

## ADMINISTRATIVE PANEL DECISION

Alticor Inc. v. Alex M  
Case No. D2023-1809

### 1. The Parties

Complainant is Alticor Inc., United States of America (“United States”), represented by Baker & McKenzie Ukraine B.V., Ukraine.

Respondent is Alex M, Ukraine.

### 2. The Domain Name and Registrar

The disputed domain name <ua-way.com> is registered with NameCheap, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 24, 2023. On April 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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*, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on April 27, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On April 27, 2023, Respondent sent an informal email communication to the Center, stating that he did not agree and providing his updated postal address. Complainant filed an amendment to the Complaint on April 28, 2023.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on May 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 25, 2023. Respondent did not submit any formal response. On May 30, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on June 20, 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**

Complainant is a company organized under the laws of the United States that is active in the direct selling industry, including *e.g.* cosmetics, skin care products, hair care products, dietary food supplements, nutritional foods, air and water treatment systems, detergents, and all-purpose cleaners.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its brand AMWAY, including, but not limited to the following:

- word mark AMWAY, European Union Intellectual Property Office (EUIPO), registration number: 000193888, registration date: February 5, 1999, status: active;
- word mark AMWAY, Ukraine Intellectual Property Office, registration number: 4423, registration date: April 15, 1994, status: active.

Moreover, Complainant has demonstrated to own, *inter alia*, since 1995 the domain name <amway.com> which resolves to Complainant's official website at "www.amway.com", promoting Complainant's products under the AMWAY as well as under other of Complainant's trademarks worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of Ukraine who registered the disputed domain name on April 23, 2022. By the time of the rendering of this decision, the disputed domain name resolves to a website at "www.ua-way.com" to which access is technically denied. Complainant, however, has demonstrated that in April 2023, the disputed domain name resolved to a website at "www.ua-way.com" offering, *inter alia*, a variety of cosmetics, cleaners and other products, traded *e.g.* under the AMWAY as well as under other of Complainant's trademarks, thereby prominently displaying *e.g.* Complainant's AMWAY trademark logo and explaining the origin of the term "Amway" (as a composition of the words "America" and "way") on said website.

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

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

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends to be one of the world's largest direct selling companies that has marketed its brand products for over 60 years, nowadays being sold in over 100 countries and territories worldwide under the inherently distinctive and meanwhile well-known AMWAY trademark.

Complainant submits that the disputed domain name is confusingly similar to its AMWAY trademark as it incorporates a confusingly similar approximation thereto, differing by only one letter "u" instead of a letter "m" and a hyphen. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is neither affiliated with nor authorized by Complainant to use its AMWAY trademark, including in the disputed domain name, or to sell Complainant's AMWAY products, (2) the way in which Respondent specifically talks about the AMWAY trademark on the website under the disputed domain name demonstrates that Respondent is fully aware of said trademark

and its well-known and famous character, (3) the website under the disputed domain name and the domain name itself misrepresent to visitors that Respondent is affiliated with Complainant which is not the case, and (4) Respondent fails to disclose the non-existing relationship with Complainant, even when visitors are in the process of making a purchase, and therefore fails to satisfy the criteria of the *Oki Data* test. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's AMWAY trademark is well known and famous worldwide, (1) Respondent's use of the disputed domain name to purport to sell Complainant's products shows that at the time of the registration of the disputed domain name Respondent clearly knew and targeted Complainant's prior registered and famous AMWAY trademark, (2) the website under the disputed domain name is unambiguously designed to look like an official website of Complainant, including original marketing materials and images of Complainant's products and AMWAY logo in the browser tab without Complainant's authorization to do so, and (3) while analyzing the website under the disputed domain name, Complainant comes to the conclusion that it is identical to the website under the domain name that was successfully opposed and transferred to Complainant in the earlier *Alticor Inc. v. Alex Istreamco*, WIPO Case No. [DUA2021-0026](#) relating to the domain name <amway-market.com.ua>.

## **B. Respondent**

Respondent did not formally reply to Complainant's contentions, but merely indicated in his email communication to the Center of April 27, 2023, that he does "not agree".

## **6. Discussion and Findings**

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

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that 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**

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 Complainant's AMWAY trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds 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 finds Complainant's AMWAY trademark is recognizable within the disputed domain name, as the latter differs therefrom by only one letter "u" instead of a letter "m" and a hyphen. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel also finds that the content of the website at the disputed domain name confirms the confusing similarity as Respondent targeted Complainant's AMWAY trademark through the disputed domain name. [WIPO Overview 3.0](#), section 1.15.

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 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 Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

before any notice to Respondent of the dispute, Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2;

Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3;

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 trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4;

the record contains no other factors demonstrating rights or legitimate interests of Respondent in the disputed domain name.

The Panel has well noted that Respondent, while using the disputed domain name to offer Complainant’s AMWAY products for online sale, has failed to disclose the non-existing relationship with Complainant, even when visitors were in the process of making a purchase, and therefore did not satisfy at least one criteria of the *Oki Data* test establishing nominative (fair) use by resellers (see [WIPO Overview 3.0](#), section 2.8).

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.

The Panel considers that the record of this case reflects that:

Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant’s AMWAY trademark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel further notes that Respondent must be assumed (by way of comparison of the related case facts showing a lot of similarities) to have been a respondent in an earlier proceeding relating to the disputed domain name <amway-market.com.ua> that was successfully opposed by Complainant and transferred to it (see *Alticor Inc. v. Alex Istreamco*, WIPO Case No. [DUA2021-0026](#)). Such circumstances at least support the Panel's bad faith finding on the part of Respondent in the case at hand, too.

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 name <ua-way.com> be transferred to Complainant.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: July 4, 2023