



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK - 2301796
Complainant:	APM MONACO S.A.M.
Respondent:	Yi Zhang/ Yizhangmusic
Disputed Domain Name(s):	<apmmonaco.online>

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; with its principal place of business at Building 12, No.999 Fulong Road, Shawan Town, Panyu District Guangzhou China (the "Complainant").

The Respondent is Yi Zhang/Yizhangmusic of 10105 E Via Linda Ste 103- 11049 Scottsdale Arizona, United States. (the "Respondent").

The domain name at issue is <apmmonaco.online>, (the "Disputed Domain Name") and is registered by Respondent with Tucows Domain Inc. (the "Registrar") of 96 Mowat Avenue, Toronto, Ontario, M6k 3MI Canada.

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (Hong Kong Office (the "Centre") on August 23, 2023. On August 25, 2023, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the domain name in question. On August 29, 2023 the Registrar transmitted by email to the Centre its verification response confirming that the Respondent, Yi Zhang/Yi Zhangmusic is listed as the registrant of the Disputed Domain Name. The Centre by email of September 08, 2023 also transmitted to the Complainant a Notice of Deficiency. On September 11, 2023 the Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for the Uniform Domain Name Dispute Resolution Policy (the "Rules") and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules"). The Centre notified the Respondent of the Complaint and advised that a response ought to be filed by the Respondent by the due date of October 01, 2023. The Respondent failed to file a response on the due date or at all and the Centre by email of October 06, 2023 informed all the parties of the Respondent's default. On October 6, 2023 the Centre appointed Professor Ike Ehiribe as Sole Panelist in this administrative proceeding. The Panel finds that it was properly constituted.

3. Factual background

The Complainant is a jewelry manufacturing company based in Monaco with also a principal place of business in the Panyu district in Guangzhou in China. The Complainant also designs develops sells and markets APM MONACO jewelry and is said to be doing so since 1982. The brand “APM” is said to be derived from the alphabet of the founder Ms Ariane Prette’s name “A” and “P”. The alphabet “M” is said to refer to the country “Monaco”. The Complainant it is said has created the “APM MONACO” brand name with strong significance and high visibility. The Complainant has established that it has intellectual property rights in the international trademark registration number 1042577 for the word “APM” since 2010 and in the international trademark registration number 12801118 since 2015 for the figurative words “APM MONACO”. The Complainant it is said has invested a substantial amount of money on intellectual property protection business and has registered the trademarks in “APM” and “APM MONACO” which covers various goods and services in Class 3, 14,16,18, 35, 43 etc. in many countries including in APAC, Europe, North and South America etc.

The Complainant it is said also owns a factory in mainland China and conducts its direct online sales through its official websites namely <apm-monaco.cn>, <www.apm.mc> and <us.apm.mc> and offline sales through 340 self-operated boutique shops around the world.

The Respondent is Yi Zhang of Yizhangmusic with an address at 101105 E Via Linda street 103 -11049 Scottsdale Arizona USA. The Respondent is recorded to have created <apmmonaco.online> the Disputed Domain Name on June 23, 2023.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The Disputed Domain Name <apmmonaco.online> created by the Respondent is confusingly similar to the Complainant’s word mark “APMMONACO” in that : (a) The Disputed Domain Name wholly incorporates the Complainant’s trademark including the top level domain (TLD) <online> thereby carrying a high risk of implied affiliation; (b) The Disputed Domain Name resolves to an e-commerce site related to the Complainant’s products displaying the Complainant’s trademark and copyrighted images; therefore the public and relevant consumers are likely to conclude that the website associated with the Disputed Domain Name actually belongs to the Complainant; (c)The Disputed Domain Name will create the misapprehension that the Respondent is authorized by the Complainant to offer its products and or services through the website associated with the Disputed Domain Name which will result in public confusion.

- ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in that:

(a)The Respondent did not publish any contact information in the content on the website or in the WhoIs information; (b) 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; (c) The Respondent has no relationship with the Complainant whatsoever and has never been authorized by the Complainant to use its trademarks or to register the Disputed Domain Name.

iii. The Disputed Domain Name has been registered and is being used in bad faith in that:

(a)The Complainant submits that it has expended great efforts on advertising the brand “APM MONACO” which can be seen on the Complainant’s official Facebook account at www.facebook.com/apmmonacojewellery with 1.8 million followers; (b) Since the Respondent registered the Disputed Domain Name on June 23, 2023 the Respondent must have been aware of the Complainant’s brand reputation considering that the Complainant had used the “APM” trademark as recent as the year 2015; (c) Since the Respondent has plagiarized the Complainant’s official website, format, picture and wording etc and the Disputed Domain Name and the Complainant’s trademarks resolve to a copycat version of the Complainant’s website displaying the Complainant’s trademark and copyrighted images, there is bound to be considerable confusion among relevant consumers and the public; (d) Since the Respondent is offering its jewelry for sale with a 70% off discount as against the Complainant’s global ‘No Discount Policy’ for the sake of market positioning there is a great risk that the Complainant’s brand reputation and goodwill is in danger of dilution and disruption. For instance, the Complainant’s official website’s standard price for an adjustable necklace with beads is US \$375.00, while the Respondent is offering the same product at US \$110.00.

