

Decision for dispute CAC-UDRP-103113

Case number	CAC-UDRP-103113
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Domain names	hotelamanwana.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization Aman Group S.à.r.l.

Complainant representative

Organization HSS IPM GmbH

Respondent

Name lu ya long

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Aman Group S.á.r.I. (hereinafter, "Complainant") is a luxury hotel and accommodation business with around 32 destinations in 20 countries. It owns registered trademarks "AMAN" and "AMANWANA" in various countries. Complainant owns also the registration of several domain names including the trademarks AMAN & AMANWANA such as the domain name <aman.com> (registered on July 22, 1997) & <amanwana.com> (registered on March 1, 2000). Complainant uses these domain names to connect to a website through which it informs potential customers about its AMAN & AMANWANA marks and its products and services.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

LANGUAGE OF PROCEEDING

The Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 11(a). Complainant makes this request in light of the potential Chinese language Registration Agreement of the two disputed domain names involved at this Complaint.

It is established practice to take UDRP Rules 10(b) and (c) into consideration for the purpose of determining the language of the proceeding to ensure fairness and justice to both parties. In approaching this issue, the Panel may consider any evidence (or lack thereof) exhibiting Respondent's understanding of the language requested by Complainant. See The Argento Wine Company Limited v. Argento Beijing Trading Company, D2009-0610 (WIPO July 1, 2009) (panel exercising discretion in deciding that the language of the proceedings advance in English, contrary to the Registration Agreement, based on evidence that respondent has command of the language). Further, the Panel may weigh the relative time and expense in enforcing the Chinese language agreement, which would result in prejudice toward either party. See Finter Bank Zurich v. Shumin Peng, D2006-0432 (WIPO June 12, 2006) (deciding that the proceeding should be in English, stating, "It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her ability to articulate the arguments for the case.").

In this case, the disputed domain name <hotelamanwana.com> (hereinafter, the "Disputed Domain Name") is composed of the English word HOTEL.

Although the website shows information in Spanish, the website was developed by the company Think Up Themes Ltd, which business language is English www.thinkupthemes.com. Therefore, Complainant assumes that Respondent is able to understand the terms and conditions of a website in English.

Furthermore, Respondent did not reply the cease and desist letter sent in English which is a potential indication that Respondent might understand English. Otherwise, Respondent should have replied in Chinese indicating that they do not understand the content of the cease and desist letter.

Finally, it is important to note that the Disputed Domain Name was registered using the most common gTLd worldwide; i.e. .com. This is relevant because a most suitable domain name for the Chinese Market would be the ccTLD applicable for China; i.e. .cn, where Respondent is located.

ABOUT COMPLAINANT AND THE BRAND AMAN

Aman Group S.á.r.I. (hereinafter, "Complainant") is a luxury hotel and accommodation business with around 32 destinations in 20 countries. Aman destinations are renowned for space and privacy. Each welcomes guests as if to the home of a close friend, instilling a sense of peace and belonging amid some of the most diverse natural and historical landscapes. It is an approach that has changed little since 1988 when the first retreat was built on Phuket's west coast. It was named Amanpuri, meaning 'place of peace', and Aman was born. Aman continues to seek out transformative experiences and awe-inspiring locations around the world and in 2018 was rated number one in the Top Luxury Hotel Brands by Travel Luxury Intelligence.

The next Aman to open will be Aman New York (2020). The introduction of Aman Skincare in 2018 continued the holistic journey beyond the perimeters of Aman's havens. Offering a soothing journey to a place of beautifully scented repose and respite, Aman Skincare represents the spirit of Aman in a bottle.

