

## **ADMINISTRATIVE PANEL DECISION**

HDR Global Trading Limited v. dav vi  
Case No. D2023-1624

### **1. The Parties**

The Complainant is HDR Global Trading Limited, Seychelles, represented by Snell & Wilmer, LLP, United States of America.

The Respondent is dav vi, United States of America.

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

The disputed domain name <bitmexk.com> (the “Disputed Domain Name”) is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2023. On April 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 17, 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 (Redacted for Privacy), and contact information in the Complaint. The Center sent an email communication to the Complainant on April 17, 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 April 17, 2023.

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 April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 12, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on May 17, 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 owns and operates a popular cryptocurrency and digitized assets trading platform founded in 2014. The Complainant holds a number of registrations for the trademark BITMEX in various jurisdictions including, for example: European Union Trade Mark No. 016462327 for the mark BITMEX registered on August 11, 2017, in class 36.

The Complainant owns and uses a number of domain names including <bitmex.com>, <bitmex.finance>, <bitmex.financial>, <bitmex.money>, <bitmex.exchange>, and <bitmex.info> in the operation of its business.

The Disputed Domain Name was registered on November 29, 2022, and resolved initially to a webpage bearing the BITMEX trademark and soliciting private details from Internet users, then subsequently resolved to an inactive webpage.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant cites a number of trademark registrations internationally for the BITMEX mark as *prima facie* evidence of ownership.

The Complainant submits that its rights in the BITMEX trademark predates the Respondent's registration of the Disputed Domain Name <bitmexk.com>. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the BITMEX trademark and that the confusing similarity is not removed by the additional letter "k" or the addition of the generic Top-Level Domain ("gTLD") ".com".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it "previously resolved to a webpage allegedly offering cryptocurrency trading services, while using Complainant's BITMEX Marks and red and blue logo" and subsequently was inactive, so the Respondent has no legitimate interest in or legitimate *bona fide* business purpose for using the Disputed Domain Name. The Complainant also states that "Respondent is not licensed or authorized by Complainant to use the BITMEX Marks. Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain [Name]. Respondent is not known by the Disputed Domain [Name]".

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and Rules and submits that the Respondent registered the Disputed Domain Name "to pass itself off as Complainant in furtherance of fraud" and that such conduct combined with the lack of any other reasonable explanation, the concealment of the Respondent's identity, the failure to respond to a cease and desist letter, and the passive holding constitutes bad faith use.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark BITMEX in numerous jurisdictions. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the BITMEX trademark, the Panel observes that the Disputed Domain Name comprises: (a) the Complainant’s trademark BITMEX (b) followed by the letter “k”; (c) followed by the gTLD “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded. The relevant comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: “bitmexk” (see [WIPO Overview 3.0](#), section 1.11).

It is also well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

Accordingly, the Panel finds that the identical trademark with the additional letter “k” does not avoid a finding of confusing similarity between the Disputed Domain Name and the Complainant’s trademark.

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

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

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see: [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because (i) the Disputed Domain Name has been used to phish for private information and was subsequently inactive; (ii) the Respondent has not acquired or owned any trademark or service mark rights in the name BITMEX, and has not been commonly known by the name BITMEX; and (iii) the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark.

The Panel notes the evidence that the Disputed Domain Name in this proceeding “previously resolved to a webpage allegedly offering cryptocurrency trading services, while using Complainant’s BITMEX Marks and red and blue logo” then was subsequently inactive. Neither phishing, nor does the passive holding of the Disputed Domain Name, give rise to any rights or legitimate interests. The Panel is satisfied that the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. In

the absence of a response, this Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Panel finds for the Complainant on the second element of the Policy.

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

The third element of the Policy requires that the complainant must also demonstrate that the disputed domain name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith is overwhelming.

On the issue of registration, taking into account the composition of the Disputed Domain Name and the Complainant's evidence of subsequent use by the Respondent of the Disputed Domain Name to resolve to a webpage that allegedly offered cryptocurrency trading services, while using the Complainant's trademarks and color scheme, the Panel is satisfied that the Respondent knew of and targeted the Complainant's trademark when it registered the Disputed Domain Name. On any view, the Respondent cannot credibly claim to have been unaware of the trademark (see: [WIPO Overview 3.0](#), section 3.2.2).

On the issue of use, in view of the Complainant's evidence of what appears to be an attempt to pass itself off as the Complainant, this Panel is satisfied that the Respondent likely sought to disrupt the Complainant's business by intentionally attempting to attract the Complainant's customers for the Respondent's own commercial gain. The evidence also includes evidence of attempted phishing using the Disputed Domain Name to impersonate the Complainant to extract private information. Past panels have held that the use of a domain name for per se illegitimate activity such as phishing is considered to be evidence of bad faith and this Panel accepts that the uncontested evidence of phishing in this case supports a finding of bad faith (see [WIPO Overview 3.0](#) at Section 3.1.4).

There is also evidence that the Disputed Domain Name was subsequent to the phishing, inactive and unconnected with any *bona fide* supply of goods or services by the Respondent. Previous UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the 'passive holding' doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put" (see [WIPO Overview 3.0](#), section 3.3). This Panel notes that the evidence is that all but one of these factors are present in this proceeding.

The Respondent's conduct calls for an explanation, which was not forthcoming. In the absence of any countervailing evidence, this Panel accepts the Complainant's evidence and finds that the Respondent has registered and used the Complainant's trademark BITMEX, together with the letter "k", in the Disputed Domain Name, without the Complainant's consent or authorization, for the likely purpose of capitalizing on the reputation of the trademark to target the Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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, <bitmexk.com> be transferred to the Complainant.

*/Nicholas Weston/*

**Nicholas Weston**

Sole Panelist

Date: May 31, 2023