

## **ADMINISTRATIVE PANEL DECISION**

Chewy, Inc. v. david almarin  
Case No. D2022-3808

### **1. The Parties**

Complainant is Chewy, Inc., United States of America ("United States" or "U.S."), represented by Winterfeldt IP Group PLLC, United States.

Respondent is david almarin, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <chewyisrael.com> is registered with Wix.com Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 11, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 26, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on October 31, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 4, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on November 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on November 28, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on July 3, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

Complainant states in its Complaint and provides evidence in the respective Annexes sufficient to support that Complainant provides pet supplies and pet wellness-related services under the trademark CHEWY (the “CHEWY Mark”) through its online retail store. Founded in 2011 as a customer-service focused online retailer for pet supplies, Complainant grew to generate 2017 revenue of approximately USD 2 billion and was responsible for 51% of online pet food sales in the U.S. when it was acquired by PetSmart in May 2017 for USD 3.35 billion. Complainant went public in 2019 under the ticker symbol CHWY.

Complainant’s online retail store services for pet supplies and pet wellness-related services employs more than 20,000 people, offers over 100,000 products from over 3,000 brands, and maintained more than 20 million active customers to generate net sales of over USD 8 billion in fiscal year 2021. Complainant’s CHEWY Mark is well-known as shown by the brand being ranked 26 on Forbes’ “The Halo 100: 2022”.

Complainant owns numerous trademark registrations for the CHEWY Mark and related CHEWY-formative marks (collectively, the “CHEWY Marks”) in the United States and many jurisdictions throughout the world, including:

1. U.S. Reg. 4,346,308, CHEWY.COM, registered on June 4, 2013, for on-line retail store services featuring pet food, pet supplies and pet accessories, in International Class 35, claiming use in commerce since 2012;
2. U.S. Reg. 5,028,009, CHEWY, registered on August 23, 2016, for services in International Class 35, claiming use in commerce since 2016; and
3. U.S. Reg. 5,834,442, CHEWY, registered on August 13, 2019, for services in International Class 35, claiming use in commerce since 2018.

Complainant shows in the annexes to its Complaint that the goodwill generated by Complainant’s CHEWY Marks have earned it recognition from organizations and news outlets worldwide, and the CHEWY Mark has been determined famous in prior UDRP decisions cited in the Complaint.

Complainant also owns domain names incorporating the CHEWY Mark, including the <chewy.com> domain name, created in April 2004, used by Complainant to access its official website at “www.chewy.com” (the “Official CHEWY Mark Website”) through which Complainant makes substantial use of the CHEWY Mark to provide its pet supplies and pet wellness-related services.

The disputed domain name was registered on July 22, 2022, and as of the filing of the Complaint resolved to an active copycat website offering various pet products for sale under a “CHEWY ISREAL” logo, “chewyisrael” website name, and “Chewy Israel, Inc.” copyright notice name, all incorporating the CHEWY Mark, and also utilizing a predominantly blue color scheme in imitation of Complainant’s color scheme on the Official CHEWY Mark Website,

#### **5. Parties’ Contentions**

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

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

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

Respondent did not reply to Complainant’s contentions.

## 6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that the requirements for each of the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these elements in more detail below.

The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

### A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has demonstrated its rights because it has shown that it is the holder of multiple valid and subsisting trademark registrations for the CHEWY Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

For purposes discussed further under 6B. and 6C. below, Complainant also contends that the CHEWY Mark qualifies as distinctive and famous especially in the U.S. where Respondent appears to be located based on the contact information provided by Registrar. The Panel finds it reasonable to conclude that Complainant's CHEWY Mark is "famous" given the evidence provided by Complainant of a decade of prior use, a credible third-party source's acknowledgement of the CHEWY Mark as ranked 26th in the 2022 Forbes "Halo 100" list of the top 100 U.S. company "Brands That Consumers Love", that Complainant has been recognized as one of the largest online pet supply retailers in the world, and the findings of such fame by prior UDRP panels. See, e.g., *Chewy Inc. v. Rostislav Karyi / Ростислав Карый*, WIPO Case No. [DUA2020-0007](#); *Chewy, Inc. v. Li Hou Chang*, WIPO Case No. [D2019-1845](#).

With Complainant's rights in the CHEWY Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's CHEWY Mark.

Prior UDRP panels have held a domain name which wholly incorporates a complainant's registered mark in its entirety is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other words to such marks. [WIPO Overview 3.0](#), sections 1.7 and 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"); see also *Carrefour SA v. yuri eros*, תוניי נתיב עב"מ, WIPO Case No. [D2022-1277](#); *BNP Paribas v. Ronan Laster*, WIPO Case No. [D2017-2167](#).

