

ADMINISTRATIVE PANEL DECISION

IMC B.V. v. jame bende
Case No. D2024-5018

1. The Parties

The Complainant is IMC B.V., Netherlands (Kingdom of the), represented by DLA Piper US LLP, United States of America (“United States”).

The Respondent is jame bende, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <imcoinapps.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2024. On December 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 2024, 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 (unidentified registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 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 amended Complaint in English on December 6, 2024.

On December 6, 2024, the Center informed the parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On December 6, 2024, the Complainant requested English to 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 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 in Chinese and English of the Complaint, and the proceedings commenced on December 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 2, 2025.

The Center appointed Karen Fong as the sole panelist in this matter on January 9, 2025. 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

Founded in 1989, the Complainant provides financial and investment services with offices in Amsterdam, Netherlands (Kingdom of the), the United States, Australia, India, the United Kingdom, and Hong Kong, China trading primarily on the basis of data and algorithms and using its platform to provide liquidity to financial markets globally under the name "IMC". The Complainant was named the 2023 Market Maker of the Year at the FOW (Future and Options World) International Awards.

The IMC trade mark is registered in many different jurisdictions including the following:

- Benelux Trade Mark Registration No. 816010 for IMC registered on April 5, 2007;
- United States Trade Mark Registration No. 3643617 for IMC registered on June 23, 2009;
- Hong Kong, China Trade Mark Registration No. 306286528 for IMC and device (the "IMC Logo") registered on July 4, 2023.

(individually and collectively referred to as the "Trade Mark").

The Complainant's main website is found at the domain name <imc.com>. The website bears the Trade Mark and the IMC Logo prominently on the home page.

The Respondent who appears to be based in Hong Kong, China registered the disputed domain name on November 1, 2024. The disputed domain name resolves to a website which bears the Trade Mark and the IMC Logo (the "Website"). The Website is a financial trading platform which appears to allow users to "Buy Crypto" once a user signs up to it.

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 contends that the disputed domain name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceedings

The language of the Registration Agreement for the disputed domain name is Chinese. 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 proceedings shall be the language of the registration agreement. The Complaint was filed in English. The Complainant requested that the language of the proceedings be English for the following main reasons:

- The Complainant's global general counsel is based in the United States;
- The disputed domain name incorporates the words "coin" and "apps" which are English words;
- Allowing the dispute to proceed in Chinese would be unduly onerous on the Complainant to have to bear the additional costs and associated delays if it has to translate the Complaint.

The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either English or Chinese despite being duly notified by the Center in both English and Chinese of the language of the proceedings and of the commencement of the proceedings.

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).

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

6.2. Substantive Issues

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Trade Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the letters "oin" after the letter "c" in the Trade Mark IMC to form the word "coin" and the word "apps" may bear on assessment of the second and third elements, the Panel finds the addition of these elements does not prevent a finding of confusing similarity between the disputed domain name and the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

While 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 often impossible 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. 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 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 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.

Moreover, the nature of the disputed domain name as it includes the Trade Mark followed by the letters “oin” to form the word “coin” and “apps” which are descriptive of the Complainant’s services, coupled with the use of the disputed domain name to resolve to the Website in which the Respondent tries to impersonate the Complainant, affirms the Respondent’s intention of taking unfair advantage of the likelihood of confusion between the disputed domain name and the Complainant as to the origin or affiliation of the Website.

Based on the available record, 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 Respondent must have been aware of the Trade Mark when he registered the disputed domain name given that the Website displays the Trade Mark and the IMC Logo. It is therefore implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent’s choice of the disputed domain name without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1). The disputed domain name falls into the category stated above and the Panel finds that registration is in bad faith.

The disputed domain name is also being used in bad faith. The unauthorised use of the Trade Mark and the IMC Logo in connection with financial services products are clear indications of the Respondent’s intention to impersonate the Complainant, potentially for any planned fraudulent use of the disputed domain name.

The Website prominently displays the Trade Mark, without any disclaimer disclosing (the lack of) relationship between the Parties. The content of the Website is calculated to give the impression it has been authorised by or connected to the Complainant when this is not the case. The Complainant alleges that a user visited the Website believing it to be associated with the Complainant and only realizing the mistake when they suffered financial loss, but no evidence was provided to substantiate the allegation. Nevertheless, it does appear that confusion is likely. The Website was set up to deliberately mislead Internet users into believing that it is connected to, authorised by, or affiliated with the Complainant. From the above, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his Website by misleading them into believing that the Respondent's Website is, and the services offered on it are, those of or authorised or endorsed by the Complainant.

It is highly likely that Internet users when typing the disputed domain name into their browser or finding it through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The disputed domain name is likely to confuse Internet users trying to find the Complainant's official website. Such confusion will result due to the fact that the disputed domain name comprises the Trade Mark in its entirety coupled with the use to which the disputed domain name has been put.

The fact that the disputed domain names is being used as a trading platform allows the Respondent to collect users' sensitive personal information such as credit card details and other payment data. This presents a serious risk of phishing and other types of financial fraud.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <imcoinapps.com> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: January 23, 2025