



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301817
Complainant:	APM Monaco S.A.M.
Respondent(s):	yihai lian, 文杰 冯
Disputed Domain Name(s):	<apmmonacosales.com>, <apmjewelry.store>

1. The Parties and Contested Domain Names

The Complainant is APM Monaco S.A.M., of 3, rue de l'Industrie, 9 ETG 98000 MONACO, Monaco, with its place of incorporate at Building 12, No. 999, Fulong Road, Shawan Town, Panyu District, Guangzhou, China.

The Respondents are yihai lian, of ganjingzi district baoli xiaoqu 2010 dalian liaoning 256035 ("**Respondent 1**"); and 文杰 冯, of 五华区学府路 690 号金鼎科技园 16 号平台金鼎众创空间 1 楼 G 区 ZCKJ-1F-G17 昆明市/云南省/650033 ("**Respondent 2**").

The domain names at issue are <apmmonacosales.com> ("**Disputed Domain Name 1**"), registered by Respondent 1 with Dynadot LLC, of 210 S Ellsworth Ave #345 San Mateo, CA 94401 United States ("**US**") and <apmjewelry.store> ("**Disputed Domain Name 2**"), registered by Respondent 2 with Name.com, Inc, of 10500 NE 8th Avenue, Suite 750, Bellevue, WA 98004, US. The said domain names and registrars are respectively referred to as the "**Disputed Domain Names**" and "**Registrars**".

2. Procedural History

On October 12, 2023, the Complaint was filed with the Hong Kong office of the Asia Domain Name Dispute Resolution Centre ("**Centre**") in accordance with the Uniform Domain Name Dispute Resolution Policy (the "**Policy**") approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999. The Complainant requested the consolidation of its complaints against the Respondents in its email to the Centre dated October 12, 2023. On October 13, 2023, the Centre transmitted by email to the Registrars requests for registrar verification in connection with the Disputed Domain Names. On October 14, 2023, Dynadot LLC transmitted an email to the Centre its verification response disclosing WHOIS information for Disputed Domain Name 1. On October 19, 2023, Name.com, Inc transmitted an email to the Centre its verification response disclosing WHOIS information for Disputed Domain Name 2. Since October 19, 2023, the Centre has repeatedly invited the Complainant to split the Complaint into two cases as the Disputed Domain Names were registered under different Registrars and held by different

Respondents. On November 16, 2023, the Centre transmitted an email to the Complainant formally providing the WHOIS information from the Registrars (among other matters). On November 23, 2023, the Complainant submitted two Form C for the Disputed Domain Names and the Centre confirmed by email that the Complaint is in administrative compliance with the Policy and the Rules for ICANN Uniform Domain Name Dispute Resolution Policy (“**Rules**”).

In accordance with paragraphs 2(a) and 4(a) of the Rules, the Centre formally notified the Respondents of the Complaint, and the proceedings commenced on November 23, 2023. The Respondents were informed that the due date for Response was December 13, 2023. No Response was filed by the Respondents. Accordingly, the Centre notified the parties of the Respondents’ default on December 14, 2023.

The Centre appointed Gabriela Kennedy as the sole panelist (the “**Panel**”) in this matter on December 14, 2023. The Panel finds that it was properly constituted.

3. **Factual background**

The Complainant has designed, developed, manufactured and sold jewellery under the “APM” and “APM MONACO” brands since 1982. The brand name “APM” is derived from the initials of the founder, Ms. Ariane Prette, with “M” referring to Monaco.

The Complainant is the owner of trade mark registrations for the APM trade mark (the “**Complainant’s Trademark**”) in various jurisdictions, including, *inter alia*, the

The logo consists of the letters 'APM' in a bold, serif font, with a horizontal line passing through the middle of the letters.

trade mark (International Reg. No. 1042577) registered on June 11, 2010 designating Denmark, Finland, UK, Greece, Singapore, and other countries; and the

The logo features the lowercase letters 'apm' in a bold, sans-serif font, with the word 'MONACO' in a smaller, uppercase, sans-serif font directly below it.

trade mark (International Reg. No. 1280118) registered on September 17, 2015 designating Australia, the European Union, Japan, the Philippines, and other countries.

Disputed Domain Name 1 was registered on November 24, 2022 and Disputed Domain Name 2 was registered on December 12, 2022. At the time of the Complaint and when the Panel is rendering her decision, the Disputed Domain Names resolved to inactive websites. According to the Registrars’ information, the Respondents are individuals residing in the People’s Republic of China (the “**PRC**”).

4. **Consolidation of multiple respondents**

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“**WIPO Overview 3.0**”) provides that where a complaint is filed against multiple respondents, panels will take into account whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties.

In support of the Complainant’s request for consolidation, the Complainant contends the Disputed Domain Names both incorporate the Complainant’s Trademark and were registered within a month’s time, and the Registrants’ identities were concealed.

