

ADMINISTRATIVE PANEL DECISION

Ares Management LLC v. 971Properties Investment Case No. D2023-4108

1. The Parties

The Complainant is Ares Management LLC, United States of America (“United States”), represented by Greenberg Traurig, LLP, United States.

The Respondent is 971Properties Investment, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <arescapitaltrade.com> is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 2, 2023. On October 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (On behalf of arescapitaltrade.com OWNER c/o whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 October 5, 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 October 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 2, 2023.

The Center appointed Federica Togo as the sole panelist in this matter on November 10, 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 the registered owner of several trademarks worldwide consisting or containing the term "ARES", e.g. United States trademark registration no. 3,014,171 for ARES (word), registered on November 8, 2005, for investment management in class 36; and United States trademark registration no. 3,925,364 for ARES CAPITAL (word), registered on March 1, 2011, for services in class 36.

The disputed domain name was registered on August 15, 2023, and resolved to a website allegedly offering its services as a crypto trading firm and displaying prominently without any authorization the Complainant's trademark and logo which are identical to those displayed on the Complainant's website.

5. Parties' Contentions

A. Complainant

It results from the Complainant's undisputed allegations that it is a subsidiary of Ares Management, L.P. (collectively, "Ares"), which is a publicly traded, leading global alternative asset manager with over 2,600 employees. It is headquartered in Los Angeles, with over 35 global offices, including in the United States, Europe, Asia, and Australia. It is active in the field of financial services, namely, investment advisory and investment management services for equity, real estate and credit-oriented pooled investment vehicles, private investment funds, and investment accounts.

It uses the domain name <aresmgmt.com> for its official website for promoting its services, where its trademarks are prominently displayed.

The Complainant contends that its trademarks ARES are distinctive and well-known in the financial services and related industries.

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant's earlier trademarks, since it incorporates the Complainant's ARES and ARES CAPITAL marks in full, changing the mark only by adding the generic terms "trade" at the end, which directly describes the Complainant's services, and then the generic top-level domain ("gTLD") ".com" after the mark. The addition of the term "trade" to the Complainant's famous ARES and ARES CAPITAL marks does not distinguish the disputed domain name but instead actually increases the likelihood of confusion based on the direct association of those words with the Complainant's financial services.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent is not commonly known by the disputed domain name, has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name. Instead, the Respondent was using the disputed domain name to divert Internet traffic to a website that prominently displays the Complainant's marks and purports to be a crypto trading firm operating under the Complainant's name and marks. The website purports to offer website visitors the ability to "deposit in Bitcoin, using a Credit or Debit card, or Wire transfer" and encourages website visitors to "open a new account" and provide personal information, including scanning a copy of their identification. Finally, the website lists its address which corresponds to the Complainant's New York City office address.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad

faith. According to the Complainant, the disputed domain name has been used to host a website passing itself off as the Complainant's website which is used to defraud consumers and steal their personal or company information. In addition to the Respondent's obvious actual and inferred knowledge of the Complainant's ARES Marks, the Respondent had constructive knowledge of the ARES Marks because of the Complainant's trademark registrations.

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". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name 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 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 evidence provided, that the Complainant is the registered owner of trademark registration for ARES as indicated in the Factual Background of this Decision.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.7). This Panel shares this view and notes that the Complainant's registered trademarks ARES and ARES CAPITAL are fully included in the disputed domain name.

Furthermore, it is the view of this Panel that the addition of the term "trade" in the disputed domain name cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademarks since the Complainant's trademarks are clearly recognizable in the disputed domain name (see [WIPO Overview 3.0](#) at section 1.8).

Finally, the gTLD ".com" of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#) at section 1.11.1).

In 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 in 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.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and, in particular, did not authorize the Respondent's use of the trademarks ARES and ARES CAPITAL, e.g., by registering the disputed domain name comprising the said trademarks entirely.

Furthermore, 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.

Moreover, the Panel notes that the disputed domain name is clearly constituted by the Complainant's registered trademarks ARES and ARES CAPITAL and the term "trade", which clearly refer to the Complainant's core business, tending to suggest sponsorship or endorsement by the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain name with the intent to attract Internet users for commercial gain. This is also confirmed by the content of the website to which the disputed domain name resolves, allegedly offering its services as a crypto trading firm and reproducing without any authorization the Complainant's trademark and logo which are identical to those displayed on the Complainant's website.

Furthermore, the composition of the disputed domain name directly targeting the Complainant's field of activity enhances the false impression that the disputed domain name is somehow officially related to the Complainant and an official website promoting the Complainant's business. Such composition of the disputed domain name cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner, see section 2.5.1 of the [WIPO Overview 3.0](#). This is also confirmed by the content of the website to which the disputed domain name resolves, in fact, the website lists an address which corresponds to the Complainant's New York City office address.

It is acknowledged 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 (see [WIPO Overview 3.0](#) at section 2.1). Since the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and 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 Panel finds that 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 documented allegations that the disputed domain name resolved to a website allegedly promoting similar services to those of the Complainant and reproducing without any authorization the Complainant's trademark and the logo. For the Panel, it is therefore evident that the Respondent knew the Complainant's 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 trademarks when it registered the disputed domain name. This is underlined by the fact that the disputed domain name is clearly constituted by the Complainant's registered trademarks ARES and ARES CAPITAL followed by the term "trade".

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith (see [WIPO Overview 3.0](#) at section 3.2.1):

- (i) the nature of the disputed domain name (a domain name incorporating the Complainant's marks plus the addition of the term "trade" corresponding to the complainant's area of activity);
- (ii) the content of the website to which the disputed domain name directs, promoting similar services to those of the Complainant and reproducing without any authorization the Complainant's trademark and the logo and listing its address which corresponds to Complainant's New York City office address;
- (iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name.

The Panel finds that the Complainant has therefore satisfied 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, <arescapitaltrade.com>, be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: November 24, 2023