The disputed domain name incorporates Complainant's CHEWY Mark in its entirety and adds the trailing term "israel". Respondent's addition of this term to Complainant's CHEWY Mark does not prevent a finding of confusing similarity as noted above. The addition of the generic Top-Level Domain ("gTLD") ".com" is irrelevant in determining whether the disputed domain name is confusingly similar. See, *Research in Motion Limited v Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#); [WIPO Overview 3.0](#), section 1.11. This Panel finds that the added term "israel" does not prevent a finding of confusing similarity between the

disputed domain name and Complainant's well-known CHEWY Mark, which remains fully recognizable as incorporated in its entirety into the disputed domain name.

Accordingly, the Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, Complainant asserts that it has not licensed, or otherwise authorized Respondent to use the CHEWY Mark in any manner, nor is Complainant in any way or manner associated with or related to Respondent. Complainant has also claimed with persuasive evidence submitted that Respondent is not commonly known by the disputed domain name because Respondent, "david almarin", clearly bears no resemblance to the term "chewy", the CHEWY Mark, or the disputed domain name.

Most importantly, Complainant contends and its evidence shows the disputed domain name resolves to what prior UDRP panels have generally referred to as a "copycat" website used to impersonate Complainant and claiming to offer various pet goods for sale under the CHEWY Mark. Respondent is trading on the goodwill associated with the CHEWY Mark incorporated in the disputed domain name to attract Internet users to its website and offer pet goods for sale in competition with Complainant. Such use of the disputed domain name does not constitute any legitimate *bona fide* sale of goods or services or legitimate noncommercial or fair use.

Prior UDRP panels have held that the use of a complainant's mark to resolve users to a respondent's site with reference to respondent's competing business would not support a claim to rights or legitimate interests nor a noncommercial fair use but would tend to show the respondent's intent to unfairly profit from the complainant's reputation. See [WIPO Overview 3.0](#), section 2.5.3; see also *Fitbit, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Wei Zhang*, WIPO Case No. [D2020-0317](#).

Prior UDRP panels have also held that a domain name created merely to mislead Internet users to a competing commercial website controlled by a respondent used as a pretext does not correspond to a *bona fide* offering of goods or a noncommercial fair use. See, *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#).

The Panel finds Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, so as to confer rights or legitimate interests in it in accordance with paragraph 4(c)(i) of the Policy and that the composition of the disputed domain name being confusingly similar to Complainant's mark fosters an implied affiliation with Complainant. [WIPO Overview 3.0](#), section 2.5.1.

These facts establish Complainant's *prima facie* showing. Respondent has not provided any basis on which that showing may be overcome. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

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

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends, and this Panel has found in Section 6A above, that the CHEWY Mark is famous especially in the United States where Respondent is ostensibly located, and widely known around the world. Complainant further contends that given its CHEWY Mark is famous, has been registered for almost a decade before Respondent registered the disputed domain name, and the disputed domain name incorporates the CHEWY Mark in its entirety, Respondent has no credible argument that he is unaware of the CHEWY Mark. See, e.g., *Chewy Inc. v. Rostislav Karyi / Ростислав Карый*, *supra*; *Chewy, Inc. v. Li Hou Chang*, *supra*.

A consensus of prior UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Prior UDRP panels have also found that where, as here, it would be implausible to believe that Respondent selected and was using the disputed domain name for any other purpose than to trade on Complainant's trademark rights and reputation, establishes a fact pattern that repeatedly has been held to constitute bad faith registration. See *Houghton Mifflin Co. v. Weathermen, Inc.*, WIPO Case No. [D2001-0211](#); see also *Philip Morris Inc. v. Alex Tsyarkin*, WIPO Case No. [D2002-0946](#). The Panel finds, therefore, that Respondent had actual knowledge of the CHEWY Mark and that Respondent has targeted Complainant's CHEWY Mark in registering the disputed domain name in bad faith.

Finally, as noted in section 6B above, Respondent, having intentionally configured the disputed domain name to enhance confusing similarity to Complainant's CHEWY Mark, is using the disputed domain name to direct Internet users to an imitation website claiming to offer pet goods and services for sale, thus unfairly trading on the goodwill associated with Complainant's CHEWY Marks. Accordingly, Respondent's conduct was undertaken in opposition to Complainant and disruptive to Complainant's business, which prior UDRP panels have found to be evidence of bad faith use under paragraph 4(b)(iii) of the Policy. See *Bombas LLC v. CTZTECH, Bighorse Cedrick*, WIPO Case No. [D2021-1448](#).

Complainant also contends that Respondent has configured the disputed domain name to create a false association with Complainant to direct or redirect consumers to Respondent's website providing Respondent's competing business selling pet products under the CHEWY Mark for Respondent's commercial gain. Prior UDRP panels have found these facts demonstrate a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's CHEWY Mark as to the source, sponsorship, affiliation or endorsement of Respondent's website, and, therefore, evidence of registration and use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy. See, e.g., *OLX, B.V. v. Glenn Monfort, Cyberthread Solutions Inc.*, WIPO Case No. [D2015-1899](#); *Travelscape, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Irwin Periola*, WIPO Case No. [D2020-2741](#).

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) of the Policy.

## **7. 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 <chewyisrael.com> be transferred to Complainant.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: July 28, 2023