

ADMINISTRATIVE PANEL DECISION

IMC B.V. v. Privacy service provided by Withheld for Privacy ehf /

IURII KABAENKOV

Case No. D2022-3050

1. The Parties

The Complainant is IMC B.V., Netherlands, represented by Merkenbureau Knijff & Partners B.V., Netherlands.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / IURII KABAENKOV, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <imc-business.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 18, 2022. On August 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 18, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 25, 2022, 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 August 25, 2022.

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 September 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 22, 2022.

The Center appointed Mariya Koval as the sole panelist in this matter on September 30, 2022. 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, founded in 1989 as International Marketmakers Combination (IMC), is a proprietary trading firm and market maker for various financial instruments listed on exchanges throughout the world.

The Complainant, being, a technology-driven trading firm, is active in over 100 trading venues throughout the world and offers liquidity to over 200,000 securities. Today, the Complainant employs over 950 people and owns offices in Amsterdam, Chicago, Hong Kong, New York City, Mumbai, Seoul and Sydney. In 30 years, the Complainant has grown considerably, offering its trading solutions primarily on the basis of data and algorithms, and using its execution platform to provide liquidity to financial markets globally.

The Complainant is the owner of a large IMC Trademark (the “IMC Trademark”) registrations portfolio throughout the world, among which are:

- International Trademark Registration No. 929842, registered on July 26, 2007, in respect of services in class 36;
- International Trademark Registration No. 1018983, registered on September 23, 2009, in respect of services in class 36;
- International Trademark Registration No. 1590051, registered on March 25, 2021, in respect of services in class 36.

The Complainant operates the domain name <imc.com> (registered on December 28, 1997) reflecting its IMC Trademark in order to sale and promote its services.

The Disputed Domain Name was registered on June 29, 2022. At the time the Complaint was filed, the Disputed Domain Name was redirected to a (crypto-) trading website where cryptocurrency services were offered (similar to the trading / financial services offered by the Complainant). As of the date of this Decision the Disputed Domain Name resolves to an active website with articles in Russian about cryptocurrency trading, as well as contains a link to a Russian crypto trading bot (website “www.revenuebot.io”).

5. Parties’ Contentions

A. Complainant

The Complainant asserts that it is one of the world’s most active proprietary trading firms and a key market maker in various products listed on exchanges throughout the world.

The Complainant contends that the Disputed Domain Name is confusingly similar to its IMC Trademark in view of the Disputed Domain Name contains the Complainant’s Trademark in its entirety with addition of a hyphen and the term “business”. The word element “business” is not distinctive as consumers are used to seeing this generic word. Moreover, since the Disputed Domain Name is currently used actively for articles on cryptocurrency trading services and redirects to a crypto trading bot, these services are clearly highly similar to the trading / financial services offered by the Complainant. The Complainant therefore rightfully fears likelihood of confusion and damage to its goodwill and reputation.

The Complainant further contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name in view of the following:

- the Respondent, offering articles in Russian about crypto trading and a malicious link to a Russian crypto trading bot, is clearly taking advantage / parasitizing on the goodwill and / or reputation of the Complainant's company name and valued IMC Trademark;
- the Respondent is not connected or affiliated to or authorized to carry out activities, either commercial or non-commercial, on behalf of the Complainant;
- the Respondent is not commonly known by the Disputed Domain Name;
- the Respondent is also not making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain. It is very much the opposite: by misleadingly diverting consumers for traffic, the Respondent tarnishes the Complainant's trade name, domain name and Trademark. The links on the website under the Disputed Domain Name do not work and the articles and embedded key words are only there to attract traffic to a (malicious) crypto trading bot, also in Russian.

The Complainant also claims that the Disputed Domain Name was registered and is being used in bad faith. The Complainant's rights to IMC Trademark predate the registration and use of the Disputed Domain Name by the Respondent.

