

ADMINISTRATIVE PANEL DECISION

Alticor Inc. v. Корченко Олексій Вікторович / Korchenyuk Oleksiy Viktorovich
Case No. D2023-5385

1. The Parties

The Complainant is Alticor Inc., United States of America ("United States"), represented by Baker McKenzie Ukraine B.V., Ukraine.

The Respondent is Корченко Олексій Вікторович / Korchenyuk Oleksiy Viktorovich, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <uaway.shop> is registered with Hosting Ukraine LLC (ua.ukraine) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on December 28, 2023. On December 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 29, 2023, 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 (Privacy Protection, Hosting Ukraine LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2024, 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 amendment to the Complaint in English on January 8, 2024.

On January 5, 2024, the Center informed the Parties in Russian and English, that the language of the Registration Agreement for the disputed domain name is Russian. On January 8, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 the Respondent in Russian and English of the Complaint, and the proceedings commenced on January 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 12, 2024.

The Center appointed Alissia Shchichka as the sole panelist in this matter on February 23, 2024. 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

Established in 1959, the Complainant is a well-known direct selling company boasting an extensive product line of more than 350 items. This diverse range includes cosmetics, skin-care products, hair-care products, dietary food supplements, nutritional foods, air and water treatment systems, detergents, all-purpose cleaners, and more. Additionally, the Complainant offers hotel and real estate services. Operating through an extensive network of over one million independent business owners, the Complainant distributes the AMWAY brand and other products globally, spanning 100 countries and territories. In 2019, the Complainant reported total global sales surpassing USD 8.4 billion.

The Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its brand AMWAY, including, but not limited to the following:

- United States trademark registration No. 4289794, registered on February 12, 2013, for the word mark AMWAY, in class 3;
- European Union trademark registration No. 000193888, registered on February 5, 1999, for the word mark AMWAY, in classes 3, 5, 16, 21, 25, and 35;
- Ukrainian trademark registration No. 4423, registered on April 15, 1994, for the word mark AMWAY, in classes 3, 5, 16, 21, 25, and 35.

The Complainant also owns more than 650 generic Top-Level Domain ("gTLD") names, which include <amway.com> (registered on October 9, 1995), <amwayopportunity.com> (registered on December 4, 1997), <amwaylive.com> (registered on December 22, 1999), and other domain names containing the AMWAY trademark. The Complainant also promotes its business at "www.amway.ua".

According to the Registrar-provided WhoIs information for the disputed domain name, the Respondent is a resident of Ukraine and registered the disputed domain name on November 2, 2022. At the time of this Decision, the disputed domain name leads to a website currently inaccessible due to expired hosting. However, the Complainant has provided evidence that previously, the disputed domain name directed to a website that offered a range of products, including cosmetics and cleaners. These products were traded under various trademarks owned by the Complainant, including the AMWAY mark. Additionally, the website provided information about the origin of the term "Amway", explaining it as a combination of the words "America" and "way".

The Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant submits that it enjoys a global reputation in its AMWAY trademark.

According to the Complainant, the disputed domain name is confusingly similar to its AMWAY trademark, as it incorporates a notably similar approximation, differing by only one letter (“u” instead of “m”). Furthermore, the disputed domain name is intentionally designed to create a direct semantic association with the AMWAY trademark by substituting the geographical reference “am” (for “American”) with “ua,” presumably referencing the country code for “Ukraine”. Regarding the gTLD “.shop” within the disputed domain name, the Complainant requests that the Panel disregard it under the first element, as it is a standard registration requirement.

Furthermore, the Complainant contends that the Respondent lacks rights or legitimate interests concerning the disputed domain name for several reasons: (1) the Complainant’s rights precede the Respondent’s registration of the disputed domain name; (2) the Respondent is not affiliated with nor authorized by the Complainant to use the AMWAY trademark in the disputed domain name; (3) the website linked to the disputed domain name falsely conveyed an affiliation with the Complainant; and (4) the Respondent fails to meet the criteria for nominative fair use, as outlined in the Oki Data test (*Oki Data Americas, Inc. v. ASD, Inc.* WIPO Case No. [D2001-0903](#)). Specifically, the “www.uaway.shop” website lacks any indication that the Respondent is not affiliated with or endorsed by the Complainant, even during the purchasing process.

