



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301771
Complainant:	APM Monaco S.A.M.
Respondent:	Melanie Herber
Disputed Domain Name(s):	<apm-mc.store>

1. The Parties and Contested Domain Name

The Complainant is APM Monaco S.A.M., of 3, rue de l'Industrie, 9 ETG 98000 Monaco, Monaco.

The Respondent is Melanie Herber, of Rue Montorgueil, Paris, France, 12000.

The domain name at issue is <apm-mc.store> (“Disputed Domain Name”), registered by the Respondent with Tucows Domains Inc., of 96 Mowat Avenue, Toronto, Ontario, M6K 3M1, Canada.

2. Procedural History

On 20 June 2023, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“ADNDRC”), 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. The Complainant chose to have a sole panelist to handle the dispute.

On 20 June 2023, the ADNDRC transmitted by email to the Registrar the request for registrar verification in connection with the Disputed Domain Name. On 21 June 2023, the Registrar transmitted by email to the ADNDRC its verification response providing, among others, the WHOIS information for the registrant. On 26 June 2023, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 27 June 2023, the Complainant filed an amended Complaint. The ADNDRC formally notified the Respondent of the Complaint and the proceedings commenced on 27 June 2023. No administratively compliant Response has been filed by the Respondent by 17 July 2023.

On 20 July 2023, the ADNDRC appointed Ivett Paulovics as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

3. Factual background

The Complainant is a Monegasque company founded in 1982 by Ariane Prette. It designs, develops, manufactures and sells fashion jewelry under the brand “APM MONACO”. The wording “APM” is derived from the founder’s initials “A” and “P”; the letter “M” refers to the country of Monaco.

The Complainant runs its e-commerce business via the official website <www.apm.mc>.

The Complainant has owned a factory in mainland China and over 340 boutiques around the world.

The Complainant has invested a great fortune on the protection of its intellectual property rights and registered trademarks in numerous countries, including:

- the International trademark “APM” (word) No. 1042577 registered since 11 June 2010 and covering goods in Class 14;
- the International trademark “apm MONACO” (device) No. 1280118 registered since 17 September 2015 and covering goods in Class 14.

The Respondent is an individual residing in France. She registered the disputed domain name with privacy / proxy service on 30 April 2023. The disputed domain name resolves to a website displaying the Complainant’s trademarks and products.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The Disputed Domain Name fully contains the Complainant’s trademarks and it is identical to the Complainant’s main domain name.
- ii. The Complainant has no business relations with the Respondent and has not given any permission or authorization to the Respondent to use its trademarks or register the Disputed Domain Name.
- iii. Considered the notoriety of the Complainant and its prior trademarks, the Respondent should have been aware of the Complainant and its well-known marks at the time of registration of the Disputed Domain Name.
- iv. The Respondent is using the Disputed Domain Name for a copycat site displaying the Complainant’s trademarks and products and having the look and feel of the Complainant’s official website. Therefore, the Respondent by impersonating the Complainant is misleading the relevant public which might believe that the Disputed Domain Name is the official website or closely connected to or licensed by the Complainant.

B. Respondent

The Respondent has not filed any Response.

5. Findings

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.

If all three elements are met, the domain name registration is ordered to be cancelled or transferred to the Complainant. If one or more elements are not met, the Complaint is denied, and the domain name registration remains intact.

A) Identical / Confusingly Similar

The first UDRP element functions primarily as a standing requirement. Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the standing requirement of having trademark rights for purposes to initiate a UDRP dispute (see paragraph 1.2 of WIPO Overview 3.0).

The Complainant has established that it has rights in the International trademark registration (word) APM no. 1042577 since 2010 and in the International trademark registration (figurative) APM MONACO no. 1280118 since 2015.

The test for identity or confusing similarity involves comparing the alpha-numeric domain name and the textual components of the relevant mark to assess whether the mark is recognizable within the domain name. When a domain name wholly incorporates the complainant's trademark or at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name is considered confusingly similar (see paragraph 1.7 WIPO Overview 3.0).

The addition of letters or other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to the relevant trademark, recognizable within the disputed domain name, would usually not prevent a finding of confusing similarity under the first element (see paragraph 1.8 of WIPO Overview 3.0).

UDRP panels have consistently found that the TLD is to be disregarded for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of the registration. The practice of ignoring the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD, including with regard to new gTLDs; the ordinary meaning ascribed to a particular TLD may however be relevant to panel assessment of the second and third elements (see paragraph 1.11 WIPO Overview 3.0).