Consumers are accustomed to the AMAN® mark being used in the context of a prefix followed by an identifier of a particular resort or property. For instance, in Europe, AMAN owns several Hotels such as:

Aman Sveti Stefan, Montenegro Amanzoe, Greece Aman Le Melezin, France Aman Venice, Italy

In Asia, Complainant owns the following Hotels:

Amanyangyun, China

Aman Summer Palace, China Amandayan, China Amanfayun, China Aman Niseko, Coming Soon, Japan Aman Tokyo, Japan

Complainant owns a resort named AMANWANA on Moyo Island, a nature reserve 90 minutes from Bali, Indonesia. In this Resort, customers can enjoy wellness, underwater discovery activities, etc. please see: https://www.aman.com/.

The links below connect customers to the official local sales and service locator and to the official website of the Complainant for the brands AMAN:

- Global Website www.aman.com
- Regional Website: https://www.aman.com/destination/region/Europe

Most of the above trademark registrations predate the registration of the Disputed Domain Name registered on May 14, 2018. Due to extensive use, advertising and revenue associated with its trademarks worldwide, Complainant enjoys a high degree of renown worldwide, including China where Respondent is located.

The trademark AMAN has been the subject of past disputes under the UDRP Policy, e.g., WIPO Case No. D2019-0340 Aman Group Sarl v. Phuong Tran concerning the domain name <amankyoto.com>.

Complainant owns also the registration of several domain names including the trademarks AMAN & AMANWANA such as the domain name <aman.com> (registered on July 22, 1997) & <amanwana.com> (registered on March 1, 2000).

Complainant uses these domain names to connect to a website through which it informs potential customers about its AMAN & AMANWANA marks and its products and services.

1. THE DISPUTED DOMAIN NAME IS CONSUFINGLY SIMILAR WITH COMPLAINANT'S AMAN & AMANWANA' BRANDS

The Disputed Domain Name directly and entirely incorporates Complainant's well-known, registered trademarks AMAN & AMANWANA.

The Disputed Domain Name incorporates the trademark AMANWANA with the addition of the word "HOTEL", which is closely connected to Complainant's business. This reference exaggerates the impression that Respondent is somehow affiliated with Complainant, and Respondent is somehow doing business using Complainant's trademark. See as an example the WIPO Overview OF WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), paragraph 1.11. as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following "In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ".com") is to be disregarded under the confusing similarity test".

In the previously mentioned UDRP Case No 2019-0340 concerning the domain name <amankyoto.com>, the panelist relevantly noted:

"The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's AMAN mark has been registered and used in connection to the Complainant's hospitality business.

The Disputed Domain Name <amankyoto.com> reproduces the Complainant's AMAN trademark in its entirety, simply adding the geographic term "kyoto". The Panel is of the opinion that the mere addition of geographic text to a complainant's trademark does not avoiding a finding of confusing similarity".

This same reasoning is applicable to the current case and the Disputed Domain Name should be considered as confusingly similar to the trademarks AMAN & AMANWANA.

2. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

Complainant has not found that Respondent is commonly known by the Disputed Domain Name or that it has interest over the Disputed Domain Name or the major part of it.

The WHOIS information "Lu Ya Long" for the Disputed Domain Name is the only evidence in the WHOIS record, which relates Respondent to the Disputed Domain Name.

The Registrant has made no effort to use the Disputed Domain Name for any purpose that might explain its choice in a manner consistent with having rights or legitimate interest in the name "AMANWANA". When entering the terms AMANWANA & China as well as AMAN & China (where Respondent is located according to the Whois) in the Google search engine, most of the returned results point to Complainant and its business activity. The Respondent could easily perform a similar search before registering the Disputed Domain Name and would have quickly learnt that the trademarks are owned by Complainant and that the Complainant has been using its trademarks AMAN in different countries, including China. Respondent has not by virtue of the content of the website, nor by its use of the Disputed Domain Name shown that it will be used in connection with a bona fide offering of goods or services.

There is no evidence that Respondent has a history of using, or preparing to use, the Disputed Domain Name in connection with a bona fide offering of goods and services. It is clear that Complainant has become a distinctive identifier associated with the terms AMAN & AMANWANA worldwide and that the intention of the Disputed Domain Name is to take advantage of an association with the business of Complainant.

