

## **ADMINISTRATIVE PANEL DECISION**

Michelios 3 and AmeXio v. Domain Manager, eWeb Development Inc  
Case No. D2024-4344

### **1. The Parties**

The Complainants are Michelios 3, France (“First Complainant”) and AmeXio, France (“Second Complainant”), represented by Legal In Motion (LEGALiM), France.

The Respondent is Domain Manager, eWeb Development Inc, Canada, represented by Muscovitch Law P.C., Canada.

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

The disputed domain name <amexio.com> is registered with Alpine Domains Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 22, 2024. On October 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 28, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 of the Complaint, and the proceedings commenced on October 30, 2024. In accordance with the Rules, paragraph 5, the original due date for Response was November 19, 2024. Pursuant to the Respondent’s request under paragraph 5(b) of the Rules, the due date for Response was extended to November 23, 2024. The Response was filed with the Center on November 20, 2024.

The Center appointed Matthew Kennedy, Jérôme Huet, and Jeffrey Neuman as the Administrative Panel in this matter on December 13, 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

The First Complainant is a holding company of the Second Complainant. According to evidence presented in the Response, the First Complainant began business on July 12, 2021. The First Complainant owns the following trademark registration:

- European Union trademark registration number 018960523 for AMEXIO, registered on March 23, 2024, specifying services in classes 35, 38, and 42.
- The Second Complainant, founded in 2006, operates in the field of digital transformation, providing Enterprise Content Management (“ECM”) and Customer Communications Management (“CCM”) services. It owns the following trademark registrations:
  - French trademark registration number 3819420 for AMEXIO, registered on October 14, 2011 (effective from March 30, 2011), specifying services in classes 35, 38, and 42; and
  - International trademark registration number 1380879 for AMEXIO, registered on October 13, 2017, designating the Benelux countries, Switzerland, and Portugal, and specifying services in classes 35, 38, and 42.

The above trademark registrations are current. The Second Complainant has registered the domain name <amexio.fr>. Since 2017, the Complainants have registered “amexio” in many other country code Top-Level Domains (“ccTLDs”) and certain generic Top-Level Domains (“gTLDs”).

The Respondent was incorporated in 2009 and is in the business of, inter alia, registering domain names and developing associated websites for clients. It uses the domain name <ewebdevelopment.com> in connection with a website where it offers for sale an e-Inclusive Package that includes domain names. According to the evidence in the Response, the Respondent has registered, among others, the domain names <amexi.com> (since at least 2009), <imexio.com> (since at least 2010), as well as <axedio.com>, <adamio.com>, <adenio.com>, <adezio.com>, <amendio.com>, <apedio.com>, <aregio.com>, <asagio.com>, <asimio.com>, <atenio.com>, <brexio.com>, <hoxio.com>, and <plaxio.com>.

The disputed domain name was registered on July 24, 2011. It resolves to a landing page that displays the disputed domain name and the following notice: “READY FOR DEVELOPMENT If you're interested in this domain, contact us to check availability for ownership, customer use, partnership or other development opportunities.”

On August 22, 2022, the Second Complainant contacted the Respondent to request a price quote for the disputed domain name, indicating that its budget was “lower than \$1000” and, on a separate line “100 USD”. On the same day, the Respondent replied that this budget was too low. On the following day, the Second Complainant made another request for a price quote. The Respondent replied with a quote of USD 25,000 for a one-time payment. According to a screenshot submitted by the Respondent, the price quote appeared above the payment terms, buttons to continue to purchase or make a counter-offer and a line of text stating that: “This quote was prepared in response to your quote request. By continuing, you agree to the Terms of Domain Purchase”. Underneath this there appeared several frequently-asked questions. The quote later expired, before and after which the Respondent sent follow-up emails.

#### 5. Parties' Contentions

##### A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainants contend that the Second Complainant is one of the leading companies in Europe in the field of ECM and CCM founded in May 2006. The Second Complainant is operating in France, Spain, Portugal, the Benelux countries, Switzerland, Canada, and the United States of America. The Respondent

holds the disputed domain name that was created on July 24, 2011, *i.e.*, at a time when the Second Complainant had used for several years the AMEXIO commercial name and a French trademark from March 30, 2011.

The disputed domain name is a reproduction of the AMEXIO trademarks held by the Complainants.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is running a website in connection with the domain name <ewebdevelopment.com>, proposing hosting services in relation to hosting and brands.