B. Respondent

The Respondent failed to file a response to this complaint.

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, as submitted, has made significant investments to advertise and promote its trademark not only in Monaco and China but also world-wide in the media and the internet, considering also the extensive efforts made to protect its intellectual property rights evidenced by the number of trademark registrations referred to in this Administrative Proceeding. As submitted, the Complainant owns a factory in mainland

China and also 340 self-operated boutique shops. Undoubtedly, the Complainant's trademark has gained a worldwide reputation following continuous marketing and extensive use in the branded jewelry business. The Panel therefore finds that on a visual examination of the Disputed Domain Name <apmmonaco.online>, the Disputed Domain Name is confusingly similar to the Complainant's "APM" and "APM/MONACO" registered trademarks. The Disputed Domain Name clearly incorporates entirely the Complainant's trademark as the dominant and most distinctive part of the Disputed Domain Name. The top level domain TLD suffix ".online" would normally be disregarded when conducting a confusing similarity test. See also in support, *WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition (WIPO Jurisprudential Overview 3.0.)* at paragraph 1.11.1.

B) Rights and Legitimate Interests

The accepted principle with respect to the rights and legitimate interests requirement under the policy, is that the Complainant normally, bears the burden of proof to establish that the Respondent has no legitimate interest in the Disputed Domain Name, however, once the Complainant has made out a *prima facie* case, that burden shifts onto the Respondent to rebut such a *prima facie* case by demonstrating rights or legitimate interests in the Disputed Domain Name. See the decision in *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000 - 0624 and followed with approval in *Janchor Partners Limited v Regina Effiong*, HK-1701037. Therefore, this Panel equally finds that the Respondent has failed to adduce any credible evidence documentary or otherwise that demonstrates that the Respondent has any rights or legitimate interests in the Disputed Domain Name. The Respondent has not produced any evidence to suggest that the Respondent has ever been authorized, licensed or otherwise permitted to use any of the Complainant's "APM"/"APMMONACO" trademarks by the Complainant. In addition, there is no evidence of a subsisting business relationship between the Respondent and the Complainant, neither is there any evidence that the Respondent is commonly known by the Disputed Domain Name. The Panel finds that to the contrary, the Respondent has been intentionally utilizing the Disputed Domain Name to mislead Internet visitors and the Complainant's customers into believing that the Disputed Domain Name is affiliated to the Complainant for commercial gain considering that the Disputed Domain Name resolves to a website that displays the Complainant's trademark, images and copyrighted material. The Respondent's actions in this regard cannot be described as a *bona fide* offering of goods and services nor a legitimate non-commercial or fair use of the Disputed Domain Name within the ambit of Paragraph 4(c)(i) and (iii) of the Policy. See generally, the principles enunciated in the oft quoted decision in *Oki Data Americas Inc. v. ASD Inc.*, WIPO Case No. D2001-0903; and *Promgirl LLC v Jack Zhang*, HK-1500814.

C) Bad Faith

On the issue of bad faith registration and use, in the first instance, the Panel finds that it is implausible for the Respondent to contend that it was unaware of the Complainant's international reputation in the branded jewelry business and pre-existing intellectual property rights in any of the "APM"/"APMMONACO" trademarks considering that the Respondent elected to register the Disputed Domain Name on 23 June 2023. The Panel has taken into account the fact that the Complainant is said to have commenced its branded jewelry business back in the year 1982 and the Complainant registered some of its trademarks in 2010 and 2015. The Panel accepts that consequently the Complainant had attained high visibility and presence in many countries. Therefore, the Panel is satisfied that the

Respondent's registration of the Disputed Domain Name was not by mere coincidence but was registered with the clear intention to exploit the Complainant's well-known brand and reputation. Such conduct has been held to constitute evidence of bad faith registration and use. See in this regard *Telstra Corp Ltd. v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. Furthermore, the Panel in this regard places reliance on relevant previous ADNDRC decisions in *APM MONACO S.A.M. v. Alex Usu*, HK-2201664 and *APM MONACO S.A.M. v. July Mary* HK- 2201665. Secondly, since the Disputed Domain Name resolves to a website displaying the Complainant's copyrighted images and trademark, the Panel finds that the Respondent's actions in this regard, combined with misleading relevant consumers and the public into believing that the Disputed Domain Name is endorsed by the Complainant, all constitute further evidence of bad faith registration and use. Thirdly, the fact that the Respondent's website is purporting to offer APM products at a discount whereas the Complainant operates a 'no discount policy' is further evidence of the Respondent's bad faith use of the Complainant's trademarks for financial gain. See in support and in this regard *APM MONACO S.A.M. v. Archer Fay*, HK-2301721.

6. Decision

For all these reasons and in accordance with Paragraph 4(1) of the Policy and 15 of the Rules, the Panel therefore, directs that the Disputed Domain Name <apmmonaco.online> be transferred to the Complainant forthwith.



Professor Ike Ehiribe, FCIArb, C.Arb. QDR

Dated: October 15, 2023.