

Decision for dispute CAC-UDRP-103938

Case number CAC-UDRP-103938

Time of filing 2021-07-19 09:36:32

Domain names argominers.com

Case administrator

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

Complainant

Organization Argo Blockchain PLC

Complainant representative

Organization Fladgate LLP

Respondent

Name Ben Dominic

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies on unregistered trade mark rights in the terms "Argo Blockchain" or "Argo", the particulars of which are further detailed and discussed under the factual background section below.

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to unregistered trade marks in which the Complainant has rights

The Complainant asserts that it was incorporated in England and Wales on 5 December 2017, and that it has been using the name "Argo Blockchain PLC" since 22 December 2017. The Complainant's business is the provision of technology, infrastructure and expertise to allow blockchain networks to operate efficiently.

The Complainant informs that it has traded under the names "Argo", "Argo Blockchain" and "Argo Blockchain PLC" (the AB Names) since its establishment, and that the use of such names with customers, strategic partners and investors has generated significant goodwill and reputation in the AB Names in the United Kingdom and throughout the world. The

Complainant also refers to its own website www.argoblockchain.com (the Complainant's website) from which further evidence of the use of the AB Names can be found.

The disputed domain name <argominers.com> was registered on 12 May 2020.

The Complainant avers that it has utilised and traded under the trade name and unregistered trade marks "Argo Blockchain" or "Argo" since December 2017 as further detailed on the Complainant's website. The Complainant contends that it has attracted significant reputation and goodwill by virtue of its use of the AB Names, as follows:

- The Complainant is a public limited company listed on the London Stock Exchange;
- The Complainant's mining revenue for the month of May 2021 amounted to GBP 5.51 million;
- The Complainant has executed various strategic and investment agreements and partnerships in the ambit of cryptocurrency industry, which have garnered the participation of many stakeholders in North America; and
- The Complainant's financial results for the year ended 31 December 2020 showed that the Complainant's revenue increased by 120% to GBP 19m; 85% increase in annual production of bitcoins; and cash and digital assets held as at 31 December 2020 amounting to GBP 6.7m.

In view of the above facts, the Complainant alleges that it has attracted significant reputation, investment and goodwill in relation to its use of the unregistered trade marks "Argo" and "Argo Blockchain" in the United Kingdom, the European Union, and the United States.

The Complainant concludes that it has rights under the English law of passing-off to prevent the use of the AB Names where such use misappropriates its goodwill and leads to confusion. The Complainant further contends that, where such use leads to damage to the Complainant, the Complainant is entitled under English law to recover damages for its losses.

Lastly, the Complainant argues that the disputed domain name incorporates a key part of the AB Names, namely "Argo", under which the Complainant has significant goodwill. Furthermore, the Complainant avers that the disputed domain name contains a reference to "miners" which is linked to the activity of cryptocurrency mining, namely, the core business of the Complainant. Therefore, the Complainant alleges that the disputed domain name is a direct reference to a trade name of the Complainant, and the direct and core business of the Complainant.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant argues that the Respondent has not demonstrated any legitimate use of the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or service. The Complainant further argues that the Respondent (as an individual, business, or other organisation) is not known by the disputed domain name, nor is the Respondent making a legitimate non-commercial or fair use of it. On the contrary, the Complainant asserts that the Respondent is using the disputed domain name with a view to attracting, for commercial gain, Internet users to the website to which the disputed domain name resolves (the Respondent's website), by creating a likelihood of confusion with the Complainant's unregistered trade marks and the AB Names by implying an affiliation or endorsement of the disputed domain name by the Complainant.

In view of the above factors, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant asserts that the disputed domain name was first registered on 12 May 2020, over two years after the Complainant incorporated its company and adopted the official company name of "Argo Blockchain PLC", and after the Complainant had begun to build significant goodwill and reputation in the investment and cryptocurrency mining sectors. The Complainant is a public listed company and a simple search engine search brings up significant results regarding the existence and activities of the Complainant.

The Complainant further asserts that the use of the registrar's privacy or proxy service to mask the identity by the Respondent is an indication that the disputed domain name was registered in bad faith.

