

ADMINISTRATIVE PANEL DECISION

IMC B.V. v. Traoley Joe
Case No. D2022-3539

1. The Parties

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

Respondent is Traoley Joe, Thailand.

2. The Domain Names and Registrar

The disputed domain names <imc-trading.me>, <imc-trading.net> and <imc-trading.one> (the “Domain Names”) are all registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 23, 2022. On September 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On September 27, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on the same day, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 28, 2022.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on September 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 20, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on October 25, 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

Complainant, based in the Netherlands, is a trading firm founded in 1989 as International Marketmakers Combination (IMC). Currently, Complainant employs over 950 people, with offices in Amsterdam, Chicago, Hong Kong, China, New York City, Mumbai, Seoul and Sydney. Complainant offers trading solutions based on data and algorithms, and uses its execution platform to provide liquidity to financial markets globally.

Complainant owns registered trademarks worldwide, including:

- International Registration, No. 929842 for IMC (word mark), Registration date: July 26, 2007
- International Registration, No. 1488678 for IMC TRADING (word mark),
Registration date: July 23, 2019
- International Registration, No. 1018983 for IMC financial markets & asset management (word and design mark), Registration date: September 23, 2009
- International Registration, No. 1491138 for IMC (word and design mark),
Registration date: July 23, 2019
- International Registration, No. 1590051 for IMC (word and design mark),
Registration date: March 25, 2021

These marks have been registered for services related to financial affairs, investment services, trading of options and securities, business and capital management and wealth / asset management. Complainant's IMC and IMC TRADING trademarks will hereinafter be referred to as "IMC" trademarks. Complainant also operates and owns the domain name <imc.com>, which was registered on December 29, 1997.

Prior to filing the current Complaint, Complainant sent a cease and desist letter to Respondent through the Registrar's online contact form, on September 1, 2022, relating to each of the corresponding Domain Names, in an attempt to resolve this matter. Respondent did not respond to these letters.

The Domain Names, <imc-trading.net>, <imc-trading.me> and <imc-trading.one> were respectively registered on August 22, 2022, again August 22, 2022, and September 7, 2022. At the time of the filing of the Complaint, each of the Domain Names resolved to a webpage that offers cryptocurrency trading services.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Names are identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Names; and (iii) Respondent registered and is using the Domain Names in bad faith.

In particular, Complainant contends that it has trademark registrations for IMC and that Respondent registered and is using the Domain Names with the intention to confuse Internet users looking for *bona fide* and well-known IMC products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Names. Rather, Complainant contends that Respondent

has acted in bad faith in acquiring and setting up the Domain Names, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

(i) the domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(ii) Respondent has no rights or legitimate interests in respect of the domain names; and

(iii) the domain names were registered and are being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the IMC trademarks, as noted above. Complainant has also submitted evidence, which supports that the IMC trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the IMC trademarks.

With Complainant's rights in the IMC trademarks established, the remaining question under the first element of the Policy is whether the Domain Names, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case are, ".net", ".me" and ".one"), are identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Names are confusingly similar to Complainant's IMC trademarks. These trademarks, which are fanciful and inherently distinctive, are recognizable in the Domain Names. In particular, the Domain Names' inclusion of Complainant's trademark IMC and/or the trademark IMC TRADING in their entirety, in the latter case with an addition of a hyphen "-" between the terms "IMC" and "TRADING", does not prevent a finding of confusing similarity between each of the Domain Names and the IMC trademarks. See [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its IMC trademarks, and does not have any rights or legitimate interests in the Domain Names. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the IMC trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the IMC trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Names.

In addition, Respondent has not used the Domain Names in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, Complainant asserts that each of the Domain Names redirect to a respective website that appeared to feature and offer cryptocurrency-trading services, which are similar to the trading and financial services offered by Complainant. Respondent's websites also include links to downloadable texts which refer to Complainant's website at the <imc.com>, including the use of Complainant's IMC trademarks, reference to email customer support at an email address of "@IMC.com", and featuring services such crypto-currency trading services, which has not been rebutted by Respondent. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Names. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Names. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Names. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Names and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Names in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

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

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The Panel finds that Complainant provided ample evidence to show that registration and use of the IMC trademarks long predate the registration of the Domain Names. Complainant is also well established and known. Indeed, the record shows that Complainant's IMC trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the IMC trademarks when it registered the Domain Names, or knew or should have known that each of the Domain Names was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Names incorporating Complainant's IMC trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the IMC trademarks at the time of registration of the Domain Names and its effort to opportunistically capitalize on the registration and use of the Domain Names. In addition, while, the Domain Names include Complainant's trademark IMC and/or IMC TRADING in their entirety, which is nearly identical to Complainant's domain name <imc.com>, directly associated with Complainant's IMC trademarks and business activities, and directly evokes Complainant's activities in the field of trading and financial services, further indicates Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of each of the Domain Names is in bad faith.

In particular, Complainant asserts that each of the Domain Names redirect to a respective website that appeared to feature and offer cryptocurrency-trading services, which are similar to the trading and financial services offered by Complainant. Respondent's websites also include links to downloadable text which refer to Complainant's website at the <imc.com>, including the use of Complainant's IMC trademarks, reference to email customer support at an email address of “@IMC.com”, and featuring services such crypto-currency trading services. Such use cannot be considered in good faith.

Moreover, Respondent registered and is using the Domain Names to confuse and mislead consumers looking for *bona fide* and well-known IMC products and services of Complainant or authorized partners of Complainant. The use of the IMC mark as the dominant part of the Domain Names is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use and association of the Domain Names to divert users to a webpage that appeared to imitate Complainant's website, could result in causing confusion with Complainant's business activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case. In addition, Respondent's website also provides the opportunity for Internet users to provide personal data, which may result in use of such data for malicious or fraudulent purposes.

Moreover, the Panel also notes the distinctiveness and reputation of the IMC trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Names may be put.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Names in bad faith and Complainant succeeds under the third element of 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 Domain Names, <imc-trading.me>, <imc-trading.net> and <imc-trading.one>, be transferred to the Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: November 3, 2022