It has to be highlighted that Complainant's trademarks predate the registration of the Disputed Domain Name. These facts clearly demonstrate that Respondent was aware of Complainant's trademark at the time of the registration. Further, Complainant had started to use the brand AMAN many years prior and had registered the trademarks AMAN & AMANWANA, hence its use had spread across the world. The above also shows that it is unlikely that the Respondent was not aware of the unlawful registration of the Disputed Domain Name.

a) THE WEBSITE

The Disputed Domain Name currently host an online shop where t-shirts of the Spanish Real Betis Football Club are offered for sale – potentially counterfeits or replicas. The Spanish Real Betis Football Club is a Spanish professional football club based in Seville and it belong to the men's top professional football division of the Spanish football league system, also known as "La Liga" (https://en.realbetisbalompie.es/.

When internet users click on the box named "MI CAMISETA – TIENDA ONLINE DE CAMISETAS BARATAS BETIS" or in English "MY-TSHIRT – ONLINE SHOP OF CHEAP BETIS T-SHIRTS", they are redirected to the website https://micamiseta.futbol/ where not only Betis' T-shirts but all kind of Football T-shirts – potentially Replicas – can be acquired from different Soccer Leagues, such as Premier League, etc.

There is no legitimate connection between the content of the website and "or "Hotel", "AMANWANA" or any combination of these terms.

Following Oki Data Americas, Inc. v. ASD, Inc. WIPO Case No. D2001–0903, the use of a trademark as a domain name by an authorized or non-authorized third party is only to be regarded as a bona fide offering of goods or services within the meaning of paragraph 4(c) of the Policy if the following conditions are satisfied:

- the respondent must actually be offering the goods or services at issue;
- the respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods;
- the site must accurately disclose the registrant's relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents;
- the respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.

The Respondent fails all of these tests. In fact, it is undeniable that Respondent was aware of Complainant's marks prior to the acquisition of the Disputed Domain Name and the establishment of Respondent's website. Respondent has made no claims to either having any relevant prior rights of its own, or to having become commonly known by the Disputed Domain Name. Clearly, Respondent is not known by the Disputed Domain Name, nor does Respondent claim to have made legitimate, non-commercial use of the Disputed Domain Name.

Complainant has never authorized Respondent to use its trademarks or contents in any manner, so the use of the Disputed Domain Name could not be considered as legitimate use.

The Respondent has made no claims to neither having any relevant prior rights of its own, nor to having become commonly known by the Disputed Domain Name.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

3.1. THE DISPUTED DOMAIN NAME WAS REGISTERED IN BAD FAITH

Clearly Complainant's trademarks predate the registration of the Disputed Domain Name, moreover, the active business presence of the Complainant in different Markets, including China where Respondent is located, and on a significant scale around the world, makes it apparent that the Respondent was aware that the registration of the Disputed Domain Name was unauthorized and improper.

3.2. THE DISPUTED DOMAIN NAME IS BEING USED IN BAD FAITH

Complainant contacted Respondent on April 17, 2020 through a cease and desist letter ("C&D letter"). The C&D was sent to the e-mail address listed in the whois record associated with the Disputed Domain Name plus the e-mail address servicio@micamiseta.futbol which was found at the website related to the Disputed Domain Name (http://hotelamanwana.com/). Reminders were sent on April 28 and May 5, 2020 without receiving any answer from Respondent.

a) THE WEBSITE

The Disputed Domain Name currently host an online shop where t-shirts of the Spanish Betis Football Club are offered for sale – potentially replicas. Respondent never granted permission to register the Disputed Domain Name. Respondent took advantage of Complainant's trademark by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's products, services, website or location.

