

ADMINISTRATIVE PANEL DECISION

Amber Lion Partners AG v. Ruslan Klishko
Case No. DAE2024-0015

1. The Parties

The Complainant is Amber Lion Partners AG, of Switzerland, represented by Galadari Advocates and Legal Consultants One Person Company LLC, United Arab Emirates.

The Respondent is Ruslan Klishko, of Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <amberlion.ae> is registered with AE Domain Administration (.aeDA).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 16, 2024. On July 17, 2024, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the disputed domain name. On July 18, 2024, AE Domain Administration (.aeDA) 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 UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 31, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was August 20, 2024. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent’s default on August 26, 2024.

Due to an administrative oversight, it appears that the Center’s Notification email was not copied to the Respondent at one the email addresses. In light of the above, the Center granted the Respondent a five-day period September 17, 2024, in which to indicate whether it wishes to participate to this proceeding. The Respondent did not submit any Response.

The Center appointed John Swinson as the sole panelist in this matter on September 18, 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 Complainant operates a financial services business. The Complainant's wealth management firm is situated in Zurich, Switzerland, and was established in 2019. The Complainant offers services such as wealth and asset management, debt advisory, and venture capital.

The Complainant's primary website is located at <amberlion.ch>.

The Complainant holds a registered trademark for AMBER LION PARTNERS in Switzerland since September 28, 2020, under trademark registration number 752595.

The Complainant has also applied for a trademark registration for AMBER LION PARTNERS under the Madrid Protocol, with application number 1740276, extending to regions such as the United Arab Emirates, European Union, and the United Kingdom.

The disputed domain name was registered on April 21, 2023.

A HTTP ERROR 403 is received when trying to visit the website at the disputed domain name.

The Respondent did not file a Response. According to the Registrar's records, the Respondent has an address in Moscow, the Russian Federation.

On March 28, 2023, the Complainant terminated the employment of Mr. Sushkov for cause, who was at that time Deputy CEO and Managing Partner of the Complainant. The Respondent is a known associate and business partner of Mr. Sushkov. For example, the Respondent and Mr. Sushkov established a company together in Cyprus in 2021 called Optimum Strategy Capital Limited. The Respondent also established a business in Dubai in August 2021 that was named "Amber Falcon" or "Amber Falcon Marketing Management LLC". Evidence was provided linking Mr. Sushkov to this business.

The Respondent is also involved in a Russian company named Amber Group (Амбер Групп) in Moscow, that used the domain name <ambercapital.ru>. When the Panelist attempted to visit this website, the browser displayed the following message: "Firefox detected a potential security threat and did not continue to ambercapital.ru. If you visit this site, attackers could try to steal information like your passwords, emails, or credit card details."

5. Parties' Contentions

A. Complainant

In summary, the Complainant makes the following submissions:

"AMBER LION" is not a natural word nor a common name, nor one which is a common or natural descriptor for the use which is being made of the disputed domain name. The Respondent's purpose in selecting the disputed domain name was plainly to use the fame of the Complainant and the Complainant's the mark to confuse Internet users visiting the Respondent's site when looking for the Complainant and their famous suite of services.

The Respondent and Mr. Sushkov, the former managing partner of the Complainant, were involved together in a broad fraudulent scheme.

The history of infringement and unauthorized use of the AMBER LION PARTNERS AG brand by both Mr. Sushkov and the Respondent in various regions, including in the Russian Federation, and Dubai, United Arab Emirates, indicates a pattern of malicious behaviour aimed at damaging the Complainant's reputation and market presence. The ongoing investigations into these infringements by the Complainant underscore the severity of the situation and highlight the Respondent's willingness to engage in unethical practices for personal gain.

B. Respondent

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

6. Discussion and Findings

Paragraph 6(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 or is being used in bad faith.

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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy.

The Complainant's registered trademark is AMBER LION PARTNERS. The first two words of the Complainant's trademark are reproduced within the disputed domain name.

The Panel finds the Complainant's trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy.

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

B. Rights or Legitimate Interests

Paragraph 6(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 6(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 proceedings under the Policy 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.

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 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.

The Respondent may be using the names "Amber Capital" or "Amber Falcon", however this does not give the Respondent rights or legitimate interests in "Amber Lion" and the disputed domain name under the Policy.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

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

C. Registered or is Being Used in Bad Faith

Paragraph 6(a)(iii) of the Policy requires a demonstration that a domain name has either been registered or is being used in bad faith.

Generally speaking, a finding that a domain name has been registered or is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Complainant has provided sufficient evidence to show that the Complainant's former managing director and the Respondent are known associates and business partners. The Respondent registered the disputed domain name shortly after the Complainant dismissed the Complainant's former managing director for misconduct. The evidence strongly suggests that the Respondent knew of the Complainant's trademark and registered the disputed domain name precisely due to its similarity with the Complainant's trademark. The Panel finds it more likely than not that the Respondent registered the disputed domain name to take an unfair advantage of its confusing similarity with the Complainant's trademark.

The Respondent did not attempt to rebut the Complainant's evidence or allegations.

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

7. Decision

For the foregoing reasons, in accordance with paragraphs 6(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <amberlion.ae> be transferred to the Complainant.

/John Swinson/

John Swinson

Panelist

Date: September 29, 2024