The Disputed Domain Name consists of the letters "apm" and "mc" divided by a hyphen, plus the TLD <.store>. It, therefore, contains the entirety of the Complainant's word mark and at least the dominant part of the Complainant's device mark (namely, the wording "APM"). The letters "mc" refer to the Monaco, country where the Complainant is incorporated. The addition of the non-distinctive and descriptive (geographic) letters "mc" neither affects the attractive power of the Complainant's trademarks, nor is it sufficient to prevent the finding of confusing similarity between the Disputed Domain Name and such marks. The TLD <.store> even enhances the risk of confusion of Internet users believing to find the Complainant's online store. Moreover, the Disputed Domain Name is confusingly similar with the main domain name of the Complainant <apm.mc>.

The content of the website associated with the domain name is usually disregarded by UDRP panels when assessing confusing similarity under the first element. In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name (see paragraph 1.9 of WIPO Overview 3.0).

In the present dispute, considered that the Disputed Domain Name resolves to an e-commerce site, displaying the Complainant's device mark in a prominent place, containing the copyrighted images of the Complainant's products, and offering for sale jewelry, it is evident that the Respondent had in her mind the Complainant, its activities and its trademarks, and intended to create confusion with such mark by registering and using the Disputed Domain Name.

Therefore, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the Disputed Domain Name is confusingly similar to the Complainant's trademarks.

B) Rights and Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the disputed domain name. If the 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 (see paragraph 2.1 of WIPO Overview 3.0).

But, by virtue of paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate the respondent's rights or legitimate interests to the domain name:

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

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In this case, the Panel considers that the Complainant has made out a sufficient prima facie case.

The Complainant has no relationship with the Respondent whatsoever and has never authorized the Respondent to use its trademarks or to register the Disputed Domain Name.

The Disputed Domain Name was registered by Melanie Herber, an individual residing in Rue Montorgueil (no house number provided), Paris, France 12000, +33.652589955 contacteasyhair@gmail.com. The address used by the Respondent for the registration of the Disputed Domain Name is not related to the Complainant in any way. There is no evidence that the Respondent has been commonly known by the Disputed Domain Name or has acquired any rights in a trademark or trade name corresponding to the Disputed Domain Name.

The Respondent registered the Disputed Domain Name, incorporating the entirety of the Complainant's word mark and at least the dominant feature of the Complainant's device mark, and, thus confusingly similar to the Complainant's trademark.

UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term or letters (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 (see paragraph 2.5.1 of WIPO Overview 3.0).

Furthermore, the Disputed Domain Name resolves to an e-commerce site related to the Complainant's products, displaying its trademark and copyrighted images.

Therefore, the Panel finds that the use of the Disputed Domain Name by the Respondent before any notice of the present dispute is clearly not a bona fide offering of goods or services or legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark under the Policy. To the contrary, as per the evidence on record, it is apparent that the Respondent not only lacks rights or legitimate interests in the Disputed Domain Name, but is instead trading off the Complainant's reputation and goodwill, impersonating the Complainant and misleading the Internet users.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the Disputed Domain Name.

The Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the Disputed Domain Name.

C) Bad Faith

The Disputed Domain Name has been registered and is being used by the Respondent in bad faith for the following reasons.

The Respondent has used a privacy or proxy service when registering the Disputed Domain Name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel's assessment of bad faith (see paragraph 3.6 of WIPO Overview 3.0).

The Respondent registered the Disputed Domain Name, incorporating in its entirety the Complainant's word mark and the dominant feature of the Complainant's device mark (namely, the wording "APM"). The addition of the non-distinctive and descriptive

(geographic) letters “mc” (referring to Monaco, the place of incorporation of the Complainant) and the TLD <.store> (a technical requirement of the registration) neither affects the attractive power of the Complainant’s well-known trademarks, nor is it sufficient to prevent the finding of confusing similarity between the Disputed Domain Name and the Complainant’s marks, and, together with the website content, even enhances the risk of confusion.

Indeed, the Disputed Domain Name resolves to a copycat version of the Complainant’s website (displaying the Complainant’s figurative trademark and copyrighted images). Thus, it is clear that the Respondent registered and has used the Disputed Domain Name with actual knowledge of the Complainant, its business and its mark and the intention to exploit the reputation and the goodwill built by the Complainant by diverting traffic away from the Complainant’s website.

Irrespective of whether the goods offered on the Respondent’s website are in fact counterfeit, the reproduction of the Complainant’s trademarks on the Respondent’s website without also displaying a clear disclaimer of a lack of relationship between the Respondent and the Complainant, trading off the Complainant’s reputation and goodwill and impersonating the Complainant and, thus, misleading the Internet users are indicative of bad faith.

Therefore, the Panel finds that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to source, sponsorship, affiliation, or endorsement of the Respondent’s website (paragraph 4(b)(iv) of the Policy).

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof to show that the Disputed Domain Name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The Disputed Domain Name is to be transferred to the Complainant.

6. Decision

For all the reasons above, the Complaint is accepted and the domain name <apm-mc.store> is to be transferred to the Complainant.



Ivett Paulovics
Panelist

Dated: 24 July 2023