

ADMINISTRATIVE PANEL DECISION

Azure Capital Ltd v. Whois Privacy Protection Service by onamae.com / dong wang, wangdong
Case No. D2022-2953

1. The Parties

The Complainant is Azure Capital Ltd, Australia, represented by Inlex IP Expertise, France.

The Respondent is Whois Privacy Protection Service by onamae.com, Japan / dong wang, wangdong, China.

2. The Domain Name and Registrar

The disputed domain name <azurecapitals.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 10, 2022. On August 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 2022, 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 August 16, 2022 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 August 17, 2022.

On August 16, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On August 16, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 English and Japanese of the Complaint, and the proceedings commenced on August 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 12, 2022.

The Center appointed Masato Dogauchi as the sole panelist in this matter on September 26, 2022. 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

Whereas the Respondent has not submitted any response, the following information from the Complaint is found to be the factual background of this case.

The Complainant, established in 2004, is a leading Australian corporate advisory firm, providing a range of advisory services, including in relation to mergers and acquisitions, capital markets, and financing transactions.

The Complainant owns Australian trademark registrations including the term "Azure Capital" such as follows:

- Australian trademark registration AZURE CAPITAL No. 1290982, filed on March 25, 2009, and registered on Mar 31, 2011;
- Australian trademark registration AZURE CAPITAL GROUP No. 1305795, filed on June 23, 2009, and registered on Mar 31, 2011.

The Complainant is also the holder of the domain name <azurecapital.com.au>, redirecting to the website of the Complainant.

The disputed domain name <azurecapitals.com> was registered on July 28, 2022. The disputed domain name resolves to a website displaying gambling advertisements and pornographic content.

The Complainant requests that the disputed domain name be transferred to the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its trademark and their domain name. The Complainant contends as follows: As it is well-established that the generic Top-Level Domain ("gTLD"), *i.e.*, ".com" may be disregarded for the purpose of determining confusing similarity; the relevant comparison to be made is with the second-level portion of the disputed domain name, *i.e.*, "azurecapitals"; the disputed domain name and the Complainant's trademark, AZURE CAPITAL, have 12 identical letters placed in the same order, and the Complainant's trademark is wholly reproduced in the disputed domain name; and the disputed domain name, adding one letter "s" to the end of the term "capital" in the Complainant's trademark, is a typosquatting case.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant contends as follows: The absence of rights or legitimate interests of the Respondent infers from the fact that, among others, according to the search done by the Complainant, the Respondent has no rights including trademark rights in respect of the name "Azurecapitals" or "Azure

Capitals” and that there is no business or legal relationship between the Complainant and the Respondent; and the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services.

Third, the Complainant asserts that the disputed domain name should be considered as having been registered and used in bad faith by the Respondent. The Complainant contends as follows: given the wide reputation of the trademark AZURE CAPITAL in the field of corporate advisory, it is inconceivable that the Respondent chose the disputed domain name without knowledge of the Complainant's activities and the name and trademark under which the Complainant is doing business; the Respondent's use of the confusingly similar disputed domain name to direct unsuspecting Internet users to adult content is evidence of bad faith registration and use of the disputed domain name; and the Respondent employed a privacy service in order to hide his identity and to avoid being notified of a UDRP proceeding.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of Proceedings

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

However, the Panel determines, in order to ensure that both Parties are treated with equality and that each Party is given a fair opportunity to present its case, that the language of this proceeding shall be English rather than Japanese on the following grounds that:

- the Complainant's request to that effect;
- the Respondent is located in China, therefore presumably Japanese is not the Respondent's mother tongue;
- the website at the disputed domain name shows some texts in English and indicates that it is based in the United States of America;
- the Respondent did not reply to the Center's Language of the Proceeding email and Notification of the Complaint email, which were both sent in English and Japanese; and
- the use of Japanese language would produce undue burden on the Complainant and unnecessarily delay the proceeding in consideration of the absence of a Response from the Respondent.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (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.

A. Identical or Confusingly Similar

The Panel finds that the Complainant owns Australian trademark registrations consisting of or containing the term “Azure Capital”. The first part of the disputed domain name, *i.e.*, “azurecapitals” is different from the Complainant’s trademark AZURE CAPITAL in that the letter “s” is added to the end of the trademark. The AZURE CAPITAL trademark is readily recognizable in the disputed domain name. The addition of the letter “s” to the Complainant’s AZURE CAPITAL trademark is a typical example of typosquatting. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9.

The last part of the disputed domain name, *i.e.*, “.com” represents one of the gTLDs, which is irrelevant in the determination of the confusing similarity between the disputed domain name and the Complainant’s AZURE CAPITAL trademark.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has right. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence that shows the Respondent is commonly known by the name “Azure Capitals” or that the Respondent is affiliated with the Complainant or authorized or licensed to use the Complainant’s AZURE CAPITAL trademark.

The disputed domain name resolves to a website displaying gambling advertisements and pornographic content. This suggests that the Respondent has intent for commercial gain to tarnish the Complainant’s trademark. Therefore, the disputed domain name is not being used for a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds on the available record that the Complainant has established an unrebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

The Panel finds that the Complainant is a leading Australian corporate advisory firm, having provided since 2004 a range of advisory services, including in relation to mergers and acquisitions, capital markets and financing transactions, and that the Complainant’s AZURE CAPITAL trademark is widely known in the field of corporate advisory. The registration of a domain name that is identical or confusingly similar to a widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The Respondent has used the disputed domain name that is confusingly similar to the Complainant’s prior registered trademark for a website displaying gambling advertisements and pornographic content. Based on

the available record, the Panel therefore finds that the disputed domain name has been registered in bad faith and is being used in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Moreover, the Respondent did not reply to the Complaint in this proceeding. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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 <azurecapitals.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: October 10, 2022