

ADMINISTRATIVE PANEL DECISION

IMC B.V. v. JustinBaer, YKTS

Case No. DIO2023-0001

1. The Parties

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

The Respondent is JustinBaer, YKTS, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 3, 2023. On January 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 5, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2023, 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 January 5, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 January 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 27, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on January 31, 2023. 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

The Complainant is a trading firm and owns many trademark registrations for IMC such as International trademark registration No. 929842 registered on June 26, 2007. The Complainant also owns International trademark registration No. 1488678 registered on July 23, 2019, for IMC TRADING.

The disputed domain name was registered on November 18, 2022, and resolves to a website which is a cryptocurrency trading platform.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights. The country code Top-Level Domain ("ccTLD") ".io" should be ignored. The disputed domain name contains the Complainant's trademarks IMC and IMC TRADING. The disputed domain name offers cryptocurrency trading services, which are services highly similar to the services offered by the Complainant. Hence, there's a likelihood of confusion and damage to the Complainant's goodwill.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has no legitimate interests in the trademarks IMC and IMC TRADING and hence in the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The Respondent is not commonly known by the trademarks IMC and IMC TRADING. The Respondent is not affiliated with the Complainant nor authorized to use its trademarks.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The disputed domain name was registered after the Complainant had registered its trademarks. The Respondent represents itself on its website as an affiliate of the Complainant. The information appearing on the Respondent's page is made up. The Complainant sent a cease-and-desist letter to the Respondent but received no answer. The Respondent is using the reputation and goodwill of the Complainant's trademark in order to attract Internet users to its website.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for IMC and IMC TRADING. The Panel is satisfied that the Complainant has established its ownership of the trademarks IMC and IMC TRADING.

It is established by prior UDRP panels that when a domain name incorporates a complainant's registered trademark, such incorporation is sufficient to establish identity or confusing similarity for the purposes of the Policy even if other words are added as part of the disputed domain name. *E.g., Oki Data Americas, Inc v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Oki Data*").¹ The disputed domain name incorporates the Complainant's trademarks IMC and IMC TRADING in their entirety adding a hyphen. The hyphen does not alter the fact that the disputed domain name is confusingly similar to the Complainant's trademarks.

¹ Given the similarities between the .IO Policy and the Uniform Domain Name Dispute Resolution Policy (the "UDRP"), the Panel will refer to cases decided under both the Policy and the UDRP if relevant to this proceeding.

The ccTLD “.io” should generally be ignored when assessing confusing similarity as established by prior decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademarks of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant to use its trademarks. The Respondent should prove that it has rights or legitimate interests.

The Panel finds it necessary to assess whether there is a *bona fide* offering of goods or services as the disputed domain name resolves to a website which appears to be a cryptocurrency trading platform. In this respect, the Panel notes a prior UDRP decision which explains that “The use of a domain name which is identical or confusingly similar to the Complainant’s trademark with an intention of deriving advantage from user confusion and diverting Internet users to other commercial sites does not confer legitimate rights on the Respondent”. See *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). The Panel is of the view that the use of the Complainant’s trademarks in order to offer competing services and to represent itself on the website at the disputed domain name as an affiliate of the Complainant confirms an intention to derive advantage from the confusion that may be caused to consumers. As such, this does not constitute a *bona fide* offering of goods or services.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent must have known of the Complainant’s business and trademarks as the Complainant’s trademark IMC was first registered 15 years before the creation of the disputed domain name. The Panel also notes that the disputed domain name is almost identical to the Complainant’s IMC TRADING trademark. The disputed domain name resolves to a website which is a cryptocurrency trading platform. Such services are similar to the Complainant’s services, which is a trading firm. Therefore, it is highly likely that the Respondent was aware of the Complainant’s trademarks.

The Panel finds that more likely than not the Respondent registered the disputed domain name in the knowledge of the Complainant’s trademarks and business with the intention of taking unfair advantage of the Complainant’s goodwill attaching to those trademarks. Noting the Respondent is representing itself on the website at the disputed domain name as an affiliate of the Complainant, it is the Panel’s view that the Respondent has used the Complainant’s trademarks in order to create confusion in the minds of consumers for the purpose of attracting Internet traffic for commercial gain.

Such conduct falls squarely within the meaning of paragraph 4(b)(iv) of the Policy, and accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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 <imc-trading.io> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: February 3, 2023