

## **ADMINISTRATIVE PANEL DECISION**

Société Anonyme des Bains de Mer et du Cercle des Etrangers à Monaco v.  
Mysar Mykhailo  
Case No. D2023-4388

### **1. The Parties**

The Complainant is Société Anonyme des Bains de Mer et du Cercle des Etrangers à Monaco, Monaco, represented by De Gaulle Fleurance & Associés, France.

The Respondent is Mysar Mykhailo, Ukraine.

### **2. The Domain Name and Registrar**

The disputed domain names <casinomontecarlo.top>, <casinomonacobet.top>, <monacobet-casino.top>, and <monacobetcasino.top> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 23, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 27, 2023, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 27, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant requested the addition of three domain names. The Complainant filed the Amended Complaint on October 31, 2023, and submitted the additional annexes on November 16, 2023.

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 Respondent of the Complaint, and the proceedings commenced on December 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 28, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on December 28, 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

The Complainant was founded in 1863 and has its registered office in the Principality of Monaco. The Complainant has almost 3,000 employees and operates the Casino de Monte-Carlo and is the sole entity with state permission to operate casinos in the Principality of Monaco. The Complainant also participates in the operation of hotels, restaurants, and bars in the Principality of Monaco.

The Complainant holds the domain name <montecarlosbm.com> which hosts its website. The Complainant owns several trademark registrations, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASSES
CASINO DE MONACO	Monaco	02.23234	September 30, 2002	3, 9, 12, 14, 16, 18, 28, 34, 35, 38, 39, 41, 43
CASINO DE MONTE-CARLO	Monaco	96.17407	October 30, 2006	3, 7, 9, 12, 14, 16, 18, 28, 34, 35, 38, 39, 41, 42, 43, 45
MONACOBET	Monaco	09.27373	July 15, 2009	41

Because the Respondent did not file a Response, not much is known about the Respondent.

The disputed domain name <casinomontecarlo.top> was registered on June 1, 2023. The disputed domain names <casinomonacobet.top>, <monacobet-casino.top>, and <monacobetcasino.top> were registered on October 19, 2023.

According to the evidence submitted with the Complaint, the disputed domain name <casinomontecarlo.top> resolves to a website offering gambling activities.

The disputed domain names <casinomonacobet.top>, <monacobet-casino.top> and <monacobetcasino.top> resolve to inactive websites.

#### 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 as follows:

The disputed domain name <casinomontecarlo.top> is confusingly similar to the CASINO DE MONTE-CARLO trademark in which the Complainant has rights.

As far as the disputed domain names <casinomonacobet.top>, <monacobet-casino.top>, and <monacobetcasino.top> are concerned, they are all confusingly similar to the Complainant's trademark MONACOBET since they all incorporate the whole of the Complainant's trademark and associate this trademark with the term "CASINO". They are also confusingly similar to the Complainant's trademark CASINO DE MONACO.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent has not been authorized by the Complainant to use its trademarks, is not commonly known by the disputed domain names, and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain names in connection with a *bona fide* offering of goods and services.

The disputed domain names were registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademarks CASINO DE MONACO and CASINO DE MONTE-CARLO at the time it registered the disputed domain names.

Respondent is using the disputed domain name <casinomontecarlo.top> in bad faith to offer gambling activities, thereby leading Internet users to believe that there is an affiliation between the Complainant and the website operated under this disputed domain name.

On the other hand, the disputed domain names <casinomonacobet.top>, <monacobet-casino.top> and <monacobetcasino.top> are inactive. However, such passive holding does not prevent a finding of bad faith and can indeed constitute, under the totality of circumstances of the case, a bad faith use.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

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

### **Procedural Considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the mail service was not able to deliver the written notice to the Respondent's address in Ukraine, whereas the Complaint was delivered to the Respondent's email address provided by the Registrar. The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the

Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, Alibaba.com Singapore E-Commerce Private Limited, is in China.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

### **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.

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 disputed domain name <casinomontecarlo.top> is confusingly similar to the CASINO DE MONTE-CARLO trademark in which the Complainant has rights.

The domain names <casinomonacobet.top>, <monacobet-casino.top>, and <monacobetcasino.top> are confusingly similar to the Complainant's trademark MONACOBET since they all incorporate the whole of the Complainant's trademark and associate this trademark with the term "CASINO". Although the addition of other terms such as here CASINO may bear on assessment of the second and third elements, the Panel finds the addition of this term does not prevent a finding of confusing similarity between these disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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 names.

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 names such as those enumerated in the Policy or otherwise.

Furthermore, the nature of the disputed domain names carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, 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.

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.

In the view of the Panel, noting that that the Complainant's trademarks predate the registration of the disputed domain names and considering that the disputed domain name <casinomontecarlo.top> resolves to a website offering gaming activities, it is inconceivable that the Respondent could have registered the disputed domain names without knowledge of the Complainant's well known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The impression given by the website posted under the disputed domain name <casinomontecarlo.top> would cause consumers to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds that by using this disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site in the sense of Policy, paragraph 4(b)(iv).

The disputed domain names <casinomonacobet.top>, <monacobet-casino.top>, and <monacobetcasino.top> are inactive. 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 finds the non-use of these disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes

- the distinctiveness and high reputation of the Complainant's trademarks for its world-famous casino,
- the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use,
- the Respondent's use of false contact details as evidenced by the inability of the courier to deliver the Center's written communication to the address disclosed by the Registrar for the Respondent.

Furthermore, under the circumstances of this case, it is inconceivable that the Respondent could make any good faith use of the disputed domain names.

Therefore, the Panel finds that in the circumstances of this case the passive holding of these disputed domain names does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy with regard to the disputed domain name.

## 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 <casinomonacobet.top>, <casinomontecarlo.top>, <monacobet-casino.top>, and <monacobetcasino.top> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: January 18, 2024