Moreover, this is not the first time the Complainant acts against the Respondent. This is the third time that the Respondent has claimed a confusingly similar domain name including the IMC Trademark (Annexes 10 and 11 to the Complaint). After the successful UDRP proceeding against the domain name <imctrades.com> (its registrant was located in the Republic of Vanuatu), the infringing party created the domain name <imctrades.io> (its registrant was located at the same address as the Respondent). Visitors of the domain name <imctrades.com> were automatically redirected to <imctrades.io>, which website for scam / fraud purposes was identical to that of the prior domain name. With this history in mind, it is clear that the Respondent seeks to circumvent the previous UDRP decisions by choosing the confusingly similar Disputed Domain Name and redirecting visitors to its website.

The Respondent was well aware of the Complainant's rights and still chooses a confusingly similar domain name after losing two prior UDRP proceedings. The current use of the Disputed Domain Name also constitutes several findings of bad faith. For one, the Disputed Domain Name's banner in the taskbar states "\$1000 for Holidays and mandatory days off", so it is clear that the Respondent's only goal is to merely attract traffic as this has nothing to do with the so called articles on cryptocurrency trading in Russian. As for the rest of the content of the website under the Disputed Domain Name, it is possible to translate this from Russian to English. None of the links of the website work and the article is likely to have been copy pasted here to fill the space and attract traffic. The only link that does work is of the mentioned "revenue bot", which redirects to a landing page for this trading bot. The rise of (fraudulent) crypto trading bots is a well-known fact (Annexes 12 and 13 to the Complaint) and the "revenue bot" in question is highly likely to be a scam (Annex 13 to the Complaint).

By registering and using the Disputed Domain Name, the Respondent intentionally attempts to attract Internet users to its website for the commercial gain. Furthermore, it is clear that the Respondent has a bad reputation as its previous domain names (<imctrades.com> and <imctrades.io>) were also directly used for fraudulent purposes (Annexes 14, 15, 16 and 17 to the Complaint).

The fact that the Respondent now offers a crypto trading bot is just another example of highly suspicious activities, which the Complainant does not wish to be associated with. In light of this, it is also worth mentioning that the Respondent has also been connected with spreading malware as its address is listed by the Cyber Security and Infrastructure Security Agency in the United States (CISA) (Annex 18 to the Complaint). Given the history with the Respondent it is clear the Disputed Domain Name is registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, in order for the complainant to succeed it must satisfy the Panel that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has properly asserted its rights in the IMC Trademark due to the long use and number of registrations globally.

The Disputed Domain Name reproduces the IMC Trademark in its entirety in combination with a hyphen, the dictionary term "business", and the generic Top-Level domain ("gTLD") ".com". According to section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements. The Panel finds that in view of the fact that in this case the Disputed Domain Name incorporates the entirety of the Complainant's IMC Trademark, the addition of hyphen and the dictionary term "business" does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.

It is also well established that the gTLD, in this case ".com", does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar.

Also, pursuant to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Furthermore, the use of hyphens in the Disputed Domain Name is irrelevant in a finding of confusing similarity, see *e.g. Royale Indian Rail Tours Limited v. Divino Indian Memoirz Tours Pvt. Ltd.*, WIPO Case No. [D2010-2107](#) ("In the present case, the Panel finds that... adding a hyphen between the two words "maharaja" and "express" in the disputed domain name are insignificant modifications that do not reduce the confusing similarity between the disputed domain name and the Complainant's mark").

In light of the above, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's IMC Trademark and that the Complainant has established the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Names pursuant to paragraph 4(a)(ii) of the Policy.

In accordance with section 2.1 of the [WIPO Overview 3.0](#) while the overall burden of proof in UDRP proceedings is on the Complainant, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. If such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name. If the Respondent fails to come forward with such relevant evidence, the Complainant is generally deemed to have satisfied the second element.

Taking into account the facts and arguments set out above, the Panel finds that the Complainant has made a *prima facie* case. The Respondent registered the Disputed Domain Name more than fifteen years after the IMC Trademark had been registered. There is no evidence that the Respondent owns any IMC Trademarks, nor that it is commonly known by the Disputed Domain Name. Therefore, the Respondent has failed to come forward with any evidence to rebut such *prima facie* case.

