

ADMINISTRATIVE PANEL DECISION

AEW Capital Management v. Usiesili Bright, Anitahost.com
Case No. D2024-4369

1. The Parties

The Complainant is AEW Capital Management, United States of America (“United States”), represented by ZeroFox, United States.

The Respondent is Usiesili Bright, Anitahost.com, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <aewcapitalmanagement.icu> is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 23, 2024. On October 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 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 (Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 October 29, 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 October 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 19, 2024. The Respondent sent an email communication on November 15, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on November 22, 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, AEW Capital Management, is a United States real estate investment firm headquartered in Boston and founded in 1981. With offices located worldwide and an estimated USD 91.6 billion in assets under management, the Complainant is ranked as the eighth largest Private Equity Real Estate firm in the world.

The Complainant claims it owns multiple trademark registrations for AEW, including the United States registration number 5310289 for AEW (word), registered on October 17, 2017, for services in International class 36.

The Complainant has also online presence through its official website at “aew.com”, registered on May 1995.

The disputed domain name was registered on August 29, 2024, and, at the time of filing the Complaint, it resolved to an error page.

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 trademark since it incorporates the AEW trademark in whole, and reproduces the entire name of the Complainant; the Respondent has no rights or legitimate interests in the disputed domain name; the Respondent registered the disputed domain name in bad faith mainly because, it is well established that, the whole incorporation of the Complainant's mark is enough to establish bad faith at the time of registration, under “passive holding” doctrine, and that the Respondent has used a privacy shield to obfuscate its contact and registration information in the Whois.

B. Respondent

The Respondent did not substantially reply to the Complainant's contentions; however the Respondent sent one email communication to the Center, on November 15, 2024, claiming that the disputed domain name was taken down several weeks ago, that the disputed domain name is no longer active, and that it is no longer in control of the disputed domain name.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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 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 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 "capitalmanagement", may bear on assessment of the second and third elements, the Panel finds the addition of such term/s 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 Respondent's email communication, the Respondent does not claim any rights or legitimate interests in the disputed domain name, to the contrary its short communication (falsely suggesting that it is no longer in the control of the disputed domain name because there was no transfer or other evidence of ownership change for the disputed domain name), can be considered as an acknowledgement of the Complainant's rights in AEW trademark, correlated with the Respondent's lack of rights or legitimate interests in the disputed domain name.

Further, the composition of the disputed domain name carries a high risk of implied affiliation, reproducing the Complainant's mark together with words designating its business area, and being virtually identical to the Complainant's trade name. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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 the disputed domain name was registered in bad faith, with knowledge of the Complainant, its trademark, and business particularly because the disputed domain name incorporates the Complainant's trademark, domain name, and reproduces exactly the Complainant's trade name, and the Complainant's trademark predates the registration of the disputed domain name with many years.

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.

At the time of filing the Complaint, the disputed domain name was not connected to an active website.

UDRP panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark; the composition of the disputed domain name which incorporates the Complainant's trademark and words related to its field of activity, and being virtually identical to Complainant's corporate name; the Respondent's communication and lack of a substantive response to the allegations made in the Complaint and, finds that, in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. [WIPO Overview 3.0](#), section 3.3.

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, <aewcapitalmanagement.icu>, be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: November 26, 2024