

ADMINISTRATIVE PANEL DECISION

IMC B.V. v. lar frank, no
Case No. D2024-2979

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 lar frank, no, Philippines.

2. The Domain Name and Registrar

The disputed domain name <imctrading90.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 23, 2024. On July 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 23, 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 (See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 24, 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 July 25, 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 July 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2024.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on August 23, 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 is the owner of a number of registrations for the IMC mark in different jurisdictions. By way of example:

International Registration No. 929842, IMC, registered on June 26, 2007;
International Registration No. 1491138, IMC, registered on July 23, 2019; and
International Registration, No. 1488678, IMC TRADING, registered on July 23, 2019.

The Complainant is the owner of the domain name <imc.com> registered on December 28, 1997, which redirects to its official site.

The disputed domain name was registered on June 5, 2024, and, according to the evidence provided by the Complainant, it resolved to a website where decentralized cryptocurrency or blockchain trading services were offered. Currently the disputed domain name is inactive.

The Complainant sent an abuse report to the Respondent on July 10, 2024, via the disputed domain name online form provided by the Registrar. No answer was received.

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 website to which the disputed domain name resolves contains a number of errors. As such, the hyperlinks are either malfunctioning or providing hyperlinks that do not work. Furthermore, the Respondent's User Agreement last update is on December 1, 2021, while the disputed domain name registration is later of June 5, 2024. The User Agreement also mentions "this website" followed by the mentioning of an unrelated domain: "https://www.apec.io/#/", whilst the Privacy Policy mentions the email address: "apec.io2022@". The mentioning of these clearly demonstrates that the User Agreement and Privacy Policy have been copied from a third party, alleges the Complainant.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a “default” the Panel is still required “to proceed with a decision on the complaint”, whilst under paragraph 14(b) it “shall draw such inferences there from as it considers appropriate”. This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

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 Panel finds the mark is recognizable 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, “90” 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 the Panel's view the evidence shows that the content of the website to which the disputed domain name directs was built on the basis of third-party websites. Besides, the Panel notes how the scope of activity of the Respondent's website is directly connected with the Complainant's activity. Furthermore, the evidence provided by the Complainant demonstrates the Respondent's attempt to impersonate the Complainant by naming the site after "Imc Tradings". Under these circumstances, the disputed domain name is seemingly used to attract Internet traffic which cannot not give rise to rights to or legitimate interests in the disputed domain name.

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.

In the present case, the Panel notes that Paragraph 4(b)(iv) of the Policy applies since the evidence show how the Respondent intentionally attempted to attract Internet users to its website for commercial gain by creating likelihood of confusion with the Complainant's mark as to the affiliation or endorsement of either the Respondent or its website. The Panel finds that the Respondent targeted the Complainant and its trademarks with the apparent purpose to gain some advantage illegally.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

As noted, the disputed domain name reproduces the Complainant's IMC TRADING trademark, the website to which the disputed domain name resolves was operating under "Imc Tradings", which reproduces the Complainant's mark adding an "s" at the end of the mark, as well as the connected or similar fields of economic activity of both parties. Therefore, the Respondent likely knew about the Complainant at the moment of the registration of the disputed domain name.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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 <imctrading90.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: September 6, 2024