With regard to the use of the disputed domain name in bad faith, the Complainant avers that, since its registration, the disputed domain name has been used in bad faith because the details of the Complainant are being intentionally used on the Respondent's website, in an attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's name, service marks, and other property of the Complainant.

The Complainant provides evidence found on Respondent's website which illustrates the Respondent's registration and use of the disputed domain name in bad faith, as follows:

- The main webpage of the Respondent's website incorporates an embedded YouTube video, over which the Complainant claims argues ownership, giving a tour of the Complainant's physical facilities in Quebec;
- The "About Us" section of the Respondent's website shows that the Respondent is claiming to be the Complainant given the references to "Argo Blockchain PLC" and its incorporation date being December 2017;
- The Respondent's website displays the Complainant's certificate of incorporation under the "About Us" section, thereby passing it off as the Respondent's own company incorporation certificate, despite there being no connection between the Complainant and the Respondent whatsoever;
- The Respondent's website also contains a hyperlink titled "Click to verify" next to the Complainant's certificate of incorporation, which redirects users to the Complainant's registration details on the Companies House website; and
- The "Help Centre" section of the Respondent's website is also a matter of concern as it contains further references to the Complainant, which suggests an association with the disputed domain name, including another re-direction to the Complainant's registration details on the Companies House website. The Complainant argues that, if existing or potential clients were to believe there is an association between the Complainant and the disputed domain name, the Complainant's business and reputation will suffer and the brand it has been trying to build will be tarnished.

The Complainant concludes that the re-direction to the Companies House website which displays the Complainant's own details, and the use of the Complainant's incorporation certificate on the various sections of the Respondent's website, show ill will and malice towards the Complainant and flagrant use of the disputed domain name in bad faith. The Complainant further concludes that the Respondent is doing this purely as an attempt to imply a connection between the Complainant and the Respondent in order to attract investment (legitimate or not) for the Respondent.

In addition, the Complainant informs that its solicitors wrote to the Respondent on 15 June 2021 setting out the above facts and asking the Respondent to (i) cease use of the AB Names and other property owned by the Complainant, (ii) cease providing links to details of the Complainant's registered company, and (iii) to transfer the disputed domain name to the Complainant. The Complainant additionally informs that no response was received to its letter.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to an unregistered trade 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.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

- 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.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

I. Identical or Confusingly Similar

The UDRP test under the first element provides for a juxtaposing approach, according to which the textual components of the disputed domain name and the Complainant's trade marks are to be compared side by side.

Notwithstanding the above, in order to succeed under the first element of the Policy, the Complainant must provide evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

As a preliminary matter, the Panel notes that the Complainant does not have registered trade mark rights and, instead, relies

upon unregistered trade mark rights in the terms “Argo Blockchain” or “Argo”, which the Complainant advises have been used and traded since December 2017.

Under the UDRP Policy, paragraph 4(a)(i), the terms “trade mark” or “service mark” encompass both registered and unregistered marks. This alone, however, does not confer UDRP standing to the Complainant. The establishment of unregistered trade mark rights for the purpose of the UDRP is an onerous task for the Complainant to fulfil.

UDRP panels have therefore considered various factors which may give rise to a finding of unregistered trade mark rights within the ambit of the UDRP proceedings. The rather broad (and non-exhaustive) range of factors include (i) the duration and nature of use of the mark; (ii) the amount of sales under the mark; (iii) the nature and extent of advertising using the mark; (iv) the degree of actual public (e.g., consumer, industry, media) recognition; and (v) consumer surveys (WIPO Jurisprudential Overview 3.0, paragraph 1.3). Among other factors are the type and scope of market activities, and the nature of the complainant’s goods and/or services, which the Panel finds of particular relevance to the present matter.