The Complainant submits that the Respondent is not using the Disputed Domain Name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. Namely, the Panel, having properly checked the content of the website under the Disputed Domain Name, found that the website contains only one article concerning cryptocurrency trading and one link to crypto trading bot (which redirects to a landing page for this trading bot), all another links on the website do not work. The Panel accepts that the services proposed by the Respondent on the website under the Disputed Domain Name are clearly highly similar to the trading / financial services offered by the Complainant. Accordingly, the Panel agrees with Complainant that the website under the Disputed Domain contains the article and embedded key words for the only purpose to attract traffic to crypto trading bot (“Revenue BOT”, also in Russian). According to the evidence presented by the Complainant (Annex 13 to the Complaint) this Revenue BOT in question is highly likely to be a scam in view of a very low rating on the website “www.scamadviser.com”. Such use of the Disputed Domain Name cannot obviously be considered as *bona fide* offering of goods or services, or a legitimate noncommercial or fair use.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, even where a domain name consists of a trademark plus an additional term (at the second- or top-level), 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. Therefore, the addition of the term “business”, which is just a term for conducting a commercial activity entered into for profit, to the Complainant’s Trademark in the Disputed Domain Name, is further evidence, that the Respondent was very well aware of the Complainant’s Trademark and business at the time of registration of the Disputed Domain Name. The Respondent has done so for the only purpose of creating an impression that the Disputed Domain Name is connected with the Complainant and its Trademark.

Also, taking into consideration the long use of the Complainant’s IMC Trademark, which also represents the Complainant’s full corporate name that has been used long prior to the official registration of the Trademark, it is implausible to assume that the Respondent was unaware of the Complainant’s Trademark at the time of registration of the Disputed Domain Name.

In light of the above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Therefore, the Panel finds that the second element of the UDRP has been met by the Complainant.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy indicates some circumstances, 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:

(i) circumstances indicating that you [respondent] have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain

name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

The Panel comes to the conclusion that the Disputed Domain Name was registered and has been used in bad faith in view of the following. The Disputed Domain Name was registered long after the Complainant registered its IMC Trademark. The Disputed Domain Name incorporates the IMC Trademark in its entirety, therefore the Panel finds that the Respondent was well aware of the Complainant's Trademark when it registered the Disputed Domain Name and obviously chose to register the Disputed Domain Name with the only intention to benefit from the Complainant's reputation.

Moreover, the Respondent's knowledge of the Complainant's Trademark is also supported by use of the Disputed Domain Name which, at the date of this Decision, resolves to the website which contains the article with indication that its author is of website "www.imc.com" – the official website of the Complainant. Moreover, the services proposed by the Respondent on the website under the Disputed Domain Name are clearly very similar to the services offered by the Complainant. This gives a strong impression that the website under the Disputed Domain Name is related to or authorized by the Complainant, the Internet users most likely consider that the Disputed Domain Name refers to the one of the Complainant's official websites. Also, as it has been already mentioned above, the Respondent's website contains a link to cryptocurrency trading bot, which in its turn, may be malicious. Such Respondent's behavior cannot be in any way considered as good faith.

Furthermore, the Disputed Domain Name, reproducing the Complainant's Trademark in its entirety, is evidently deceptive for the consumers. In view of the above, the Respondent obviously chose to register the Disputed Domain Name, which is confusingly similar to the Complainant's IMC Trademark, for the purpose of attracting Internet users to its competing website by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

Finally, the Respondent, not participating in these proceedings, has failed to indicate any facts and/or evidence, which would show the good faith registration and use of the Disputed Domain Name.

In view of the foregoing, the Panel finds that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant

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 <imc-business.com> be transferred to the Complainant.

/Mariya Koval/

Mariya Koval

Sole Panelist

Date: October 10, 2022