

ADMINISTRATIVE PANEL DECISION

Bad Kitty's Dad, LDA v. Sanjay Bambhaniya
Case No. D2023-4682

1. The Parties

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

The Respondent is Sanjay Bambhaniya, India.

2. The Domain Name and Registrar

The disputed domain name <ometv.one> ("the disputed domain name" or "the Domain Name") is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 10, 2023. On November 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on November 14, 2023, 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 15, 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 Respondent of the Complaint, and the proceedings commenced on November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 8, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on December 12, 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 is a company headquartered in Portugal. It specializes in games and entertainment software and application (“app”) development. “OmeTV” is a free online video chat platform developed by Complainant. Since its launch in 2015, OmeTV has become a popular random chat platform for users seeking to connect with new people from all around the world using their online platform or mobile application. It is available in multiple languages with a built-in message translator. OmeTV is made available to users at <ome.tv> and <ometv.chat>. According to <Similarweb.com>, <ome.tv> had an average of 6.4 million visitors from December 2022 to February 2023, ranking it 130th most popular website in its category. On Google Play, OmeTV has more than 100 million downloads.

Complainant owns trademark registrations for OME TV including:

- the Portuguese trademark registration No. 604088, OME TV (figurative), filed on June 23, 2018, and registered on November 15, 2018, for goods and services in international classes 9, 35, and 38;
- the United Kingdom trademark registration No. 00918021225, OME TV (word), filed on February 9, 2019 with priority date of February 6, 2019, and registered on June 4, 2019, for goods and services in international classes 9, 35, and 38; and
- the European Union trademark registration No. 018021225, OME TV (word), filed on February 9, 2019 with priority date February 6, 2019, and registered on June 4, 2019, for goods and services in international classes 9, 35, and 38.

Complainant also maintains its primary domain name <ome.tv> since September 9, 2015.

The Domain Name was registered on June 27, 2020, and leads to a website (the Website) claiming to be affiliated with, connected to, or authorized by Complainant, prominently displaying Complainant’s logo, trademark and service information on the Website. Moreover, on the Website, Respondent purports to offer and attempts to sell the services of Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

(i) the 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) the Domain Name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The generic Top-Level Domain ("gTLD") ".one" is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

The Panel finds the mark is identical to the Domain Name.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Prior to the notice of the dispute, Respondent did not demonstrate any use of the Domain Name or a trademark corresponding to the Domain Name in connection with a bona fide offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name resolves to the Website, which suggests falsely that it is of an affiliated entity or of an authorized partner of Complainant.

Per Complaint, Respondent is not an affiliated entity or an authorised distributor or reseller of Complainant and no agreement, express or otherwise, exists allowing the use of Complainant's trademarks on the Website and the use of the Domain Name by Respondent.

A distributor or reseller can be making a bona fide offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods/services at issue; (ii) respondent must use the site to sell only the trademarked goods/services; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) respondent must not try to "corner the market" in domain names that reflect the trademark.)

These requirements are not cumulatively fulfilled in the present case. At the most basic level, the Domain Name falsely suggests that the Website is an official site of Complainant or of an entity affiliated to or endorsed by Complainant. Panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1. The Website extensively reproduces, without authorization by Complainant, Complainant's trademark, without any disclaimer of association (or lack thereof) with Complainant.

Furthermore, the use of a domain name which intentionally trades on the fame of another and suggests affiliation with the trademark owner cannot constitute a bona fide offering of goods or services (*Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#); *AB Electrolux v. Handi Sofian, Service Electrolux Lampung*, WIPO Case No. [D2016-2416](#); [WIPO Overview 3.0](#), section 2.5).

The above, along with the fact that the Domain Name was registered with a privacy shield service at the time of filing of the Complaint, speaks against any rights or legitimate interests held by Respondent (*Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. [D2017-2533](#)).

The Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. As per Complaint, Complainant's OME TV trademark is used and registered for software and "app" services. Because the OME TV mark had been widely used and registered at the time of the Domain Name registration by Complainant, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

As regards bad faith use of the Domain Name, Complainant has demonstrated that the Domain Name is used to resolve to the Website, which prominently displays Complainant's registered trademarks, thereby giving the false impression that it is operated by Complainant, or a company affiliated to Complainant or an authorised partner of Complainant. The Domain Name is therefore used to intentionally create a likelihood of confusion with Complainant's trademark and business as to the source, sponsorship, affiliation, or endorsement of the website it resolves to. This can be used in support of bad faith registration and use (*Booking.com BV v. Chen Guo Long*, WIPO Case No. [D2017-0311](#); *Ebel International Limited v. Alan Brashear*, WIPO Case No. [D2017-0001](#); *Walgreen Co. v. Muhammad Azeem / Wang Zheng, Nicenic International Group Co., Limited*, WIPO Case No. [D2016-1607](#); *Oculus VR, LLC v. Sean Lin*, WIPO Case No. [DCO2016-0034](#); and [WIPO Overview 3.0](#), section 3.1.4).

Last, the Panel considers the apparent concealment of the Domain Name holder's identity through use of a privacy shield at the time of filing the complaint, to be further indicative of bad faith (*BHP Billiton Innovation Pty Ltd v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#)).

The Panel also further notes that present Respondent had previously involved in another UDRP case, against the same Complainant related to the same trademark rights, where it was found that Respondent is acting in bad faith. This pattern of bad conduct further supports the bad faith of Respondent. *Bad Kitty's Dad, LD v. Ome and Sanjay Bambhaniya*, WIPO Case No. [D2023-2400](#).

The Panel finds that the Complainant has established the third element 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, <ometv.one>, be transferred to the Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: December 26, 2023