

## **ADMINISTRATIVE PANEL DECISION**

IMC B.V. v. JustinBaer, YKTS

Case No. D2022-3838

### **1. The Parties**

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

The Respondent is JustinBaer, YKTS, China.

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

The disputed domain name <imc-trading.info> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2022. On October 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 October 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 October 18, 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 October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 9, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on November 14, 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**

The Complainant is a company incorporated in the Netherlands, and it 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. The Complainant employs over 950 people and owns offices in Amsterdam, Chicago, Hong Kong, New York City, Mumbai, Seoul and Sydney.

The Complainant is the exclusive owner of a number of registered trademarks consisting of or including IMC or IMC TRADING, including the International trademark registration No. 929842 for IMC registered on June 26, 2007 and the International trademark registration No. 1488678 for IMC TRADING registered on July 23, 2019. The Complainant has registered the domain name <imc.com> since December 28, 1997, that it uses to host its main online location.

The disputed domain name was registered on September 30, 2022 and at the date of the Complaint it resolved to a webpage offering cryptocurrency trading services. At the date of the Decision, it resolves to a warning page stating that the website cannot provide a secure connection.

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

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

The Complainant argues that the disputed domain name is identical to the Complainant's trade names, domain name and registered trademarks IMC and IMC TRADING. Since the disputed domain name appears to be used for cryptocurrency-trading services, these services are clearly highly similar to the trading and financial services offered by the Complainant.

As regards the second element, the Complainant argues that it has not authorized the registration and use of the disputed domain name, or use of its trade names and trademarks by the Respondent. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and the Respondent is not commonly known by the disputed domain name. By operating the website at the disputed domain name, the Respondent is seeking to take advantage of the reputation of the Complainant's company names and trademarks.

With respect to the third element, the Complainant argues that the Complainant's trademark rights predate the registration and use of the disputed domain name by the Respondent. The use of the disputed domain name is in bad faith as the Respondent presents itself as an affiliate of the Complainant. The website at the disputed domain name includes links to the Complainant's website and contact details with the Complainant's email address. The Complainant denies connection with the Respondent. The disputed domain name appears to be used for cryptocurrency-trading services, which are highly similar to the trading and financial services offered by the Complainant. However, most of the links on the website at the disputed domain name do not work or only work after connecting a person's wallet (for cryptocurrency) to the website.

## **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 the Complaint was sent to the relevant address disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP 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. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default.

### **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 proved its rights over the IMC and IMC TRADING trademarks.

The disputed domain name incorporates the trademark IMC TRADING in its entirety, with the only difference that in the disputed domain name a hyphen is added between the two words of the trademark, which does not in the view of the Panel prevent the Complainant's trademark from being recognizable within the disputed domain name. Many UDRP panels have found that a disputed domain name is confusingly similar where the relevant trademark is recognizable within the disputed domain name. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The disputed domain name is also confusingly similar to the Complainant's IMC trademark, which is recognisable in the disputed domain name as well.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".info", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 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 IMC and IMC TRADING 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. Rather, according to the un rebutted evidence submitted with the Complaint, the website at the disputed domain name resolved to a website that appeared to offer cryptocurrency-trading services, which are similar to the trading and financial services offered by the Complainant. The website at the disputed domain name also included links to the Complainant's website and contact details with the Complainant's email address, in the absence of authorization from the Complainant. In the Panel's view, such use demonstrates neither a *bona fide* offering of goods nor a legitimate interest of the Respondent within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Furthermore, the nature of the disputed domain name 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](#).

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

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**

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name is confusingly similar to the Complainant's trademarks and resolved to a website that appeared to offer cryptocurrency-trading services, which are similar to the trading and financial services offered by the Complainant. Given the distinctiveness and renown of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks.

By registering and using the disputed domain name to resolve to a website offering similar services with those of the Complainant and links to the Complainant's website and contact details with the Complainant's email address without authorization, the Respondent has intentionally attempted to attract, for commercial gain, Internet users, by creating a likelihood of confusion with the Complainant's trademark.

Moreover, the Respondent has not 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. The disputed domain name currently leads to a warning page, which reinforces the inference of bad faith registration and use.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

## **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, <imc-trading.info> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: November 28, 2022