

ADMINISTRATIVE PANEL DECISION

IMC B.V. v. Evelyn Otene, Majia Comm Ltd
Case No. D2024-1785

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 Evelyn Otene, Majia Comm Ltd, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <consolidated-imc.com> is registered with Cosmotown, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 29, 2024. On April 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 2024, 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 (Withheld for Privacy Purposes) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 7, 2024, 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 May 8, 2024.

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 May 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2024. The Respondent sent an email communication to the Center on May 13, 2024. The Center proceeded to the Commencement of Panel Appointment on June 12, 2024.

The Center appointed Knud Wallberg as the sole panelist in this matter on June 14, 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 was founded in 1989 as International Marketmakers Combination (IMC), today, IMC (Trading) B.V. and employs over 950 people and owns offices in Amsterdam, Chicago, Hong Kong, China, New York City, Mumbai, Seoul and Sydney. The Complainant offers trading solutions primarily on the basis of data and algorithms and is using its execution platform to provide liquidity to financial markets globally.

The Complainant owns a number of registrations for the IMC mark in countries around the world, including, but not limited to the following: International Registration No. 929842, IMC, registered on June 26, 2007, for services in international class 36; and International Registration No. 1491138, imc (figurative), registered on July 23, 2019, also for services in international class 36.

The Complainant's main domain name is found at <imc.com>.

The disputed domain name was registered on April 9, 2024, and, at the time of filing of the Complaint, it resolved to a website for a company named IMC Consolidated Investment Management Company that appeared to offer financial services. However, the website at the disputed domain name displays elements that, as evidenced by the Complainant, correspond to a combination of elements from third parties (such as the Respondent's company name, logo, and the supposed member of the "Global Management Committee").

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 the Complainant's IMC trademark since it incorporates the mark exactly and in its entirety.

Furthermore, the Respondent has no rights to or legitimate interests in the disputed domain name. The Respondent is not commonly known by the name "IMC" and the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain by misleadingly diverting consumers or to tarnish the Complainant's trademarks.

The Complainant finally contends that the Respondent has registered and is using the disputed domain name in bad faith. The Respondent is using the disputed domain name for a website for a company named IMC Consolidated Investment Management Company that appears to offer financial services whereby the Respondent is clearly abusing the reputation and goodwill of the Complainant's older rights to its reputed IMC mark.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In an e-mail to the Center the Respondent stated that the disputed domain name does not belong to her, and the Respondent provided an e-mail address of the alleged registrant. The Center requested the Respondent "to identify the third party mentioned, clarifying her/his relationship (if any) to you, and to provide information sufficient to verify such relationship", but the Respondent did not provide such information. The Panel also notes that the

Respondent did not provide any explanation as to why she was registered as the registrant of the disputed domain name (as confirmed by the Registrar). A registrant of a domain name has certain obligations by virtue of its registration, which cannot be reneged by merely referring to the registration being done on behalf of a third party (see, e.g. *Bryan Cave Leighton Paisner LLP v. Job*, WIPO Case No. [D2020-0592](#)). The Panel therefore finds that the individual, that is recorded as registrant of the disputed domain name shall be considered to be the Respondent in this case.

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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms - 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.

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.

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.

In particular, the Panel notes that while the website at the disputed domain name shows the profile of a company purportedly named IMC Consolidated Investment Management Company, the Complainant has provided un rebutted evidence that leads the Panel to a conclusion that the content of the website was fabricated using a combination of elements from third parties' websites. In addition, while the website at the disputed domain name was referring to the finance and investment business (fields related to the

Complainant's business), the Panel notes the Complainant's un rebutted contention that the website at the disputed domain name included hyperlinks unrelated to those fields (for example, links related to videogames, which in turn referred to pornographic content). The Panel agrees with the Complainant's argument that the disputed domain name appears to be used to attract Internet traffic, and the Panel finds that the use of the disputed domain name does not give rise to or legitimate interests in it.

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.

Given the circumstances of the case, including the evidence on record of the use of the Complainant's trademark IMC, and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the disputed domain name was registered without prior knowledge of the Complainant and the Complainant's mark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The Panel also notes the Complainant's argument that the website at the disputed domain name "is fully identical to the website that used to connect to the domain consolidatedimc.com" (see *IMC B.V. v. Sandra Dietz*, WIPO Case No. [D2023-3843](#)), and that the "Complainant assumes to be dealing with the same (or related) party as with this previous case". In addition, the disputed domain name was registered on April 9, 2024, that is after the decision in *IMC B.V. v. Sandra Dietz*, WIPO Case No. [D2023-3843](#), which is dated November 9, 2023. In this regard, the Complainant argues the registration of the disputed domain name was an attempt to circumvent the previous panel's decision. The Panel finds that the registration of the disputed domain name (<consolidated-imc.com>), nearly identical to the domain name <consolidatedimc.com> in *IMC B.V. v. Sandra Dietz*, WIPO Case No. [D2023-3843](#), and its use for a website with the same content, points toward the Respondent being the same person or related to the respondent in *IMC B.V. v. Sandra Dietz*, WIPO Case No. [D2023-3843](#). These circumstances further support the Panel's finding on bad faith.

Furthermore, the Panel finds that the disputed domain name has been used in bad faith to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Noting that the disputed domain name incorporates the Complainant's trademark IMC; that the Respondent has not replied to the Complainant's contentions; and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence of the case, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

The Panel thus finds that the Complainant has also 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 <consolidated-imc.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: June 28, 2024