

## **ADMINISTRATIVE PANEL DECISION**

Amazon Europe Core S.a.r.l. and Amazon Technologies Inc. v. Nanotech LTD, Lasha Zautashvili  
Case No. DGE2023-0001

### **1. The Parties**

The Complainants are Amazon Europe Core S.a.r.l., Luxembourg and Amazon Technologies Inc., United States of America (“United States”), represented by PETOŠEVIĆ, Ukraine.

The Respondent is Lasha Zautashvili, Nanotech LTD, Georgia.

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

The disputed domain name <myamazon.ge> is registered with Caucasus Online LLC (the .GE Registry).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 9, 2023. On January 9, 2023, the Center transmitted by email to the .GE Registry a request for registry verification in connection with the disputed domain name. On January 10, 2023, the .GE Registry transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .GE Domain Name Dispute Resolution Policy (the .GE Policy), the Rules for .GE Domain Name Dispute Resolution Policy (the .GE Rules), and the WIPO Supplemental Rules for .GE Domain Name Dispute Resolution Policy (the Supplemental Rules).

In accordance with the .GE Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint and the proceedings commenced on January 12, 2023. In accordance with the .GE Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on February 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 .GE Rules, paragraph 7.

#### 4. Factual Background

Both of the Complainants are subsidiaries of, and intellectual property holding companies for, Amazon.com, Inc. ("Amazon"). Amazon provides services in the fields of e-commerce, cloud computing and other information technology areas. For ease of reference, both Complainants, together with Amazon, are referred to below as "the Complainant".

Amazon's first retail website, "www.amazon.com", was launched in 1995. Its net sales for the third quarter of 2022 were USD 127.1 billion. Amazon now serves consumers worldwide through many country-specific websites, the layout of its consumer-facing websites sharing the same distinctive layout and functionality. Among their well-known features are a dark blue banner in the upper portion of the home page, with the AMAZON name and other key information appearing in white font. The products offered for sale are presented in a specific and uniform format, with key information about each of the products offered for sale, including the price, being positioned beneath an image of the product together with other information, such as a star rating denoting the consumers' average review rating for it.

The Complainants own many trade marks worldwide for AMAZON, including, by way of example, International Registration, number 751641, registered on September 15, 2000, in multiple classes. The Complainants also own many domain names which comprise or include the AMAZON mark.

The disputed domain name was registered on April 24, 2020. It has previously resolved to a website, headed "MYamazon", most of the content of the Respondent's website being in Georgian script. The Respondent's website offered for sale, amongst other products, a range of a well-known brand of power tools, using a format, stylization, colour palette and layout which was essentially the same as that used by Amazon's retail websites. The "About us" section of the Respondent's website stated (in translation) "Myamazon.ge is an international online store that has been successfully operating on the Georgian market since 2014. We have up to 5 million products in our arsenal...".

The disputed domain name does not presently resolve to an active website.

#### 5. Preliminary issue: Joint complaints

The First and Second Complainants have asserted that it is appropriate for their respective complaints to be dealt with within a single Complaint. In support of this contention, they have referred to section 1.4.1 and also section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")<sup>1</sup>, which considers the position of multiple complainants filing against a single respondent and explains that; "In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation".

In circumstances where both Complainants are members of the same group of companies and have advanced essentially the same complaint against the Respondent arising from the same conduct concerning its registration and use of the disputed domain name, it is appropriate for their assertions to be dealt with within the same proceedings under the Policy and it is equitable and procedurally, efficient to do so. The Panel therefore accepts that the Complaint is properly brought in its current form.

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<sup>1</sup> Given the similarities between the .GE Policy and the Uniform Domain Name Resolution Policy ("UDRP"), it is appropriate for the parties and the Panel to refer to UDRP jurisprudence, including reference to the WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

## **6. Parties' Contentions**

### **A. Complainant**

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which it has rights. It refers to its registered marks for AMAZON and says that the disputed domain name incorporates its AMAZON mark in its entirety. The addition of the prefix "my" does not prevent a finding of confusing similarity.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has no relations with the Respondent and has not granted any authorizations or licenses to use its marks. So far as the Complainant can establish, the Respondent does not have any rights in a trade mark corresponding to the disputed domain name. There is no evidence to suggest that the Respondent is commonly known by the disputed domain name. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name in that its website was obviously developed for commercial gain and in order to impersonate the Complainant's website. Moreover, an online media organization which posts articles about intellectual property infringement in Georgia has asserted that the power tools which the Respondent is selling are counterfeit.

Finally, the Complainant says that the disputed domain name was registered or is being used in bad faith. As at the date of registration of the disputed domain name, the Complainant's AMAZON mark was already well-known, enjoying worldwide recognition. Accordingly, the Respondent knew, or should have known, about its mark. The Respondent's use of misleading insignia similar to the Complainant's AMAZON marks and logos on its website, as well its use of a similar layout and appearance, confirms that, as at the date of registration of the disputed domain name, the Respondent was fully aware of the Complainant and its brand. Accordingly, the Respondent intentionally registered the disputed domain name, being confusingly similar to the Complainant's marks, and has been using it to attract Internet users by creating a false impression that the website under the disputed domain name is affiliated or endorsed by the Complainant, for the purpose of commercial gain, including for the sale of counterfeit goods. Furthermore, the article on the third-party website, which asserts that the products sold on the Respondent's website are counterfeit, confirms the Respondent's bad faith.