The Panel has considered the following specific evidence of goodwill either adduced by the Complainant or obtained by the Panel through the Panel’s limited factual research into matters of public record (as empowered by UDRP Rule 10):

- The Complainant is a public limited company listed on the London Stock Exchange;
- The Complainant has been in operation since 2017 however in a rapidly changing – and – evolving segment of business (cryptocurrency market). The Panel therefore views that the “duration of use” factor for establishing unregistered trade mark rights has to be adequately balanced against the singular features of type and scope of the Complainant’s market (including its relative infancy), and the goods and services traded in this ecosystem;
- Whilst the Complainant could have provided its website traffic report to strengthen a claim for unregistered trade mark rights, the Panel notes that the Complainant operates its business through the website www.argoblockchain.com, with the domain name having been registered in 2017;
- The Complainant’s financial health and leading role in the cryptocurrency industry; and
- The Panel undertook a google search for the term “Argo Blockchain”, which brought up over 668,000 results, among which are numerous references to the Complainant in many media channels worldwide.

Having considered the above elements, the Panel is satisfied that the Complainant has unregistered trade mark rights in the term “Argo Blockchain” dating back to 2017 (for the purpose of these UDRP proceedings, the Complainant’s unregistered trade mark). Consequently, the Panel shall now proceed to the exercise of juxtaposing the disputed domain name and the Complainant’s unregistered trade mark side by side.

The disputed domain name <argominers.com> wholly incorporates the distinctive part of the Complainant’s unregistered trade mark ARGO BLOCKCHAIN, namely “Argo”. The Panel notes that the word “miners” is commonly used in the cryptocurrency industry. Bitcoin mining is the process by which new bitcoins are entered into circulation, and this process is performed by “miners”, who solve complex mathematical problems on the Bitcoin network, the result of which being that they produce new bitcoin and make the Bitcoin payment network trustworthy and secure by verifying its transaction information (information extracted from <https://www.investopedia.com/>).

In view of the above, the Panel considers that the suffix “miners” in the disputed domain name increases the confusion between the disputed domain name and the Complainant given the Complainant’s segment of business which is precisely bitcoin mining.

The Panel further notes that TLD suffixes are typically disregarded in the assessment of the first element of the Policy, the

reason being that the TLD is part of the anatomy of a domain name (see WIPO Jurisprudential Overview 3.0, paragraph 1.11).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's unregistered trade mark ARGO BLOCKCHAIN, the result of which being that the Complainant has succeeded under the requirement of paragraph 4(a)(i) of the Policy.

Lastly, the Panel notes that under this element of the Policy the Complainant alluded to the passing-off doctrine under English law to support its claim. The Panel is, however, regrettably unable to make any finding with respect to the elements of passing-off, given that in doing so the Panel would exceed the relatively limited scope of the UDRP, the consequence of which being that any claims on passing-off would be more appropriately addressed by a court of competent jurisdiction.

II. Rights or Legitimate Interests

The second element of the Policy provides that the Respondent shall demonstrate that it has rights or legitimate interests in the disputed domain name. It therefore falls on the Complainant the burden to refute any such allegations.

Paragraph 4(c) of the Policy sets out a non-exhaustive list of examples by which the Respondent can demonstrate its rights or legitimate interests in the disputed domain name, as follows:

- (i) before any notice 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 the respondent 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.

The evidentiary standard under the UDRP proceedings is such that, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to provide evidence to the contrary.

The Respondent did not submit a Response in these UDRP proceedings, nor has it responded to the Complainant's letter before the Complaint has been filed. Therefore, the Panel will make a determination on the basis of the available evidence.

Having reviewed the case file, the Panel notes that the Respondent does not carry out any activity for, or has any business or relationship of any nature with, the Complainant. There is no contractual arrangement between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade marks. There is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel notes that there is also no evidence on the record to suggest that the Respondent is affiliated with, or endorsed by, the Complainant (and, in any event, any affiliation or endorsement has been denied by the Complainant).

In addition, in the Panel's view, the choice of a domain name which incorporates a complainant's trade mark wholly or nearly wholly, and is unaccompanied or unsupported by any credible explanation as to the reason for this coincidence, could further evidence a lack of rights or legitimate interests.

Lastly, the Panel further notes that the evidence on the available record does not demonstrate, before any notice 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. In addition, the available record does not demonstrate that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers. Rather, there appears to be evidence to suggest that the Respondent has attempted to impersonate the Complainant, as discussed under section III below.

