

## **ADMINISTRATIVE PANEL DECISION**

IMC B.V. v. Sandra Dietz

Case No. D2023-3843

### **1. The Parties**

The Complainant is IMC B.V., Netherlands (Kingdom of the), represented by Merkenbureau Knijff & Partners B.V., Netherlands (Kingdom of the).

The Respondent is Sandra Dietz, United States of America ("US").

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

The disputed domain name <consolidatedimc.com> (the "Disputed Domain Name") is registered with Cosmotown, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 14, 2023. On September 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 21, 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 (NAME AND ADDRESS WITHHELD FOR PRIVACY PURPOSES) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 21, 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 amendment to the Complaint on September 25, 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 the Respondent of the Complaint, and the proceedings commenced on September 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 19, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on October 26, 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 is a financial trading business. It was founded in 1989 as International Marketmakers Combination (IMC). Today, through its wholly owned subsidiary IMC (Trading) B.V., it employs over 950 people and owns offices in Amsterdam, Chicago, Hong Kong, China, New York City, Mumbai, Seoul, and Sydney. In 30 years, the Complainant has grown considerably, offering its trading solutions primarily on the basis of data and algorithms, and using its execution platform to provide liquidity to financial markets globally.

The Complainant owns a number of registered trademarks which comprise or include the term “IMC” – see for example IMC (word mark), International Registration, No. 929842 (designating various territories including the US), registered on June 26, 2007. These trademarks are referred to as the “IMC trademark” in this decision.

The Complainant’s principal website is linked to the domain name <imc.com>.

The Disputed Domain Name was registered on July 26, 2023. It resolves to a website (the “Respondent’s Website”) which purports to be the website of ‘IMC Consolidated Investment Management Company’ and which in terms of layout, style and content, is at least superficially substantially similar to the Complainant’s own website (see discussion below).

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name. Notably, the Complainant contends that the Respondent’s Website is clear evidence of deliberate targeting of the Complainant and is clearly designed to give the impression that it is the Complainant’s own website – this is evidence of registration and use in bad faith of the Disputed Domain Name. The Complainant says that the Respondent in creating the Respondent’s Website has taken part of the name and the logo of a *bona fide* third party - Consolidated Investment Group (see “www.ciginvest.com”) and combined these elements with the Complainant’s own name to create a bogus website which masquerades as being that of the Complainant.

The Complainant says that the Respondent’s Website is in fact a superficial copy which appears to have been created quickly. Many of the links it contains do not work. Much of its content is fake having been copied from other sources on the Internet (the Complainant provides examples). The Complainant says that one link on the Respondent’s Website does work – that links to a Korean videogaming website. The Complainant says that the “Respondent is clearly seeking to attract traffic and to advance its own nefarious purposes by acting as (an affiliation of) Complainant, while luring and scamming people in the process”.

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

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

## 6. Discussion and Findings

### 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. 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 the 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 the entirety of the IMC trademark is reproduced within the Disputed Domain Name. While the addition of other terms such as here, "consolidated" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Accordingly, the Disputed Domain Name is identical or confusingly similar to the Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 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. There is no evidence before the Panel that any legitimate business called 'Consolidated Investment Management Company' exists and the nature of the Respondent's Website suggests it is a sham, though to what purpose is unclear (see discussion below). This type of sham activity cannot establish rights or a legitimate interest.

Based on the available record, the Panel finds the second element of the Policy has been established.

### C. Registered and Used in Bad Faith

In the present case the Panel concludes that the Respondent chose to register a name comprising the Complainant's trademark combined with the word "consolidated" (which appears to have been taken from the name of another *bona fide* financial business, along with that business' logo which is prominently reproduced on the Respondent's Website) as part of a scheme to publish a website which clearly gives the impression, at least initially, that it is that of the Complainant. The evidence before the Panel does not provide sufficient material for the Panel to reach a conclusion on exactly what the Respondent's intention was in so doing.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present circumstances factor (ii) is not applicable but the Panel cannot clearly determine which, if any, of the other factors may apply. It may be that factor (iv) applies but it is not clear to the Panel what if any commercial gain the Respondent is obtaining from the Respondent's Website. The Respondent's Website superficially presents in a manner that would likely lead to it being taken as that of the Complainant. However if any time is spent examining it, it quickly becomes apparent it does not function properly and contains inconsistent and confusing text. It also does not, so far as the Panel can see, seem to be arranged to "phish" for customer data or the like. Accordingly the Panel is unsure exactly what its purpose is or what benefit the Respondent derives from it. However, the Panel notes that in any event the list in paragraph 4(b) of the Policy is non exhaustive and takes the view that the acquisition of the Disputed Domain Name with knowledge of the Complainants' trademark is itself evidence of bad faith – see *The Channel Tunnel Group Ltd. v. John Powell*, WIPO Case No. [D2000-0038](#). This is particularly so given that the Respondent has not filed a Response and hence has not availed herself of the opportunity to present any case of good faith that she might have. The Panel infers that none exists.

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, <consolidatedimc.com>, be transferred to the Complainant.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: November 9, 2023