the Complainant's products and services to his own websites for financial gain. As such, the Panel determines that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website. The circumstances referred in paragraph 4(b)(iv) of the Policy are applicable to the present case.

According to the evidence submitted by the Complainant, the Respondent had some relation to the domain names <imc-trading.net>, <imc-trading.me> and <imc-trading.one>, subject to another UDRP where the panel has issued a decision favorable to the Complainant, finding bad faith against the respondent. Further, the Parties were involved in another UDRP dispute involving the domain name <imc-trading.info>, where the panel again issued a decision favorable to the Complainant, finding bad faith against the Respondent. The Respondent appear to be engaging in a pattern of cybersquatting activities. The circumstances referred in paragraph 4(b)(ii) of the Policy are applicable to the present case.

Furthermore, efforts to send the Written Notice to the Respondent at the physical address provided by the Respondent to the Registrar (and in turn to the Center) failed which suggests that the Respondent had provided false or incomplete contact details at the time of registering the disputed domain names. This further suggests the Respondent's bad faith.

The Respondent has not filed a response to deny the Complainant's allegations of bad faith. Taking into account all the circumstances, the Panel concludes that the Respondent has registered and is using the disputed domain names in bad faith.

Accordingly, the Complainant has satisfied the requirements of the third element under 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 <imc-trading.biz> and <imc-trading.cc> be transferred to the Complainant.

*/Sok Ling MOI*

**Sok Ling MOI**

Sole Panelist

Date: February 19, 2023