The disputed domain name was registered and is being used in bad faith. The disputed domain name was created on July 24, 2011 while the Complainants had already registered their trademark previously (March 11, 2011). The disputed domain name was proposed to be sold to the Complainants to make unreasonable profits. The proposition was USD 25,000 from June 6, 2023 and represents a valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name. The Respondent was aware of the Complainants' rights at the time of acquiring the disputed domain name and when it was subsequently renewed. In addition, the sole holding and non-use of a domain name (including a blank or "coming soon" page) demonstrates bad faith under the doctrine of passive holding. The Respondent has infringed the Complainants' registered trademarks and, therefore, by using the disputed domain name in such a manner, the Respondent has breached the warranty it provided under paragraph 2 of the Policy. As such, the Respondent's use in bad faith has also rendered the registration to be in bad faith.

## **B. Respondent**

The Respondent contends that the Complainants have not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The First Complainant's trademark was registered nearly 13 years after the disputed domain name. The Second Complainant claims that its French trademark was registered on March 30, 2011 and did not disclose that the trademark was not granted until later, with a deemed registration date that went back to its date of application, as is the French practice. When the Respondent registered the disputed domain name on July 24, 2011, the Complainants had not yet obtained a trademark registration. The Complainants currently have two registered trademarks and that is sufficient to meet the standing requirement under the Policy.

The Respondent has rights or legitimate interests in respect of the disputed domain name. First, the Respondent was the first person to register the disputed domain name at a time when it was not subject to any trademark rights held by the Complainants. Second, prior to notice of any dispute, the Respondent used the disputed domain name as understood by the Policy, namely for advertising the Respondent's web branding and web development packages; for offering the disputed domain name for sale as part of the Respondent's stock-in-trade of attractive domain names for new entrants to the marketplace; and for email to communicate with potential customers. Prior panels under the Policy have upheld the Respondent's business model as legitimate. See, for example, *Kevac S.r.l v. Eweb Development Inc.*, WIPO Case No. [D2019-2991](#); *Sanofi v. Domain Manager, eWeb Development Group*, WIPO Case No. [D2014-1185](#); and *Ferm-O-Feed B.V. v. Domain Manager, eWeb Development Inc.*, WIPO Case No. [D2018-1112](#).

The disputed domain name has not been registered and is not being used in bad faith. At the time when the disputed domain name was registered, the Complainants merely had a pending trademark application which affords no rights until registered. It is well-established that in general, a finding of bad faith registration cannot be made with respect to a trademark that did not exist at the time of registration of the disputed domain name. The Complainants provide no evidence that the Respondent was aware, or ought to have been aware, of the existence of the Complainants' trademark at the time of acquiring the dispute domain name. The general manager of the Respondent solemnly declares that the Respondent was not aware of the Complainants at that time. The Complainants provided no evidence whatsoever of any common law

trademark rights pre-existing its trademark registration nor of any reputation in France, let alone in Canada where the Respondent is located, let alone at the material time. The Complainants are not even the exclusive user of AMEXIO as a brand; a third party has used it in connection with a German online voucher site since 2006. It was the Complainants who solicited the Respondent and not the other way around. Responding to an inquiry for purchase is not considered bad faith. The Respondent is entitled to offer its business asset for sale at market price and this is not bad faith.

## **6. Discussion and Findings**

### **6.1 Consolidation: Multiple Complainants**

The Complaint and amended Complaint were filed by two complainants. Both Complainants form part of the same corporate group as the First Complainant is a holding company of the Second Complainant, and both Complainants own one or more AMEXIO trademark registrations. The Panel finds that the Complainants have a common grievance against the disputed domain name registrant and that it is efficient to permit the consolidation of their complaints. Therefore, the Complainants are referred to below separately and collectively as “the Complainant” except as otherwise indicated.

### **6.2 Substantive Issues**

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements with respect to the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant. Failure to demonstrate any one element will result in denial of the Complaint.

#### **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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

Although the Policy makes no specific reference to the date on which the holder of the trademark mark acquired its rights, such rights must be in existence at the time when the complaint is filed. See [WIPO Overview 3.0](#), section 1.1.3.

In the present case, the Complainant has shown rights in respect of the AMEXIO trademark for the purposes of standing under the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. The dates of registration of the trademark are considered further below in relation to the third element of paragraph 4(a) of the Policy.

The entirety of the AMEXIO mark is reproduced within the disputed domain name. The only additional element is the generic Top-Level Domain (“gTLD”) extension (“.com”) which, as a standard requirement of domain name registration, may be disregarded in the assessment of confusing similarity. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.11.1.

Therefore, the Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Given the Panel's findings on the third element of paragraph 4(a) of the Policy in Section 6.2C below, it is unnecessary to consider the second element.

## **C. Registered and Used in Bad Faith**

The Panel notes that the third element of paragraph 4(a) of the Policy contains two requirements that apply conjunctively. A complainant must show both that the disputed domain name has been registered in bad faith and also that it is being used in bad faith. The former requires a demonstration that the Respondent knew, or should have known of the Complainant and/or the Complainant's trademark at the time when it registered or acquired the disputed domain name and that it registered the disputed domain name with a bad faith intention targeting the Complainant and/or its mark.

