



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301721
Complainant:	APM MONACO S.A.M.
Respondent:	Archer Fay
Disputed Domain Name(s):	<APMMONACOSALE.NET>

1. The Parties and Contested Domain Name

1. The Complainant is APM MONACO S.A.M. of 3, rue de l'Industrie, 9 ETG 98000, Monaco, with its principal place of business at Building 12, No. 999, Fulong Road, Shawan Town, Panyu District, Guangzhou China.
2. The Respondent is Archer Fay of 3346 N Mountain Lane, Boise, ID, USA, 83702.
3. The domain name at issue is <APMMONACOSALE.NET> (“Disputed Domain Name”), registered by the Respondent with NameCheap, Inc. of 4600 East Washington Street, Suite 305, Phoenix, AZ 85034, USA (“Registrar”).

2. Procedural History

4. The Complainant filed this complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) (“Centre”) on 16 February 2023, pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”) effective from 31 July 2015.
5. On 17 February 2023, the Centre emailed to the Registrar requesting confirmation of the WHOIS record and other related information of the Disputed Domain Name. On the same date, the Centre received a reply from the Registrar, which contained the registration details, confirmed that the language of the registration agreement is English, and provided other relevant information.
6. A copy of the Complaint was sent to the Respondent and the Registrar on 20 February 2023 (which was the date of commencement of the proceeding). The due date for the Respondent to submit a Response to the Complaint was 12 March 2023. The Respondent failed to file a

response within the time limit and on 13 March 2023 the Centre issued a notification that the Respondent was in default.

7. On 13 March 2023, after confirming that he was able to act independently and impartially between the parties, the ADNDRC appointed Mr David Allison as the Panellist in this matter.

3. Factual background

8. The Complainant, APM MONACO S.A.M., has designed, developed, manufactured and sold jewellery under the “APM” and “APM MONACO” brands since 1982. The brand “APM” is derived from the initials of the founder’s name - Ms. Ariane Prette - with “A” referring to Ariane, “P” referring to Prette and “M” referring to “Monaco.
9. The Complainant markets and sells its products globally through nearly 400 stores worldwide and is a well-known fashion brand.
10. The Complainant has also registered a large number of trademarks in numerous jurisdictions, including in Europe, the United States of America, the Peoples Republic of China and Hong Kong SAR. The Complainant’s earliest “APM” trademark was registered in Class 14 in several European countries in 2010 (Reg No. 1042577). The Complainant has subsequently registered versions of the APM, APM MONACO and the APM MONACO logo trademarks in many countries worldwide.
11. The Respondent is Archer Fay, is an individual residing in the United States of America. As the Respondent has not responded to the Complaint, little is known about the Respondent. However, the Disputed Domain Name was registered on 16 June 2022 and the website to which the Disputed Domain name resolves appears to be selling APM Monaco products at a steep discount.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain name is identical to the trademarks owned by the Complainant; and
- ii. The Respondent has no rights or interests in the disputed domain name since the disputed domain name has no relation to the Respondent’s business;
- iii. The disputed domain name has been registered and is being used in bad faith.

B. Respondent

The Respondent has not filed any response to the Complaint.

5. Findings

12. The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

A) Identical / Confusingly Similar

13. The Complainant has adduced sufficient evidence to show that it has clear rights in the APM and APM MONACO trademarks, particularly in relation to jewellery and fashion items. As such, the Panel finds that the Complainant has sufficient rights and interests in the "APM" and "APM MONACO" trademarks.

14. The Complainant's marks and the disputed domain name are confusingly similar in respect of their key elements – ie APMMONACO. The disputed domain name also has an additional element (ie SALE) but this does nothing to reduce the confusing similarity between the Complainant's marks and the disputed domain name. The addition of the element "SALE" merely suggests to consumers that this may be a subdomain or related domain of the main APMMONACO domain and will largely be ignored when comparing the Complainant's trademarks and the disputed domain name.

15. When comparing the dominant and distinctive element of the Disputed Domain Name and the Complainant's trademarks, it is clear that they are confusingly similar. As such, the Complainant has made out the first element.

B) Rights and Legitimate Interests

16. The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. Evidence provided by the Complainant suggests that the disputed domain name is being used to offer for sale APM branded Jewellery and other APM products at a steeply discounted price. This is despite the Complainant never authorising or allowing the Respondent to sell its products or to use its trademarks in any way.

17. In addition, the Respondent's website offers APM products at a discount despite the Complainant having a "no discount" policy. Further, the website shows a number of errors which strongly suggest that this is a fake website (including copyright warnings referring to other brands such as Michael Kors) rather than an authorized website. All of the evidence points to a fake website established purely for the purpose of luring consumers into believing that they are interacting with an official APM MONACO website.

18. The above clearly suggest that the Respondent has no legitimate rights or interests in the disputed domain name and therefore, the second element is made out.

C) Bad Faith

19. To establish the third element, the Complainant must establish that the Respondent both registered and is using the disputed domain name in bad faith. In this case, the Complainant has registered and actively used its distinctive and well-known trademarks for many years and is an extremely well-known company worldwide in relation to jewellery and fashion. As such, it is highly unlikely that that the Respondent would have been unaware of the Complainants' marks and websites prior to registering the disputed domain name.
20. Bad faith may be established if UDRP paragraph 4(b)(iv) is satisfied, namely that “...*by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website...by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site ...or a product or service on your website*”
21. Here, and as discussed above, it appears that selection of the disputed domain name was made purely to misuse the Complainant's trademarks and to attract users to the Respondent's website for commercial gain. It is a clear attempt to try and suggest some form of connection to the Complainant where there is in fact none. Accordingly, the Respondent's use of the disputed domain name and the website meet the definition under UDRP paragraph 4(b)(iv). As such, the Panel concludes that the third element is made out.

6. Decision

22. The Panel finds that the Complainant has satisfied all three elements of UDRP paragraph 4(a). Accordingly, the Panel orders that the disputed domain name <APMMONACOSALE.NET > be transferred to the Complainant.



David Allison
Panellist

Dated: 27 March 2023