

## **ADMINISTRATIVE PANEL DECISION**

African Bank Limited v. liu yun tao

Case No. D2024-1456

### **1. The Parties**

The Complainant is African Bank Limited, South Africa, represented by Adams & Adams Attorneys, South Africa.

The Respondent is liu yun tao, China.

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

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

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 8, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Qianyeung Information Technology Co., Limited) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 2024 providing the registrant and contact information disclosed by the Registrar, and requiring the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on April 26, 2024.

On April 19, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On April 22, 2024, the Complainant requested that the language of the proceeding be English. The Respondent did not comment on the Complainant’s request.

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 in English and Chinese of the Complaint, and the proceedings commenced on May 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 22, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 28, 2024. 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 South Africa-based retail bank founded in 1975. It holds multiple trademark registrations for AFRICAN BANK in four jurisdictions in southern Africa, including South African trademark registrations numbers 2012/28234, 2012/28235, 2012/28236, 2012/28237, 2012/28238, and 2012/28239, all registered on May 18, 2008, specifying goods and services in multiple classes. Those trademark registrations are current. The Complainant uses the domain name <africanbank.co.za>, registered on November 26, 1996, in connection with a website where it promotes its banking services. The Complainant also operates social media accounts using the name "African Bank".

The Respondent is an individual with a contact address in China.

The disputed domain name was created on December 27, 2023. At the time when the Complaint was filed, it resolved to a website in Chinese that ostensibly offered gaming services. It displayed the logos of online gaming providers and invited Internet users to enter their email address to create an account. At the time of this Decision, the disputed domain name does not resolve to any active website; rather, it is passively held.

#### **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 disputed domain name is confusingly similar to its AFRICAN BANK mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant did not authorize the Respondent's use of the AFRICAN BANK mark. The Complainant confirms that there is no relationship between the Parties, whether by license or otherwise. The disputed domain name was registered and is being used in bad faith.

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

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

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

##### **6.1 Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that it conducts its business in English; while the disputed domain name relates to a completely English trademark and makes no reference to China or Chinese.

The Respondent did not make any submission with respect to the language of the proceeding or express any interest in otherwise participating in this proceeding, despite the Center having sent email communications in Chinese and English regarding the language of the proceeding and the notification of the Complaint.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. The Panel would have accepted a Response in Chinese, but none was filed.

## **6.2 Substantive Issues**

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (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 burden of proof of each element is borne by the Complainant. The Respondent's default does not automatically result in a finding in favor of the Complainant. See [WIPO Overview 3.0](#), section 4.3.

### **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. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the AFRICAN BANK trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. It adds the possessive pronoun "my" as its initial element but the mark is recognizable within the disputed domain name. The only additional element is a generic Top-Level Domain ("gTLD") extension (".com") which, as a standard requirement of domain name registration, may be disregarded in the assessment of confusing similarity for the purposes of the Policy. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7, 1.8, and 1.11.1.

Therefore, 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 a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

In the present case, the disputed domain name wholly incorporates the Complainant’s AFRICAN BANK mark. Although the disputed domain name is composed of three dictionary words (i.e., “my”, “African”, and “bank”) plus a gTLD extension, nothing on the associated website had any apparent connection to the meaning of “African” or “bank”. The website invited Internet users to create an account for online gaming services. At the time of this Decision, the disputed domain name is passively held. The Panel does not consider that any of these circumstances constitutes a use of the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate noncommercial or fair use.

Having reviewed the available 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.

Based on the 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 fourth of these is as follows:

“(iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent’s] 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 [the Respondent’s] website or location or of a product or service on [the Respondent’s] website or location.”

The disputed domain name was registered in 2023, many years after the registration of the Complainant’s AFRICAN BANK mark. The disputed domain name wholly incorporates that mark, adding only the word “my” as its initial element and a gTLD extension. According to the evidence, the Complainant has made longstanding and widespread use of its mark in South Africa and online. The Respondent formerly used the disputed domain name in connection with an online gaming website. Nothing on the website had any apparent connection to the dictionary meaning of the words “African” and “bank” in the disputed domain name. In the Panel’s view, the most likely explanation for the registration of the disputed domain name was an attempt to capitalize on the value of the Complainant’s mark.

As regards use, the disputed domain name formerly resolved to a website that offered online gaming services. In the Panel’s view, the most likely explanation of the evidence is that the Respondent used it in an intentional attempt to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website within the terms of paragraph 4(b)(iv) of the Policy.

The Panel notes that the use of the disputed domain name has recently changed, and it no longer resolves to an active website. This change in use does not alter the Panel's conclusion; in the circumstances it may constitute an attempt to evade detection and, hence, a further indication of bad faith.

Therefore, the Panel finds that the Complainant has established the third element 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 <myafricanbank.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: June 10, 2024