



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301788
Complainant:	APM MONACO S.A.M.
Respondent:	KAI YIP CHEUNG
Disputed Domain Name(s):	<apmmonaco.shop>

1. The Parties and Contested Domain Name

The Complainant is APM MONACO S.A.M., of MONACO, Monaco.

The Respondent is KAI YIP CHEUNG, of Renton, WA, US.

The domain name at issue is <apmmonaco.shop>, registered by Respondent with DYNADOT, LLC, of San Mateo, California, US.

2. Procedural History

Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“Centre”) electronically on 8 August 2023 concerning the domain name <apmmonaco.shop>; the Centre confirmed the receipt of the Complaint on 8 August 2023.

On 10 August 2023, the Centre served an email to the Registrar to confirm the WHOIS information. On 11 August, 2023, the Registrar confirmed by email to the Centre that the disputed domain name was registered with the Registrar. The current Registrant of the disputed domain name is KAI YIP CHEUNG. The Registrar has verified that Respondent is bound by its registration agreement which is in the English language, and has thereby agreed to resolve domain disputes brought by third parties following ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”).

The Centre notified the Complainant on 25 August 2023 of deficiencies in the Complaint. The Complainant submitted an amended Complaint on 25 August 2023. On 25 August 2023, the Centre confirmed that the Complaint is in administrative compliance with the Policy and its Rules.

On 31 August 2023, the Centre served the Complaint and all Annexes, setting a deadline of 20 September 2023, by which Respondent could file a Response to the Complaint via email.

On 21 September 2023, according to Complainant's request to have the dispute decided by a single-member Panel, the Centre served a panelist appointment notice to the undersigned.

On 25 September 2023, the Centre confirmed no Response was received within the deadline.

On the same day, having declared no conflict of interests between the parties, the undersigned was appointed as the Panelist. The Panelist shall render a decision on or before 9 October 2023.

3. Factual background

Complainant

The Complainant, APM MONACO S.A.M. designs, develops, manufacture, sells, and markets the brand “APM MONACO” jewelry since 1982. The brand “APM” is derived from the founder Ms. Ariane Prette’s first alphabet “A” and “P”; the alphabet “M” is referring the country “MONACO”.

The Complainant 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 Complainant invested a great fortune on intellectual property protection business and has registered its trademark “APM” / “APM MONACO” which covers various goods and services in Class 3, 14, 16, 18, 35,43 etc. in many countries including the country in APAC, Europe, North and South America etc.

The Complainant has owned a factory in mainland China and direct sale channels, such as official website <apm-monaco.cn> <apm.mc> <us.apm.mc> online sale and the 340 self-operated boutique shops around the world for offline sale.

The disputed domain name was registered on 23 December 2022.

Respondent

The Respondent in Renton, WA, US and did not file a Response.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The Respondent registered the disputed domain name, incorporating the entirety of the Complainant's word mark 'APMMONACO' plus the TLD <shop> and thus identical to the Complainant's trademark and carried a high risk of implied affiliation. Furthermore, the disputed domain name resolves to an e-commerce site related to the Complainant's products, displaying its trademark and copyrighted images. The Respondent is impersonating the Complainant and misleading the Internet users, free riding the Complainant's reputation and goodwill.
- ii. 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. 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.
- iii. The Complainant spent great efforts on advertising the brand "APM MONACO", which can be shown on the official Facebook account 'www.facebook.com/apmmonacojewellery' with 1.8 million followers. The Trademark "APM" has been used by the Complainant no later than 2015 well before the registration of the disputed domain name on 23 December 2022. The Respondent shall have been aware of the Complainant's brand reputation. The Respondent plagiarizing the Complainant's official website's format, picture and wording etc. The disputed domain name and the Complainant's marks, and, together with the website content, resolves to a copycat version of the Complainant's website (displaying the Complainant's figurative trademark and copyrighted images) enhances the risk of confusion.
- iv. The Complainant has its own factory and direct sale channel, hold NO DISCOUNT POLICY GLOBALLY for the sake of market positioning. The Respondent's offering for sale is 70% off and the source of these low-price products is unknown. These offering's price is far lower than the market's normal price and disrupted the order of the market. The brand's reputation and good will is in danger.

B. Respondent

The Respondent did not file an administratively compliant Response during the required period.

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.

A) Identical / Confusingly Similar

The Panel is satisfied that the Complainant has shown it owns rights in the trademark "APM" and the trademark "APM MONACO", with evidence provided dating the earliest trademark registration back to 2010.

Turning to analyze if there is a confusing similarity between the disputed domain name and the trademark, the Panel notes, based on the record at hand, that the disputed domain name reproduces the trademark in its totality, namely "APM MONACO".

Based on the above, and in what relates to the first element, the verbatim reproduction of the trademark is enough to find confusing similarity between the disputed domain name and the Complainant's trademarks.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

B) Rights and Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not related to the Complainant; b) the Respondent is not authorized to carry out any business activity for the Complainant; c) the Respondent has no license or authorization to use the trademarks; d) the Respondent is not commonly known by the disputed domain name; e) the Respondent is using the disputed domain name to sell what appears to be counterfeit products bearing the Complainant's trademark.

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant's contentions, the Respondent has consequently not rebutted the *prima facie* case, as described in paragraph 2.1 of WIPO 3.0 Overview.

The above fact pattern on the balance of probabilities, and in conjunction with the use of the disputed domain name indicates, if nothing else, a likely intention of confusing Internet users with a likely implied association with the Complainant. However, this will be subject of further analysis under the element below.

The evidence on record leads the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that the disputed domain name reproduces the trademark in the website associated to the disputed domain name, as well as other components of the Complainant's trade dress, including what appear to be counterfeit products bearing the Complainant's trademark for sale.

This would indicate that the Respondent appears to be evoking a connection to the Complainant's trademark and appears to misrepresent a link between the disputed domain name and the Complainant. In this case, as supported by the record at hand, the Respondent appears to have targeted the Complainant on the balance of probabilities.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

6. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.



Rodolfo C. Rivas Rea
Panelist

Dated: 5 October 2023