

ADMINISTRATIVE PANEL DECISION

Société Anonyme des Bains de Mer et du Cercle des Etrangers à Monaco v.
monaco monaco, Ton Chen
Case No. D2023-3176

1. The Parties

The Complainant is Société Anonyme des Bains de Mer et du Cercle des Etrangers à Monaco, Monaco, represented by De Gaulle Fleurance & Associés, France.

The Respondents are monaco monaco, Indonesia, and Ton Chen, Cambodia.

2. The Domain Names and Registrar

The disputed domain names <monaco138.bio>, <monaco138.biz>, <monaco138.ink>, <monaco138.pro>, <monaco138.site>, <monaco138.tech>, <monaco138.space>, <monaco138.cloud>, <monaco138.store>, and <monaco138-alternatif.online> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2023. On July 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 27, 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 Amendment to the Complaint on August 7, 2023 and requested the addition of 3 domain names.

On August 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the 3 additional disputed domain names. On August 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names.

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 August 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 6, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on September 19, 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.

On September 20, 2023, the Complainant filed a supplemental filing requesting the addition of the domain names <monaco138.space>, <monaco138.cloud>, <monaco138.store>, and <monaco138-alternatif.online>.

On October 4, 2023, the Panel issued Procedural Order No. 1 (the "Order"), regarding the Complainant's request to add the additional disputed domain names to this proceeding and granting the Complainant to add further consolidation arguments and facts until October 10, 2023 (if any) and the Respondent for the additional disputed domain names an additional seven day period (*i.e.*, through October 17, 2023) to make any submissions regarding the consolidation of the proceedings, and to file a Response in respect of the additional disputed domain names as it may deem appropriate.

4. Factual Background

The Complainant is a company organized under the laws of Monaco and was founded in 1863. The Complainant was formed initially to operate the well-known Casino de Monte-Carlo and was granted, and maintains, a monopoly of gambling services in Monaco. It currently operates four casinos and a resort in Monaco.

The Complainant operates under various trademarks incorporating the term "Monaco". Among others, the Complainant is the registered owner of the Monaco Trademark Registrations No. 02.23234 for CASINO DE MONACO (registered on September 30, 2002), covering protection for goods and services in classes 3, 9, 12, 14, 16, 18, 28, 34, 35, 38, 39, 41, and 43; No. 09.27380 for MONACOPOKER (registered on July 15, 2009); No. 09.27373 for MONACOBET (registered on July 15, 2009); No. 09.27370 for MONACOSPORTBET (registered on July 15, 2009); No. 09.27372 for MONACOWIN (registered on July 15, 2009); and No. 09.27371 for MONACOGAMING (registered on July 15, 2009), all of the latter covering protection for particular gambling services in class 41 (all together referred to in the following as the "MONACO trademarks").

The disputed domain names were all registered with the same Registrar on the following dates:

- <monaco138.pro> and <monaco138.site> were both registered on February 28, 2023;
- <monaco138.bio> was registered on April 17, 2023;
- <monaco138.biz> was registered on July 21, 2023;
- <monaco138.ink> and <monaco138.tech> were both registered on August 1, 2023; and
- <monaco138-alternatif.online> was registered on September 14, 2023;
- <monaco138.space>, <monaco138.cloud>, and <monaco138.store>, were registered on September 15, 2023.

Based on the information provided by the Complainant, all disputed domain names resolve to identical or at least highly similar websites offering online gambling and related services.

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 names.

B. Respondent

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

6. Discussion and Findings

6.1. Addition of Domain Names

The Complainant has requested the addition of various domain names to the Complaint after the Complaint had been notified to the Respondents and the proceedings had formally started.

It is generally accepted, that such requests would be denied, since the addition of additional domain names may delay the proceedings, which are expected to be carried out with due expedition. However, whenever there is sufficient indication that a respondent is trying to frustrate the proceedings, e.g. by registration of additional domain names shortly prior or subsequent to the notification of a complaint, the subsequent addition of domain names to pending proceedings may be reasonable and justified. See section 4.12.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In the present case, and following the issuance of the Order, the Panel believes that the subsequent addition of the disputed domain names <monaco138.space>, <monaco138.cloud>, <monaco138.store>, and <monaco138-alternatif.online> is exceptionally admissible, as (1) the Respondent of the added disputed domain names is probably the same individual as the Respondent of the disputed domain names <monaco138.bio>, <monaco138.pro>, <monaco138.site>, <monaco138.biz>, <monaco138.ink>, and <monaco138.tech>, and (2) the added disputed domain names were registered predominantly after notification of the Complaint to the Registrar, obviously to frustrate the proceedings and to replace the website previously associated to the meanwhile locked disputed domain names and to resume the activities through the newly registered disputed domain names.