Finally, the Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith for the following reasons: (1) the Complainant’s AMWAY trademark is well known and famous worldwide, (2) the Respondent’s use of the disputed domain name to purport to sell the Complainant’s products shows that at the time of the registration of the disputed domain name the Respondent clearly knew and targeted the Complainant’s prior registered and famous AMWAY trademark, (2) the website under the disputed domain name is unambiguously designed to look like an official website of the Complainant, including original marketing materials and images of the Complainant’s products and AMWAY logo in the browser tab, and (3) while analyzing the website under the disputed domain name, the Complainant comes to the conclusion that it is identical to the websites under the domain names that were successfully opposed and transferred to the Complainant in the earlier *Alticor Inc. v. Alex Istreamco*, WIPO Case No. [DUA2021-0026](#) relating to the domain name <amway-market.com.ua> and the *Alticor Inc. v. Alex M*, WIPO Case No. [D2023-1809](#) relating to the domain name <ua-way.com>. The Complainant also asserts that the Respondent may also been involved in earlier proceedings related to the disputed domain names <amway-market.com.ua> and <ua-way.com> considering the similar use of the domain names.

Therefore, the Complainant alleges that the registration and use of the disputed domain name was, and currently is, in bad faith, contrary to the Policy and the Rules.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Noting the Respondent’s mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should.

The Panel notes that the Written Notice was not delivered to the Respondent's address in Ukraine. However, the Notification of Complaint emails were apparently delivered to the Respondent's email address provided by the Registrar, and the Respondent has not opposed to the continuation of the proceeding.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

The Panel therefore concludes that the Parties have been given a fair opportunity to present their case, and that the administrative proceeding should take place with due expedition, and that the Panel will proceed to a Decision accordingly.

6.2. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons. Firstly, according to the Complainant, the Respondent's familiarity with the English language is evident in its ability to use the words "ua" and "way" in the composition of the disputed domain name and the content of the related website. Secondly, given the abusive nature of the disputed domain name, which targets the Complainant's trademarks, it would not be fair or equitable to require the Complainant to spend the unnecessary time and expense of translating its pleadings into another language.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.5.1).

The Panel notes that the Center has sent its communications to the Respondent in both English and Russian and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a response in either English or Russian or any objections to the Complainant's request that the proceeding be conducted in English.

The Panel is proficient in both English and Russian, capable of reviewing all the documents and materials in both languages and giving full consideration to the Parties' respective arguments.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.3. Substantive Issues

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

- (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 has been registered and is being used in bad faith.

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant's AMWAY trademark is recognizable within the disputed domain name, as the latter differs therefrom by adding one letter "u" at the beginning and removing the letter "m" in the mark. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel also finds that the content of the website at the disputed domain name confirms the confusing similarity as the Respondent has attempted to target the Complainant's AMWAY trademark through the disputed domain name. [WIPO Overview 3.0](#), section 1.15.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the AMWAY trademarks or to seek registration of any domain name incorporating the trademarks. The Respondent is also not known to be associated with the AMWAY trademarks, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

Based on the available record, the Panel finds that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. [WIPO Overview 3.0](#), section 2.4.

Currently, the disputed domain name merely resolves to inactive page. Previously, as demonstrated by the Complainant, the disputed domain name resolved to a webpage that attempted to impersonate the Complainant and advertised the Complainant's products. Additionally, the Respondent has failed to disclose the non-existing relationship with the Complainant, even when visitors were in the process of making a purchase. Consequently, the Respondent has not met at least one criterion outlined in the Oki Data test, which establishes nominative (fair) use by resellers. [WIPO Overview 3.0](#), section 2.8.

Accordingly, the Complainant has provided evidence supporting its prima facie case that the Respondent lacks any rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Complainant's AMWAY trademark substantially predates the Respondent's registration of the disputed domain name. The Complainant is also well established and widely recognized. In fact, given the Complainant's global reputation and its trademark registrations, the Panel deems it highly unlikely that the Respondent was unaware of the Complainant's rights in the said trademarks. The Panel considers that with a simple Google search, the Respondent could have easily discovered the existence of the Complainant. Therefore, the Respondent knew or should have known the Complainant's trademarks at the time of registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Moreover, the Respondent's knowledge of the Complainant and its trademarks can be readily inferred from the Respondent's use of the Complainant's mark and logo on the website at the disputed domain name, which previously attempted to impersonate the Complainant and promoted products sold by the Complainant.

Therefore, in the Panel's view, 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 trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its websites. Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of registration and use of a domain name in bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Upon reviewing the available evidence, the Panel concludes that the current non-use of the disputed domain names does not preclude a finding of bad faith under the circumstances of this case, as established in the landmark UDRP decision *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Based on the available record, the Panel finds that the Complainant has established the third element 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 name <uaway.shop> be transferred to the Complainant.

/Alissia Shchichka/

Alissia Shchichka

Sole Panelist

Date: March 8, 2024