



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	<b>HK-2101434</b>
<b>Complainant:</b>	<b>(1) Allianz Asset Management of America L.P. (2) Pacific Investment Management Company LLC</b>
<b>Respondent:</b>	<b>Aitken Marketing Pty Ltd</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;pimco-au.com&gt; and &lt;pimco-aus.com&gt;</b>

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### 1. The Parties and Contested Domain Name

The First Complainant is Allianz Asset Management of America L.P. and the Second Complainant is Pacific Investment Management Company LLC, both of 650 Newport Center Drive, Newport Beach, California 92660, United States of America. The First and Second Complainants will individually and collectively be referred to as the “**Complainant**” hereafter.

The Respondent is Aitken Marketing Pty Ltd (“**Respondent**”) of 128 Oliver Street.

The domain names at issue are <pimco-au.com> and <pimco-aus.com> (“**Domain Names**”) registered by Respondent with Eranet International Limited, 時代互聯網國際有限公司 of Unit 2 7/F Trans Asia Centre, 18 Kin Hong Street, Kwai Chung, N.T., Hong Kong (“**Registrar**”).

### 2. Procedural History

On 11 March 2021, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“**Rules**”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“**Supplemental Rules**”) effective from 31 July 2015. The Complainant chose to have a sole panelist to handle the dispute.

On 11 March 2021, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. Reminders were sent to the Registrar on 18, 25 and 26 March 2021. On 26 March 2021, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as

the registrant and providing the contact details. On 28 March 2021, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 29 March 2021, the Complainant filed a rectified Complaint. The ADNDRC formally notified the Respondent of the Complaint and the proceedings commenced on 30 March 2021. The ADNDRC did not receive any formal response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules. Accordingly, on 20 April 2021, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist.

On 22 April 2021, the ADNDRC appointed Ms. Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

### 3. Factual background

The First Complainant, previously known as “PIMCO Advisors L.P.” and “Allianz Global Investors of America L.P.”, is the holding company for the Second Complainant and its group companies. The Second Complainant together with its group companies is a global investment management firm established in Newport Beach, California, US in November 1971 which provides its services under the name PIMCO. The First Complainant is the owner of the PIMCO trade mark registrations globally.

The Second Complainant is a well-known financial investment management firm and has been operating for nearly 50 years with a focus on active fixed income management. It manages investments in a number of asset classes including but not limited to fixed income, hedge funds, commodities and asset allocation. As of 2020, the Second Complainant has 20 offices throughout the Americas, Europe and Asia and eight trading desks covering every time zone, including in Hong Kong and in Australia. The Second Complainant manages approximately US\$2.21 trillion on behalf of various institutional and retail investors.

The Complainant has trade mark registrations for PIMCO (“**Trade Mark**”) in multiple jurisdictions including in Hong Kong and Australia which the Respondent appears to be based and/or where it is targeting its operations. The **Trade Mark** registrations submitted in evidence pre-date the date of registration of the Domain Names.

The Complainant’s official websites are found at [www.pimco.com](http://www.pimco.com), [www.pimco.com.hk](http://www.pimco.com.hk) and [www.pimco.com.au](http://www.pimco.com.au). The Complainant has won numerous awards for its services and also extensively markets and promotes itself under the Trade Mark.

The Respondent registered the Domain Names on 31 January 2021. It appears to be based in Hong Kong as it has a Hong Kong telephone number. The Domain Names are not connected to active websites. However, according to evidence submitted by Complainant, the Domain Names have been used to send fraudulent emails to impersonate the Complainant and its employees with prospective clients including sending a fake prospectus and form requesting for personal and financial information purporting to be from the Complainant.

#### **4. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions may be summarized as follows:

The Domain Names are identical or confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Names, and that the Domain Names have been registered and are being used in bad faith. The Complainant requests transfer of the Domain Names to the First Complainant.

##### **B. Respondent**

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

#### **5. Findings**

##### **A. General**

The 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.

##### **B. Identical / Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case the Domain Names consists of the Trade Mark in its entirety plus "-" followed by the geographical terms "au" for one and "aus" for the other. The addition of a hyphen and a geographical term after the Trade Mark do not negate the confusing similarity encouraged by the Respondent's complete integration of the Trade Mark in the Domain Names. *E.g., N.V. Organon Corp. v. Vitalline Trading Ltd., Dragic Veselin / PrivacyProtect.org*, WIPO Case No. D2011-0260; *Oakley, Inc. v. wu bingjie aka bingjie wu/Whois Privacy Protection Service*, WIPO Case No. D2010-0093; *X-ONE B.V. v. Robert Modic*, WIPO Case No. D2010-0207. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement.

The Panel finds that the Domain Names are confusingly similar to trade marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

### **C. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it 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 has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“**WIPO Overview 3.0**”) that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that there is no evidence that the Respondent is commonly known by the Domain Names nor has any trade mark rights to the Trade Mark. Further, it has not authorised, licensed, sponsored or otherwise permitted the Respondent to use the Trade Mark in the Domain Names or for any other purpose. The Respondent's sending of fraudulent emails (by spoofing Complainant's official email address) and a fraudulent prospectus and form to unsuspecting potential investors in order to collect personal and financial data to the Respondent's illegal advantage neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names.

### **D. Registered and Used in Bad Faith**

To succeed under the Policy, the Complainant must show that the Domain Names have been registered and are being used in bad faith.

The circumstances in this case leave no doubt that the Respondent was fully aware of the Complainant's rights in the Trade Mark when it registered the Domain Names given that the Trade Mark is well known and the fact that the Respondent has been attempting to impersonate the Complainant.

The Panel also finds that the Domain Names were very evidently used in bad faith. They were used for phishing activities by sending fraudulent emails (including spoofing Complainant's official email address) to unsuspecting users informing them of investment opportunities purporting to be from the Complainant in order to collect personal and financial data to the Respondent's illegal advantage. This is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own email communication by creating a likelihood of confusing with the Trade Mark to the source, sponsorship, affiliation or endorsement of the Respondent's email. The Panel therefore concludes that the Domain Names have been registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

## 6. Decision

For the foregoing reasons, and in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names <pimco-au.com> and <pimco-aus.com> be transferred to the First Complainant.



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Karen Fong  
Panelist

Dated: 11 May 2021