

ADMINISTRATIVE PANEL DECISION

AEW SA v. Privacy Service Provided by Withheld for Privacy ehf / Anna Schuller

Case No. D2022-2173

1. The Parties

The Complainant is AEW SA, France, represented by Inlex IP Expertise, France.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Anna Schuller, New Zealand.

2. The Domain Name and Registrar

The disputed domain name <aewuk-invest.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2022. On June 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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 June 17, 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 June 21, 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 June 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 14, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on July 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to the un rebutted information in the Complaint, the Complainant is a financial services company creating and executing real estate investment strategies on behalf of institutional investors. It is one of the largest real estate investment managers in the world with USD 93.0 billion (EUR 82.2 billion) in assets under management across all property types in North America, Europe, and the Asia Pacific. It has 800 clients, 780 employees in 17 offices across the globe.

The Complainant has registered several trademarks consisting of AEW, including the European Union Trade Mark No. 016056293 registered on May 2, 2017 (figurative) and the UK trademark No. UK00916056293, registered on May 2, 2017 (figurative), as well as trademarks consisting of AEW UK, including the European Union Trade Mark No. 009931684 registered on October 5, 2011 (figurative), the UK trademark No. UK00909931684, registered on October 5, 2011 (figurative), the European Union trademark No. 009931635, registered on October 5, 2011 (word).

The Complainant owns and operates various domain names reflecting its trademark in order to promote its services, including <aew.com> registered on May 12, 1995, or <aewuk.co.uk> registered on May 17, 2017, redirecting to its official websites.

The disputed domain name was registered on February 25, 2022. Prior to the time the Complaint was filed, the Respondent was using the website associated with the disputed domain name to resolve to a website that included the Complainant's own trademark and logo, along with a login screen that asked consumers for their username and password. The website was later made inactive and at the time of the filing of the Complaint did not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its prior trademarks, as it is composed of the trademark AEW UK placed in a leading position and of the word "invest" which is directly descriptive of the Complainant's activities.

As regards the second element, the Complainant contends that there is no business or legal relationship between the Complainant and the Respondent. The Complainant has neither authorized nor licensed the Respondent to use its trademarks in any way. Moreover, the Respondent is not commonly known as AEW UK or AEWUK-INVEST. In addition, the Complainant argues that the Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods and services, as the disputed domain name resolved to a website reproducing the Complainant's trademark and logo leading the consumer to think that the litigious website is owned by the Complainant. The website at the disputed domain name purported to be the official website of AEW UK Investment and to offer investment services, copying content from the Complainant's website. The website is no longer active as the Complainant has taken steps to obtain the deactivation of the website at the disputed domain name.

In what concerns the third element, the Complainant argues that the choice of the disputed domain name cannot be a hazard as it has no meaning, and that the Respondent was aware of the Complainant's reputed trademarks and activity as the website linked to the disputed domain name was an infringing website reproducing the Complainant's trademarks and copying content from the Complainant's website. As regards the use, the Complainant argues that the disputed domain name was registered to impersonate the Complainant and to attract Internet users to the website at the disputed domain name causing at least some visitors to be confused into believing that the Respondent's website legitimately reflects that of the Complainant. Furthermore, the website at the disputed domain name invited Internet users to fill in their username and password and offered to create an account which amounts to a fraudulent activity. Also, the Respondent impersonated the Complainant, as the contact details of the United Kingdom ("UK") company of the Complainant were indicated on the website at the disputed domain name. After receiving the takedown notice, the Registrar deactivated the website at the disputed domain name, which shows the misleading nature of the website. In addition, MX Records attached are activated, suggesting that the Respondent is intentionally attempting to take advantage of the Complainant's trademark in order to generate profits with email services attached to the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

No communication has been received from the Respondent in this case. However, given that notice of the Complaint was sent to the relevant addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent's failure to file any Response.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

6.2 Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the AEW and AEW UK trademarks. The trademark AEW UK is reproduced in its entirety in the disputed domain name. The addition of "invest" and of a hyphen does not prevent a finding of confusing similarity with the Complainant's trademark which is recognizable in the disputed domain name. The fact that a domain name wholly incorporates a complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of

other words to such trademarks. The addition of an additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

It is well accepted by UDRP panels that a generic Top-Level Domain (“gTLD”), such as “.com”, is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademarks AEW and AEW UK and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name. According to the unrebutted evidence in the Complaint, the Respondent used the disputed domain name to host a website copying (without authority) information on the Complainant’s services, as well as contact information of the Complainant’s UK company. Also, the website at the disputed domain name invited Internet users to fill in their username and password and offered to create an account. In this Panel’s view, this cannot be considered a *bona fide* offering of goods or services or a noncommercial use.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent has not replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, that includes the Complainant’s well-established trademark, carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

To fulfill the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the unrebutted assertions of the Complainant, its AEW and AEW UK trademarks were widely used in commerce well before the registration of the disputed domain name in February 2022 and are reputed. The disputed domain name is confusingly similar to the Complainant’s trademarks (reproducing the entirety of the Complainant’s trademark AEW UK along with “invest”, which is directly connected with the Complainant’s services). The website associated with the disputed domain name contained the Complainant’s trademark and logo, and was offering investment services, purportedly copying content from the Complainant’s website. Under these circumstances, the Panel considers that the Respondent has

registered the disputed domain name with knowledge of the Complainant and its trademark and that it targeted that trademark. The Respondent provided no explanations for why she registered the disputed domain name.

As regards the use, the disputed domain name resolved to a website where the Complainant's trademark and logo were displayed together with text boxes where users can enter a username and password, which may be considered as evidence of phishing. The use of a domain name for illegitimate activity such as phishing can never confer rights or legitimate interests on a respondent and such behavior is considered evidence of bad faith use (see sections 3.1.4 and 3.4 of the [WIPO Overview 3.0](#)).

It appears that the disputed domain name no longer resolves to an active website. The Panel finds that the passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible. An additional element is the DNS setup of the disputed domain name (with active MX records), which in the circumstances of this case, particularly noting the use of the disputed domain name for a website reproducing the Complainant's trademark and requesting a username and password, further supports a finding of bad faith. Further, the Respondent has provided what seems to be an incomplete contact address to the Registrar. Considering all the above, it is not possible to conceive any plausible actual or contemplated good faith registration and use of the disputed domain name by the Respondent.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and used in bad faith.

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, <aewuk-invest.com>, be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: August 4, 2022