

ADMINISTRATIVE PANEL DECISION

IMC B.V. v. Traoley Joe, Justin Baer

Case No. D2023-0013

1. The Parties

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

The Respondents are Traoley Joe, Thailand, and Justin Baer, Taiwan Province of China.

2. The Domain Names and Registrars

The disputed domain name <imc-trading.pro> is registered with Dynadot, LLC; and the disputed domain name <imc-trading.vip> is registered with Gname.com Pte. Ltd. (the "Registrars").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 3, 2023. On January 3, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On January 4, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on January 11, 2023.

On January 13, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 16, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondents did not comment on the language of the proceeding.

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 Respondents in English and Chinese of the Complaint, and the proceeding commenced on January 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on February 9, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on February 22, 2023. 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

A. Complainant

The Complainant is a company established in the Netherlands in 1989 and a provider of stock trading solutions, with offices in Amsterdam, Chicago, Hong Kong, China, New York City, Mumbai, Seoul, and Sydney, operating since its inception under the trade mark IMC (the "Trade Mark").

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the Trade Mark, including International registration No. 929842, registered on June 26, 2007.

B. Respondents

The Respondent Traoley Joe is apparently an individual with an address in Thailand; and the Respondent Justin Baer is apparently an individual with an address in Taiwan Province of China.

Both of the named Respondents have been found in prior decisions under the Policy (*IMC B.V. v. JustinBaer, YKTS*, WIPO Case No. [D2022-3838](#); *IMC B.V. v. Traoley Joe, YKTS*, WIPO Case No. [D2022-3539](#); *IMC B.V. v. Baer Justin, YKTS*, WIPO Case No. [DCC2022-0011](#); and *IMC B.V. v. JustinBaer, YKTS*, WIPO Case No. [DIO2023-0001](#)) to have registered and used similar domain names comprising the Trade Mark in bad faith, in respect of websites offering cryptocurrency trading services under the Trade Mark.

C. The Disputed Domain Names

The disputed domain name <imc-trading.pro> was registered on December 5, 2022. The disputed domain name <imc-trading.vip> was registered on November 18, 2022.

D. The Websites at the Disputed Domain Names

The disputed domain names resolved previously to identical English language websites featuring prominently the Trade Mark and offering cryptocurrency trading services (the "Websites"). As at the date of this Decision, the disputed domain name <imc-trading.vip> is no longer resolved to an active website; and the disputed domain name <imc-trading.pro> is resolved to a cryptocurrency wallet related website with an imbedded link.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to the Trade Mark, the Respondents have no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Issue: Consolidation of Respondents

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) provides as follows:

"Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

The Complainant contends that there should be consolidation of the Respondents in the present proceeding, as the same named Respondents Traoley Joe and Justin Baer have used the same identical websites in respect of cryptocurrency trading services, including in respect of the Websites in this proceeding set out in Section 4.D. above, and in respect of each of the websites referred to in the cited UDRP decisions set out in Section 4.B. above.

For the above reasons put forward by the Complainant, the Panel concludes that there are sufficient grounds to support the conclusion that the disputed domain names are subject to common control and that consolidation would be fair and equitable to all Parties. The Panel notes, in addition to the factors relied upon by the Complainant, none of the Respondents has objected to the Complainant's consolidation request.

Save where the context suggests otherwise, the Respondents will accordingly be referred to as the "Respondent" hereinafter.

6.2. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name <imc-trading.pro> is English; whereas the language of the Registration Agreement for the disputed domain name <imc-trading.vip> 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.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding (see [WIPO Overview 3.0](#), section 4.5.1).

The Complainant has requested that the language of the proceeding be English.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response in either Chinese or English, after the Respondent had been duly notified in both Chinese and English of the language of the proceeding, and 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.

In light of the English language content of the Websites, and the fact the Registration Agreement for the disputed domain name <imc-trading.pro> is English, the Panel finds there is sufficient evidence in support of the conclusion that the Respondent is conversant in English. The Panel notes also that each of the prior decisions under the Policy set out in Section 4.B. above was handed down in English. The Panel's Consolidation finding under Section 6.1. above provides further support for the Panel's finding in this regard.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

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.

6.3. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the generic Top-Level Domains ("gTLDs") ".pro" and ".vip", the disputed domain names incorporate the entirety of the Trade Mark, followed by the word "trading", separated by a hyphen (see [WIPO Overview 3.0](#), section 1.7).

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services. To the contrary, each of the disputed domain names has been resolved to the Websites, offering cryptocurrency trading services under the Trade Mark, services which are similar to the trading services provided by the Complainant for many years under the Trade Mark.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

Moreover, the nature of the disputed domain names is inherently misleading, and carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

In light of the composition of each of the disputed domain names, their dates of registration, the manner of use of the Websites, the Respondent's pattern of conduct of registering and using domain names comprising the Trade Mark in the same manner to offer cryptocurrency trading services, the previous adverse findings against the Respondent under the Policy, and the fact at least one of the Websites has been taken down following the filing of the Complaint herein, the Panel finds that bad faith has been made out by the Complainant under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are being used in bad faith.

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 names <imc-trading.pro> and <imc-trading.vip> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: March 8, 2023