From the Complainant's point of view, Respondent intentionally chose the Disputed Domain Name based on registered and well-known trademarks AMAN & AMANWANA, along with the associated search term "hotel" in order to generate more traffic to its own business. Nowhere does Respondent disclaimed an association between itself and Complainant. Respondent uses

the Disputed Domain Name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website. This conduct has been considered as bad faith under the Policy, and other WIPO decisions have also arrived to the same conclusion, for example Philip Morris Incorporated v. Alex Tsypkin, WIPO Case No. D2002-0946, where the Panel stated:

"It follows from what has been said about legitimacy that the Panel is satisfied that Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internauts to his web site by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of his web site. Pursuant to Policy paragraph 4(b) (iv), this constitutes evidence of both bad faith registration and bad faith use, for the purposes of paragraph 4(a)(iii)."

In the WIPO case no. D2015-0579 AB Electrolux v. Guangzhou Nan Guang Electrical Appliances Co.Ltd. concerning the domain name <zanussi-china.com>, the Panel noted that:

"The Respondent is using the Domain Name for a website with an orange and black livery, which displays the mark ZANUSSI in a large, black font in the banner and photographs of the Complainant's group's ZANUSSI products... The Panel accepts the Complainant's evidence that the Respondent's website is liable to mislead customers into believing that it is a website of the Complainant or authorized by it. This evidence is well-substantiated by the nature of the Domain Name, the absence of any statement that the Respondent is not authorized by the Complainant's group, the prominent ZANUSSI mark in the banner, the orange and black livery, and the pictures of the Complainant's group's products. Furthermore, having regard to all the circumstances, the Panel considers that it was the Respondent's intention so to mislead customers."

Similarly, in the WIPO case no D2014-0487 Aktiebolaget Electrolux v. electroluxmedellin.com, Domain Discreet Privacy Service / Luis Rincon where analogous circumstances were at hand the Panel stated:

"The continuing use of the disputed domain name is clearly confusing to online users who will be attracted by the inclusion of the word ELECTROLX in the disputed domain name, and who will therefore believe that they are accessing a website that is in some way associated with or authorized by the Complainant. This is not the case, and the consumer confusion is further strengthened by the fact that there are services for Electrolux products advertised on the Respondent's website without any disclaimer of association with the Respondent."

The Respondent is taking advantage of Complainant's trademark by intentionally attempting to attract visitors to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or a product or service on the Respondent's website or location.

The Respondent is selling replicas of copyrighted or trademarkable goods without apparently having authorization to do so. This is an additional element of bad faith on Respondent's side.

To summarize, the trademark AMAN is a well-known mark around the world in the hotel and travel industry, including China where the Respondent is located. Furthermore, the trademark AMANWANA is also used by Complainant in connection with a luxury resort located in Indonesia, to clientele worldwide. Respondent bears no relationship to the trademarks and the Disputed Domain Name has no other meaning except for referring to Complainant's business name and trademarks. There is no way in which the Disputed Domain Name could be used legitimately by the Respondent. Inference of bad faith registration and use of the Disputed Domain Name is also given by the fact that the Respondent did not reply to C&D letter. Finally, the Disputed Domain Name currently host an online shop where t-shirts of the Spanish Betis Football Club are offered for sale – potentially replicas, an additional element of bad faith in accordance with the applicable cases described at this Complaint.

Consequently, the Respondent should be considered to have registered and to be using the Disputed Domain Name in bad faith.

PARTIES CONTENTIONS

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Disputed Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 11(a): Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Complainant makes this request in light of the potential Chinese language Registration Agreement of the Disputed Domain Name involved at this Complaint.

Paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) the disputed domain name <hotelamanwana.com> (hereinafter, the "Disputed Domain Name") is composed of the English word HOTEL; 2) Respondent did not reply the cease and desist letter sent in English rather than replied in Chinese; and 3) the Disputed Domain Name was registered using the most common gTLd worldwide; i.e. .com. The panel is not persuaded that the registration using .com is conclusive in establishing that the respondent can understand the language of the complaint because the websites shows information in Spanish and it is equally likely by registering a .com domain name the Respondent tried to target markets of Spanish-speaking countries (such as Spain and South America). However, the Panel is of the view that collectively 1) and 2) shows that Respondent can understand the English language based on a preponderance of evidence test. Therefore, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or confusingly similar

The Complainant contends that the disputed domain name <hotelamanwana.com> is confusingly similar to the Complainant's trademark AMANWANA. The AMANWANA trademark is owned by Aman Group S.á.r.I., a globally well-known luxury hotel and accommodation business with around 32 destinations in 20 countries. The Complainant owns numerous trademarks for ARLA registered many years before the Disputed Domain Name <hotelamanwana.com> created, and also enjoys a strong online presence via its official website https://www.aman.com/.

As the Complainant suggested, if the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not generally prevent a finding of confusing similarity under the first element. This has both been rested in numerous UDRP cases (WIPO Case No. D2014-0581, WIPO Case No. D2000-0138, Nat. Arb. Forum, September 12, 2000, WIPO Case No. D2001-0110) as well as the WIPO

Overview 3.0 (para. 1.8).

In this case, the Disputed Domain Name incorporated the AMANWANA trademark entirely, along with the term "hotel"- the English term that is closely connected to the Complainant's business. generic Top-Level Domain ".com" in the second-level portion is a standard registration requirement and should be disregarded when assessing whether a domain name is confusingly similar to the trademark. Usually, a domain name wholly incorporates a complainant's registered trademark is already sufficient to establish identify or confusing similarity within the meaning of the Policy, and the complainant has cited numerous cases to buttress its argument.

The Panel therefore concludes that the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. No rights or legitimate interests

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant has not licensed or authorized the Respondent to register or use the Disputed Domain Name. There is no evidence that the Respondent is known by the Disputed Domain Name or owns any corresponding registered trademarks including the terms "hotelamanwana.com". The Disputed Domain Name <hotelamanwana.com> hosts an online shop where t-shirts of the Spanish Real Betis Football Club are offered for sale, and as pointed out by the Complainant, there is no legitimate connection between the content of the website and "or "Hotel", "AMANWANA" or any combination of these terms.

In this case, the domain registrant's name, organization and contact seem to bear no connection with the Complainant's brand. The Complainant contends that no evidence suggests that the Respondent has been known in any way by the Disputed Domain Name. The Complainant did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainant's trademark on every page of the disputed website. Before the dispute, the Respondent also has not used the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the Disputed Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(b)(i) and 4(b)(iv) of the Policy.

First of all, registration of the Disputed Domain Name in bad faith. Registration of Complainant's trademarks predate the registration of the Disputed Domain Name. This and the fact that active business presence of the Complainant in different markets (hotel and T-shirts of football clubs) add to the inference that the Respondent is well aware of existence and reputation of the Complainant's brand before registering the Disputed Domain Name.

Second, Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which shall be evidence of the registration and use of a domain name in bad faith. Among those circumstances Paragraph 4(b)(iv) of the Policy reads: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation,

or endorsement of your website or location or of a product or service on your website or location." As contended by the Complainant, it is true that UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. However, many instances here have collectively pointed to the conclusion in this case that the disputed domain name has been registered and used in the way attempting to attract for commercial gains by creating a likelihood of confusion with the complainant's trademark. Nowhere does Respondent disclaimed an association between itself and Complainant. The Respondent never had bona fide business establishments related to Disputed Domain Name and the website seems to misled internet users and consumers for commercial gains by attempting to derive potential traffic for its own website.

Many instances have collected point to the conclusion that the Disputed Domain Name has been registered and is being used in bad faith. Like the Complainant contended here, the Respondent was clearly aware of the existence of the Complainant's brand at the time of registering the Disputed Domain Name, has no bona fide business establishments related to the contents of the website, tries to use the Complainant's readily established trademark to derive commercial gains for itself, etc.

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. HOTELAMANWANA.COM: Transferred

PANELLISTS

Name	Carrie Shang
DATE OF PANEL DECISION	2020-08-04

Publish the Decision