

## **ADMINISTRATIVE PANEL DECISION**

HDR Global Trading Limited v. Web Commerce Communications Limited,  
Client Care

Case No. D2023-1948

### **1. The Parties**

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

The Respondent is Web Commerce Communications Limited, Client Care, Malaysia

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

The disputed domain name <bitmex08.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 29, 2023. On May 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 4, 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 (None) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 4, 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 May 4, 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 May 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 5, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on June 9, 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**

According to the Complainant's undisputed allegations, the Complainant owns and operates a cryptocurrency trading platform and has been offering financial trading services in the field of digitized assets and cryptocurrencies since 2014.

The Complaint is based amongst others on European Union Trademark registration for BITMEX (verbal) No. 016462327 registered on August 11, 2017 for services in class 36.

The disputed domain name was registered on June 5, 2022.

It further results from the Complainant's undisputed allegations that at the time of registration, the disputed domain name has resolved to a webpage allegedly offering cryptocurrency trading services, while using the Complainant's BITMEX Marks and logo. On September 6, 2022, the Complainant sent a cease-and-desist letter to the Respondent, requesting the Respondent amongst others to transfer the disputed domain name to the Complainant. It is uncontested that the Complainant did not receive any reply to this letter from the Respondent. As of the filing of this Complaint, the disputed domain name resolves to an inactive webpage.

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

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

Firstly, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's registered trademarks BITMEX. The Respondent merely added the number "08" to the Complainant's BITMEX Mark, which does nothing to distinguish the disputed domain name from the Complainant's trademarks.

The Complainant, secondly, submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not sponsored or endorsed by the Complainant, and the Complainant has never authorized or licensed the Respondent to use the Complainant's BITMEX Marks. In addition, the disputed domain name previously resolved to a webpage allegedly offering cryptocurrency trading services, while using the Complainant's BITMEX Marks and red and blue logo. Furthermore, the Respondent is not identified as Bitmex in the Whois information.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith to capitalize on the goodwill associated with the Complainant's rights in the BITMEX Marks by attempting to confuse consumers as to the source and/or ownership of the disputed domain name. The Complainant has spent years building its cryptocurrency trading platform and has acquired rights in the BITMEX Marks. When the Respondent registered the disputed domain name, the Respondent had actual knowledge of the BITMEX Marks, evident through the Respondent's use of the BITMEX Marks and logo on the resolving webpage. Not only did the Respondent offer competing services, but also attempted to pass off the Complainant's services as its own in an effort to defraud the public. Furthermore, the Complainant sent the Respondent a cease-and-desist letter, and the Respondent did not respond.

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

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Furthermore, paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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 Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the undisputed evidence provided, that the Complainant is the registered owner of European Union Trademark registration for BITMEX (verbal) no 016462327 registered on August 11, 2017.

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant’s trademark for purposes of the first element, where the relevant trademark is recognizable within the disputed domain name. Under such circumstances, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (*cf.* section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). This Panel shares the same view and notes that the Complainant’s registered trademark BITMEX is included in full in the disputed domain name and is recognizable therein. Furthermore, the combination of the trademark BITMEX with the figures “08” does not avoid a finding of confusing similarity between the disputed domain name and the Complainant’s trademark.

Finally, the generic Top-Level-Domain (“gTLD”) “.com” is viewed as a standard registration requirement and is as such to be disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests to the disputed domain name. In the Panel’s view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

It results from the Complainant's undisputed allegations that at the time of registration, the disputed domain name has resolved to a webpage allegedly offering cryptocurrency trading services, while using the Complainant's BITMEX Marks and logo. As of the filing of this Complaint, and after a cease-and-desist letter had been sent, the disputed domain name resolves to an inactive webpage. The Panel assesses this use as being commercial, so that it cannot be considered 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 pursuant to paragraph 4(c)(iii) of the Policy.

Furthermore, such use as described above cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In fact, this Panel considers that a registrant has no legitimate interest in a domain name that is similar to a third party's mark, where the composition of the domain name is associated to the business of the trademark holder, and that is being used to address consumers in the same business as the trademark holder operates ([WIPO Overview 3.0](#) at section 2.5).

In addition, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, previous UDRP panels have found that once the panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

One of these circumstances is that the respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand. It results from the Complainant's undisputed allegations that at the time of registration, the disputed domain name has resolved to a webpage allegedly offering cryptocurrency trading services, while using the Complainant's BITMEX Marks and logo. As of the filing of this Complaint, and after a cease-and-desist letter had been sent, the disputed domain name resolves to an inactive webpage. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's BITMEX mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name, having registered it due to its similarity with the Complainant's BITMEX mark. Registration of the disputed domain name which contains the Complainant's mark, in awareness of said mark, to take advantage of its similarities with the mentioned mark, and in the absence of rights or legitimate interests amounts to registration in bad faith.

The finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand which are:

- (i) the domain name fully includes the Complainant's trademark BITMEX which predates the registration of the disputed domain name for several years;

- (ii) the Respondent's failure to submit a Response to the Complaint and to reply to the cease and desist letter sent before starting these UDRP proceedings;
- (iii) the Respondent's failure to provide any evidence of actual or contemplated good faith use; and
- (iv) the implausibility of any good faith use to which the disputed domain name may be put.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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, <bitmex08.com> be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: June 26, 2023