For the foregoing reasons, and noting that the Respondent has not provided a Response to refute any of the allegations and evidence produced by the Complainant in these proceedings, the Panel finds that the Complainant has made a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

In order to meet the third requirement under the Policy, the Complainant must provide evidence that the disputed domain name was registered and is being used in bad faith. The Policy enumerates non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

1. circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
2. the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
3. the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
4. by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel has considered the evidence put forward by the Complainant and has undertaken some factual research into matters available on the public record. In the Panel's view, the case circumstances warrant a concurrent assessment of bad faith registration and use, as follows:

- The disputed domain name <argominers.com> wholly incorporates the distinctive part of the Complainant's unregistered trade mark ARGO BLOCKCHAIN, namely "Argo". The presence of the term "miners" in the disputed domain name heightens the confusion with the Complainant given the Complainant's core segment of business (bitcoin mining);
- There is no credible explanation for the Respondent's choice of the disputed domain name, which was registered in 2020, and contains the term "Argo" within the disputed domain name string. Firstly, the Complainant has been in operation since 2017 and has been a key player in the fast-growing market of cryptocurrency. Secondly, the Complainant's company name, and its website also contain the distinctive word "Argo". The Panel does not look favourably upon the Respondent, and finds it that the Respondent was well aware of the Complainant given the specific references to the Complainant on the Respondent's website (as discussed further below);
- The Panel does not consider the use of a registrar's privacy service in and of itself as an indication of domain name registration in bad faith. Rather, the Panel views the provision of false contact information as an indication of bad faith. In this instance, the Respondent appears to have adopted a non-existent address;

- The Respondent has not provided a Response within the time prescribed under the UDRP Rules, or at all, nor has it responded to the Complainant's letter before these UDRP proceedings have been initiated, and has thus failed to offer any explanation of justification to the matters raised by the Complainant in the context of these proceedings. The Panel is empowered to draw adverse inferences by such failure (UDRP Rule 14 (b));
- There is nothing on the record suggesting that the Respondent is affiliated or otherwise connected with the Complainant and the Complainant denies any association;
- At the time of writing, the disputed domain name resolves to a landing webpage on which the following message is displayed "sorry! If you are the owner of this website, please contact your hosting provider: webmaster@argominers.com". This Panel has consulted the historical resource of the disputed domain name on the Internet Archive platform. The search brought up three screenshots from 1 November 2020 through to 15 April 2021, on which the Panel could see, in particular, references to "ARGO BLOCKCHAIN LTD. | © 2020 All Rights Reserved" and a YouTube video titled "A tour of Argo's facility in Quebec". Moreover, and most compellingly, there is robust documentary evidence that the Respondent's website used to display the Complainant's company name and its certificate of incorporation in a rather prominent position, in addition to making references to the Complainant and its core business of bitcoin mining, and to providing a link that would re-direct Internet users to the Complainant's details on the Companies House website. This behaviour suggests that the disputed domain name was registered for a potential financial gain, i.e. to misleadingly divert Internet users (most likely the Complainant's - existing or otherwise - customers because of the use of the Complainant's trade mark within the disputed domain name string and on the Respondent's website) to the Respondent's website and inviting them to consume their goods and services through the Respondent's website (circumstance 4 above). In particular, the Panel finds that the Respondent has attempted to suggest an affiliation with, or a connection to, or an endorsement of the Complainant or even to impersonate the Complainant through the use of the Complainant's trade mark in the dispute domain name string and on the Respondent's website in the manner described above. On closer inspection, the Panel also notes that the Respondent's website used to mimic some of the layout features of the Complainant's website, including the colour orange of the "get in touch" section of the Complainant's website;
- The Respondent's failure to provide any evidence of actual or contemplated good faith use of the disputed domain name; and
- Taken the above together, and on the balance of probabilities, the overall unlikelihood of any good faith use of the disputed domain name.

The Panel has looked at the overall composite picture of events and finds it, collectively, to be sufficient to justify a finding that the Respondent has registered and is using the disputed domain name in bad faith under the Policy.

Accordingly, the Complainant has made a prima facie showing that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ARGOMINERS.COM: Transferred

PANELLISTS

Name	Dr Gustavo Moser
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DATE OF PANEL DECISION **2021-08-18**