The Panel has considered the evidence and WIPO cases submitted by the Complainant with respect to the requested consolidation and notes that:

- i. The Disputed Domain Names were registered by different Respondents through different Registrars;
- ii. Although the Respondents' email addresses were registered via Hotmail and they appear to reside in the PRC, their precise addresses are different;
- iii. Whilst the registration time of different domain names was frequently considered by other panels, this is not a determinative factor in considering a consolidation request. Absent other supporting evidence, the fact that the Disputed Domain Names are registered within a month's time is insufficient to conclude that they are under common control;
- iv. As the Disputed Domain Names do not resolve to active websites, the Panel is unable to compare the content or designs of the websites; and
- v. The generic Top-Level Domain ("gTLD") of the Disputed Domain Names are different.

The Panel finds that the Complainant did not submit any concrete evidence to show that the Disputed Domain Names are subject to common control. For the reasons above, the Complainant's consolidation request is dismissed.

Nevertheless, the Panel will address Disputed Domain Name 1 in her sole discretion, without prejudice to the Complainant's rights to bring a separate complainant in respect of Disputed Domain Name 2. The Panel's discussion below pertains only to Disputed Domain Name 1 and Respondent 1.

5. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Disputed Domain Name is identical or confusingly similar to the Complainant's Trademark as it incorporates the Complainant's Trademark in its entirety. Combined with the descriptive and generic word "sale", the Disputed Domain Name will lead to public confusion that the Respondent was authorized by the Complainant to use the Complainant's Trademark;
- ii. The Respondent does not have the right to use or legitimate interest in the Complainant's Trademark. The Complainant confirmed that no authorization has been given to the Respondent to use of Complainant's Trademark. The Respondent was making neither a bona fide offering of goods or services, nor a legitimate, non-commercial or fair use of the Disputed Domain Name as it does not resolve to any active website; and
- iii. The Complainant's worldwide reputation and the extensive use of the Complainant's Trademark indicate that the Respondent was or should have been aware of the

Complainant's Trademark prior to registering the Disputed Domain Name. Whilst the Disputed Domain Name does not resolve to any active website, the non-use does not prevent a finding of bad faith under the doctrine of passive holding. The Complainant further suspects that the Respondent intends to hoard the Disputed Domain Name in order to make commercial gain or illegal profits through the transfer of the Disputed Domain Name to the Complainant or the Complainant's competitors.

B. Respondent

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

6. Findings

The Policy provides, at Paragraph 4(a), that each of the following three findings must be made in order for a Complainant to prevail:

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

A) Identical / Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on the trademark registrations listed above in Section 3.

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of the geographical term "monaco" (which the letter "M" in the Complainant's Trademark stands for) and the term "sales" which is descriptive and generic especially in the Complainant's line of business. UDRP panels have consistently found that the addition of other terms to a mark (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element. See section 1.8 of the WIPO Overview 3.0. Further, it is well established that the gTLD, ".com" in this case, may be disregarded. See section 1.11 of the WIPO Overview 3.0.

The Panel therefore takes the view that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B) Rights and Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and the Respondent bears the burden to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the WIPO Overview 3.0.

The Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. D2009-1437; and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. D2000-0403).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (i) Before any notice to him of the dispute, the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services;
- (ii) The Respondent has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

As the Disputed Domain Name does not resolve to an active website, the Panel also accepts that there is no evidence to suggest the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services or can be regarded as legitimate noncommercial or fair use.

Moreover, the composition of the Disputed Domain Name, which incorporates the Complainant's Trademark with the terms "monaco" and "sales", carries a risk of implied affiliation as it effectively impersonates or suggests a connection with the Complainant. See section 2.5.1 of the WIPO Overview 3.0.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C) Bad Faith

After reviewing the evidence submitted by the Complainant, the Panel agrees that the Complainant's Trademark appears to be well known. A quick Internet search conducted by the Panel shows that the top search results returned for "APM" relate to the Complainant's

business and/or third-party websites providing information relating to the Complainant's business. Therefore, the Panel agrees with the Complainant that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

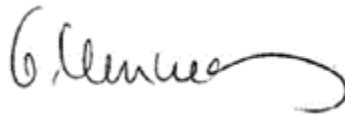
The Disputed Domain Name resolves to an inactive website. This does not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the WIPO Overview 3.0. The Panel finds that the following factors support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated the Complainant's Trademark in its entirety. Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. D2005-0740).
- (ii) The Respondent registered the Disputed Domain Name with a privacy shield to conceal his identity (see *Primonial v. Domain Administrator, PrivacyGuardian.org / Parla Turkmenoglu*, WIPO Case No. D2019-0193).
- (iii) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of his actual or contemplated good faith use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

6. 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 Name, <apmmonacosales.com> be transferred to the Complainant.



Gabriela Kennedy
Panelist

Dated: 28 December 2023