In light of the above, the Panel believes it to be fair and practical, and not prejudicial to the Respondent for the added disputed domain names <monaco138.space>, <monaco138.cloud>, <monaco138.store>, and <monaco138-alternatif.online> to be considered as part of this proceeding.

6.2. Consolidation of Respondents

As neither the Policy nor the Rules explicitly provides provisions for the consolidation of claims against multiple respondents into a single administrative proceeding, UDRP panels generally apply the principles for consolidation as set out at section 4.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Section 4.11.2 of the [WIPO Overview 3.0](#) states the following: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario." See also, *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

In this regard, previous UDRP panels particularly considered the following aspects in determining whether consolidation is appropriate: similarities in or relevant aspects of (i) the registrants' contact information, (ii) the content or layout of websites corresponding to the disputed domain names, (iii) whether the

registrants are targeting a specific sector, and (iv) the relevant language/scripts of the disputed domain names.

In light of the criteria set out above, the Panel is convinced that all disputed domain names are under common control.

In view of the Panel, the Complainant has provided sufficient evidence that the Respondents are either one and the same person or at least connected to each other. This is particularly indicated by various undisputed facts, such as that all disputed domain names resolve to virtually identical or at least highly similar websites, sharing multiple of identical features. Also, all associated websites are allegedly offering the same or highly similar betting services by prominently using the term “Monaco” plus “138”.

Bearing in mind that none of both Respondents have raised any objection to the Complainant’s consolidation request, the Panel is convinced that in the present case consolidation of multiple respondents is procedurally efficient, fair, and reasonable to all Parties.

The Panel therefore, for the purpose of this decision, accepts the case to be dealt with in a consolidated Complaint and will refer, whenever appropriate, to the Respondents as “the Respondent” below.

6.3. Substantial Issues

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no substantive response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant’s contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

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.

Based on the available record, the Panel finds 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 further finds the Complainant's MONACO trademarks are recognizable within the disputed domain names. Except one, all of the disputed domain names comprise the term "monaco138" with a generic Top Level Domain ("gTLD"). Only disputed domain name further comprises the term "alternative".

While the addition of other terms (here "138", and in one disputed domain name together with the term "alternatif") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. In particular, the Panel finds that the term "138" is associated by the wide public with casino and gambling services and, hence, implicates particularly the CASINO, BET, POKER and WIN elements of the Complainant's MONACO trademarks. Also, the additional use of the term "alternatif" in the disputed domain name <monaco138-alternatif.online> does not prevent a finding of confusing similarity as at least the associated website clearly indicates that the Respondent seeks to target the Complainant's reputation in its MONACO trademarks for casino and gambling services.

Further, the Panel also notes that the applicable (".pro", ".site", ".bio", ".tech", ".ink", ".biz", ".space", ".cloud", ".store" and ".online" in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the disputed domain names are confusingly similar to the Complainant's MONACO trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 names. 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 names such as those enumerated in the Policy or otherwise.

On the contrary, and noting that the disputed domain names are confusingly similar to the Complainant's MONACO trademarks, the Panel has no doubt that the Respondent's intent is to create confusion with the Complainant and its services, which in view of the Panel results in an illegitimate use that cannot confer rights or legitimate interests upon the Respondent.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its widely-known MONACO trademarks in mind when registering the disputed domain names. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain names to target and mislead third parties searching for the services provided by the Complainant. Consequently, the Panel is convinced that the Respondent has registered the disputed domain names in bad faith.

As regards the bad faith use by the Respondent, the Panel notes that the Respondent uses the Complainant's MONACO trademarks in connection with online gambling services on websites associated to the disputed domain names. By doing so, the Respondent free rides on the Complainant's established reputation in casino and gambling services and takes unfair advantage of the Complainant's MONACO trademark rights. In the Panel's view, the Respondent intentionally tries to attract, for illegitimate commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's MONACO trademarks as to the source, sponsorship, or endorsement of its websites. The Panel concludes that the Respondent is also using the disputed domain names in bad faith.

Furthermore, the Panel accepts the registration of the disputed domain names <monaco138.ink>, <monaco138.tech>, <monaco138-alternatif.online>, <monaco138.space>, <monaco138.cloud>, and <monaco138.store> by the Respondent after notification of the Complaint to the Registrar as an additional indication of the Respondent's bad faith intentions.

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 names <monaco138.bio>, <monaco138.biz>, <monaco138.ink>, <monaco138.pro>, <monaco138.site>, <monaco138.tech>, <monaco138.space>, <monaco138.cloud>, <monaco138.store>, and <monaco138-alternatif.online> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: October 30, 2023