In the present case, the disputed domain name was registered in July 2011, three months before the Complainant acquired its earliest trademark registration for AMEXIO. The Panel recalls that where a respondent registers a domain name before a complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. See [WIPO Overview 3.0](#), section 3.8.1.

The Panel has considered the possibility that there may be exceptional circumstances establishing that the Respondent's intent in registering the disputed domain name was to unfairly capitalize on the Complainant's nascent, as yet unregistered, trademark rights. See [WIPO Overview 3.0](#), section 3.8.2. In that regard, the Panel notes that the Complainant's French trademark application was pending when the Respondent registered the disputed domain name. AMEXIO is not a dictionary or geographical word but rather a coined term, and the disputed domain name is identical to it. However, there is no evidence on the record of the Complainant's foundation, operations, or reputation prior to July 2011. Specifically, there is no evidence on the record to support the Complainant's assertion that it had used AMEXIO as its trade name for several years prior to 2011, no evidence on the record of its operations in France or other countries, no mention of when it commenced operations outside France, no evidence on the record that it is "one of the leading companies in Europe" in the field of ECM and CCM, and no evidence on the record that it operates a website in connection with any of its domain names.

The general manager of the Respondent solemnly declares that at no time prior to the registration of the disputed domain name did the Respondent have any awareness of the Complainant or of its trademarks, and she provides a plausible alternative explanation for her choice of the disputed domain name, i.e., that it was a creatively "made-up" term for a customer who would want to use it as a new brand. In the Panel's view, this explanation is borne out by the evidence showing that the Respondent had previously acquired similar domain names (*i.e.*, <amexi.com> and <imexio.com>) and subsequently acquired other similar domain names such as those shown in Section 4 above. Further, the Respondent did not make an unsolicited offer to sell the disputed domain name to the Complainant; rather, it made an offer in response to a price quote request submitted by the Complainant.

Based on the record, the Panel sees no exceptional circumstances indicating that the Respondent registered the disputed domain name in anticipation of the Complainant's nascent trademark rights.

The Respondent also argues that the Respondent should have been aware of the Complainant's trademark at the time when the disputed domain name registration was subsequently renewed. The Panel recalls that a number of UDRP panels in 2009 and 2010 explored application of registrant representations in paragraph 2 of the Policy in finding so-called "retroactive" bad faith registration. However, this concept has not been followed in subsequent cases. Paragraph 2 of the Policy may be relevant on its own terms, in particular where the Complainant's trademark rights are nascent at the time of the disputed domain name registration, but that is not the case in this dispute, for the reasons discussed above. See [WIPO Overview 3.0](#), section 3.2.1.

Therefore, the Panel finds the third element of the Policy has not been established.

#### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. See [WIPO Overview 3.0](#), section 4.16.

The Respondent submits that the Complainant launched this Complaint without any evidentiary basis for a finding that it was targeted by the Respondent; the Complainant materially and intentionally misrepresented its trademark rights; the Complainant intentionally omitted the context for its receipt of a quote from the Respondent and it also failed to address its breach of its warranties to the Respondent; and this is a “Plan B” case.

The Panel notes that the Complainant has legal representation in this proceeding. The Complainant asserts that the Respondent was aware of the Complainant’s rights at the time of acquiring the disputed domain name, yet the Complaint provides no evidence on the record of the Complainant’s foundation, operations, or reputation prior to that time (or since). The arguments on bad faith in the Complaint include the materially inaccurate statement that the disputed domain name was created “while the Complainant had already registered its trademark previously” when in fact the trademark had not yet been registered at that time (as protection was granted later with retroactive effect). The Complaint also misleadingly asserts that the disputed domain name “was proposed to be sold to the complainant” without mentioning that the offer was solicited by the Complainant and cropping the annexed screenshot just above the text indicating that the offer was prepared in response to the Complainant’s quote request (which is visible in the uncropped version annexed to the Response). In the Panel’s view, these are indications of bad faith, and that the Complainant launched this case as “Plan B” after it failed to acquire the disputed domain name at a price within its budget.

In view of the above circumstances, the Panel finds that the Complaint has been brought in bad faith and constitutes an abuse of the administrative proceeding.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an abuse of the administrative proceeding.

*/Matthew Kennedy/*  
**Matthew Kennedy**  
Presiding Panelist

*/Jérôme Huet/*  
**Jérôme Huet**  
Panelist

*/Jeffrey Neuman/*  
**Jeffrey Neuman**  
Panelist

Date: December 23, 2024