

ADMINISTRATIVE PANEL DECISION

Bad Kitty's Dad, LD v. Suren Akopian

Case No. D2023-2368

1. The Parties

The Complainant is Bad Kitty's Dad, LD, Portugal, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Suren Akopian, Armenia.

2. The Domain Name and Registrar

The disputed domain name <ometv.com> is registered with Nettuner Corp. DBA Webmasters.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 1, 2023. On June 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 6, 2023, 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 (Private Registration, Account Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 8, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 12, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on June 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 3, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on July 10, 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

The Complainant is a Portuguese company that specializes in the development of games and entertainment software and applications (“apps”) counting with development teams in Ukraine, Europe, and the United States of America (Annex 6.1 to the Complaint).

The Complainant developed and provides the OmeTV free online video chat platform, launched in 2015, for users seeking to connect with new people from all around the world using the Complainant’s online platform or mobile app, in multiple languages and counting with a built-in message translator.

The Complainant’s Ome TV platform is available to users at <ome.tv> and <ometv.chat>. In addition to that, the Complainant is the owner, amongst others, of:

- European Union Trade Mark registration No. 018021225 for the word mark OMETV, filed on February 9, 2019, registered on June 4, 2019, in classes 09, 35, and 28; and
- United States trademark registration No. 5833264 for the word mark OME TV, filed on January 16, 2019, registered on August 13, 2019, claiming first use in commerce on September 9, 2015, in class 38.

The disputed domain name was created on December 17, 2007 and acquired/registered by the Respondent on or around March 18, 2022. Presently, the disputed domain name redirects Internet users to a website which “provides online chat solutions for those who are looking for cam chat opportunities on internet”.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that its OmeTV platform became a popular random chat platform for users seeking to connect with new people from all around the world using the Complainant’s online platform or mobile app.

The Complainant further asserts that according to Similarweb.com, the Complainant’s <ome.tv> website averaged 6.4 million visitors from December 2022 to February 2023, ranking it the 130th most popular website in its category (Annex 7 to the Complaint) and the Complainant’s mobile app versions for iOS and Android on Google Play counted with more than 100 million downloads, with a 4.1/5 rating from 530,000 users and having ranked No. 39 in the social networking category at Apple Store (Annex 6.3 to the Complaint).

Under the Complainant’s view, its OMETV brand is well recognized and respected worldwide and in its industry, having the Complainant made significant investment to advertise and promote its trademark worldwide in media and the Internet over the years and has thus developed substantial goodwill in the OMETV brand, which has become distinctive and uniquely associated with Complainant and its products and services.

Under the Complainant’s view, the disputed domain name incorporates the Complainant’s trademark in its entirety and is thus confusingly similar. Additionally, the Complainant contends that the Respondent is using the disputed domain name to frame a website where competing video chat services are offered, which suggests that the Respondent intended the disputed domain name to be confusingly similar to the Complainant’s trademark as a means of furthering consumer confusion.

As to the absence of rights or legitimate interests, the Complainant argues that:

- i. the Respondent is not sponsored by or affiliated with the Complainant in any way, not having the Complainant given the Respondent any license, authorization or permission to use the Complainant’s trademark in any manner, including in domain names;

- ii. the Respondent is not commonly known by the disputed domain name;
- iii. the Respondent is not making a *bona fide* offering of goods or services or legitimate, noncommercial fair use of the disputed domain name given the use of the disputed domain name in connection with a website offering online video chat services to Internet users which directly compete with the Complainant's own offerings; and
- iv. the Respondent acquired the disputed domain name between March 15 and 18, 2022, which is significantly after the use initiated by the Complainant of the OME TV mark in 2015.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

In what it relates to the bad faith registration and use of the disputed domain name, the Complainant asserts that the disputed domain name was first registered on December 17, 2007 and was held by an entity named "eNotifyMe" until at least March 15, 2022, having the disputed domain name simply resolved to a page displaying pay-per-click links until that date. Later on, at sometime between March 15 and 18, 2022, the Complainant asserts that the Respondent acquired the disputed domain name and placed a privacy service on the previously disclosed Whois information and began using the disputed domain name to frame a competing website.

The Complainant thus contends that by acquiring a domain name that fully incorporates the Complainant's OMETV trademark, the Respondent has created a domain name that is identical to the Complainant's trademark, as well as its <ome.tv> domain name, having demonstrated the Respondent's knowledge of and familiarity with the Complainant's brand and business, what is evidenced by the fact the Respondent has used the disputed domain name to frame a website which offers competing online chat services, characterizing such conduct a disruption of the Complainant's business as well as bad faith registration and use under of the disputed domain name. Furthermore, the choice to retain a privacy protection service to hide its true identity is a further indicative of the Respondent's bad faith, as well as the lack of reply to the Complainant's cease-and-desist letter and subsequent reminders (Annex 8 to the Complaint). Lastly, the Respondent appears to have engaged in a bad faith pattern of cybersquatting having been found in bad faith in previous UDRP decisions which dealt with cases targeting competitors of the Complainant in the video chat industry (*Andrey Ternovskiy dba Chatroulette v. Private Registration, Account Privacy / Suren Akopian*, WIPO Case No. [D2018-2587](#) (for <livechatroulette.com>); *Multi Media LLC v. Private Registration, Account Privacy / Suren Akopian*, WIPO Case No. [D2017-2440](#) (for <chatrubate.com> et al); and *Beronata Services Ltd v. Private Registration, Account Privacy / Suren Akopian*, WIPO Case No. [D2017-1796](#) (for <bongocams.com>)).

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights over the OME TV trademark which the Complainant started using in 2015.

The disputed domain name reproduces in its entirety the Complainant's OME TV trademark. As recognized by past UDRP panels, this test involves a "side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) 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; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial 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 Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default, as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent whom has not been commonly known by the disputed domain name and is neither sponsored by or affiliated with the Complainant in any way, not having the Complainant given the Respondent any license, authorization or permission to use the Complainant's trademark in any manner, including in domain names.

Also, the absence of any trademarks or trade names registered by the Respondent corresponding to the disputed domain name, or any possible link between the Respondent and the disputed domain name, that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate the absence of a right or legitimate interest.

Moreover, the Respondent has been clearly targeting the Complainant's users, redirecting them to a competing website using a confusingly similar domain name and moreover to offer competing services.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv), in view of the acquisition of the disputed domain name by the Respondent after the Complainant's use of the OME TV mark in 2015, as well as the Respondent's redirection of Internet users to a webpage offering competing services, which creates a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

Moreover, the bad faith of the Respondent is also supported here by (i) the choice to retain a privacy protection service in an attempt to conceal the Respondent's true identity; (ii) the lack of reply by the Respondent invoking any rights or legitimate interests; (iii) the lack of reply to the Cease-and-desist letter and reminders sent prior to this procedure; (iv) the indication of false or incomplete information used by the Respondent for registering the disputed domain name, since the Written Notice was undeliverable to the Respondent by courier service; and (v) the Respondent's pattern of cybersquatting having targeted other competitors of the Complainant, as seen above.

For the reasons above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The third element of the Policy has therefore been met.

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 <ometv.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: July 24, 2023