

## **ADMINISTRATIVE PANEL DECISION**

Bad Kitty's Dad, LDA v. Mark Stone

Case No. D2023-4688

### **1. The Parties**

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

The Respondent is Mark Stone, United States of America ("United States").

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

The disputed domain name <ome-tv.one> 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 November 13, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 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 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 the 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. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 7, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on December 27, 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 in this administrative proceeding is Bad Kitty's Dad, LDA, a company headquartered in Portugal. It specializes in games and entertainment software and application ("app") development with development teams in Europe and the United States. OmeTV is a free online video chat platform developed by the Complainant and launched in 2015. The Complainant's platform is made available to users at <ome.tv> and <ometv.chat>. On Google Play, the Complainant's platform has had more than 100 million downloads. On the Apple Store, it ranks No. 39 in the social networking category.

The Complainant is the owner of several registrations for the OMETV trademark across various jurisdictions.

The Complainant is, *inter alia*, the owner of:

United Kingdom trademark OMETV registration number UK00918021225, registered on June 4, 2019 ;

Portuguese trademark OMETV (word) registration number 618348, registered on July 17, 2019;

European Union trademark OMETV (word) registration number 018021225, registered on June 4, 2019;

United States trademark OMETV (word) registration number 5833264, registered on August 13, 2019.

The Complainant is also the holder of the domain name <ome.tv> registered on September 9, 2015.

The disputed domain name was registered on April 23, 2023.

The disputed domain name hosts a website that offers video chat services under the name OmeTV.

#### **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.

Notably, the Complainant contends that the disputed domain name is identical to the Complainant's trademark, that the Respondent has no rights or legitimate interests in the disputed domain name, and particularly that the Respondent's use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under Policy 4(b)(iii) because the Respondent's domain name is identical to the Complainant's trademarks, and the website hosted at the disputed domain name features the Complainant's services as well as a link to a competitor of the Complainant.

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

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

#### **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

#### **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.

Based on the available record, the Panel finds 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 Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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. Furthermore, the nature of the disputed domain name, which is identical to the Complainant's OMETV trademark, and the use of the disputed domain name for an unauthorized commercial website offering services competing to those of the Complainant whilst displaying the Complainant's logo, indicate an awareness of the Complainant and its trademark and the intent to take unfair advantage of same, which does not support a finding of any rights or legitimate interests. 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.

Based on the available record, the Panel finds the second element of the Policy has 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent was aware of the Complainant's trademark registrations and rights to the OMETV trademark when it registered the disputed domain name.

"Ometv" is not a common or descriptive term, but a registered trademark known in its field of business. The disputed domain name reproduces, without any authorization or approval, the Complainant's registered OMETV trademark in its entirety. The fact that the disputed domain name is identical to the Complainant's trademark carries with it a high risk of implied affiliation.

The disputed domain name was registered several years after the Complainant's trademark was registered. In addition, owing to the substantial presence established on the Internet by the Complainant, it is unlikely that the Respondent was not aware of the existence of the Complainant's trademark when registering the disputed domain name.

Indeed, the Respondent's use of the disputed domain name for an unauthorized commercial website offering services competing with those of the Complainant whilst displaying the Complainant's logo is a clear inference that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark, and this amounts to bad faith use and registration of the disputed domain name.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the OMETV trademark.

The bad faith registration and use of the disputed domain name are also affirmed by the fact that the Respondent did not respond, nor has it denied the assertions of bad faith made by the Complainant in this proceeding.

The Panel finds that the Respondent registered and used the disputed domain name in bad faith in accordance with paragraph 4(b)(iv) of the Policy.

Based on the available record, 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 <ome-tv.one> be transferred to the Complainant.

*/Fabrizio Bedarida/*

**Fabrizio Bedarida**

Sole Panelist

Date: January 5, 2024