### **B. Respondent**

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

## **7. Discussion and Findings**

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

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

## A. Identical or Confusingly Similar

The Complainant has produced evidence of its registered trade and service marks for AMAZON, including the mark full details of which have been set out above, which thereby establish its rights in this term. When considering whether the disputed domain name is identical or confusingly similar to the Complainant's mark the country code Top-Level Domain ".ge" is disregarded as a technical requirement of registration. The disputed domain name accordingly comprises the Complainant's AMAZON trade mark, in full and without alteration, preceded by the word "my". The addition of this term does not prevent the disputed domain name from being found confusingly similar to the Complainant's mark. As explained at section 1.8 of the [WIPO Overview 3.0](#); "Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". See also *LinkedIn Corporation v. Daphne Reynolds*, WIPO Case No. [D2015-1679](#).

The Complainant's AMAZON mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, in summary, that a respondent may demonstrate that it may have rights or legitimate interests in a disputed domain name by demonstrating either that, before any notice to it of the dispute, it has been using or has made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods or services or that it has been commonly known by the domain name or that it has been making a legitimate noncommercial or fair use of the domain name.

The use of a brand, "MYamazon", on the Respondent's website which is confusingly similar to the Complainant's mark, coupled with the creation of content, the form of which replicates the appearance of the Complainant's websites does not comprise use in connection with a *bona fide* offering of goods and services. Whilst the Respondent's website contains a claim that it is a company which has been operating in the Georgian market since 2014, the close similarities between its website and the Complainant's websites and its use of a very similar trading style will inevitably (and intentionally) mislead Internet users into believing that the Respondent is, in some way, authorized by the Complainant. Although there is no direct evidence that the products offered for sale on the Respondent's website are counterfeit, the Respondent has not gone on record to deny the Complainant's assertion that this is the case, nor is it necessary for this to be established in order for the Respondent's use of the disputed domain name to be found not to comprise a *bona fide* offering of goods and services. It is sufficient that the Respondent is using its website in order intentionally to mislead Internet users into believing that it has some form of connection with the Complainant; See *eBay Inc. v. Artgrafi Multimedya Hizmetleri*, WIPO Case No. [D2008-1935](#) and also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

There is no evidence to indicate that the Respondent has been commonly known by the disputed domain name and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

Lastly, the current inactive status of the disputed domain name comprises neither a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of it.

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any response from the Respondent to the Complaint, it has failed to satisfy that burden. The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

### C. Registered or Used in Bad Faith

The fact, that following its registration of the disputed domain name, the only known use of it by the Respondent has been to resolve to a website, which has been closely modelled on the Complainant's websites, establishes both an awareness by the Respondent of the Complainant's rights as at the date of registration of the disputed domain name and an intention on its part to take unfair advantage of them. Moreover, as explained at section 3.1.4 of the [WIPO Overview 3.0](#), "[UDRP panels] have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or 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 also *Amazon Technologies, Inc. v. julan pirali, justinow justin, james kualan, jukalee alee*, WIPO Case No. [DIO2022-0058](#). The Respondent's registration of the disputed domain name is accordingly in bad faith.

As the Policy requires that it is necessary for a Complainant to establish either bad faith registration or bad faith use, the above finding is therefore determinative of the proceedings. However, for completeness, the Panel considers the question of bad faith use.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a 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 the source, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent has put the disputed domain name falls within this circumstance in that the form and content of its website will have led Internet users to believe that it was operated by the Complainant. Such a belief will have been reinforced because of the confusing similarity between the disputed domain name and the Complainant's trade mark. See, by way of example, *G4S Limited v. Ltd "Vitec"*, WIPO Case No. [DGE2022-0002](#).

The current inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding; see, for example, See also *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#). The factors that are typically considered when applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealment of its identity by its use of a privacy service, and (iv) the implausibility of any good faith use to which the disputed domain name may be put. These factors are fulfilled in the current circumstances in that: (i) the Complainant has established the repute of its AMAZON trade mark; (ii) the only use made by the Respondent of the disputed domain name to date has been in bad faith; (iii) the Respondent has sought to conceal its identity by its use of a privacy service and (iv) there is no plausible good faith use to which the disputed domain name is likely to be put by the Respondent.

For the above reasons, the Panel therefore finds that the disputed domain name is also being used in bad faith.

### 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .GE Policy and 15 of the .GE Rules, the Panel orders that the disputed domain name <myamazon.ge> be transferred to the Complainant.

/Antony Gold/

**Antony Gold**

Sole Panelist

Date: February 20, 2023