

## ADMINISTRATIVE PANEL DECISION

Bad Kitty's Dad, LD v. Abbigail Abril  
Case No. DTV2023-0002

### 1. The Parties

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

The Respondent is Abbigail Abril, United States of America ("United States").

### 2. The Domain Name and Registrar

The disputed domain name <ometv.tv> is registered with NameCheap, Inc. (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 22, 2023. On May 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 22, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 24, 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 May 25, 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 May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. The Center received an email from the Respondent on May 26, 2023. The Center notified the commencement of Panel Appointment Process on June 20, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on June 22, 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, headquartered in Portugal, is a company specialized in games and entertainment software and application development with development teams in Ukraine, Europe and the United States.

OmeTV is a free online video chat platform developed by Complainant and launched in 2015. OmeTV is available to users at <ome.tv> (registered in September 9, 2015) and <ometv.chat>, reaching an average of 6.4 million visitors from December 2022 to February 2023, ranked by Similarweb.com as the 130<sup>th</sup> most popular website in its category; having more than 100 million downloads on Google Play; and being ranked on Apple Store on position 39 in the social networking category.

The Complainant owns trademark registrations for OMETV/OME TV, such as the following:

- the European Union word Trade Mark OMETV registration No. 018021225 filed on February 9, 2019, and registered on June 4, 2019, for goods and services in International Classes 9, 35 and 38; and
- the United States word trademark OME TV registration No. 5833264 filed on January 16, 2019, and registered on August 13, 2019, for services in International Class 38.

The disputed domain name was registered on November 22, 2019, and at the time of filing the Complaint it resolved to a website claiming to be OmeTV (displaying notes as the following: "OmeTV-fastest random chat similar to Omegle") and was offering random video chat services. In addition, the website under the disputed domain name was displaying links redirecting Internet users to third party websites that compete with Complainant's business.

On December 6, 2022, the Complainant sent a cease-and-desist letter to the Respondent in relation to the disputed domain name. Two follow up letters were sent on December 13 and December 20, 2022 respectively. The letters remained unanswered.

According to Annex 9 to the Amended Complaint, the Respondent was involved in another UDRP dispute decided against it.

#### **5. Parties' Contentions**

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

The Complainant contends that the disputed domain name is identical to its trademark OMETV, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant requests the transfer of the disputed domain name to it.

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

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

In its communication sent on May 26, 2023, the Respondent claimed in particular that the disputed domain name "may appear as an alternative website for Ometv. Just as Ome.tv is an alternative to omegle, our website has the same logic."

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

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph

4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the concurrence of the above circumstances.

#### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant holds rights in the OMETV/OME TV trademark.

The disputed domain name incorporates the Complainant's trademark OMETV in its entirety, with no additional terms, making the disputed domain name identical to the Complainant's trademark.

It is well established in decisions under the UDRP that the country-code Top-Level Domain ("ccTLD") (in this case ".tv") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Given the above, the Panel finds that the disputed domain name is identical to the Complainant's trademark OMETV, pursuant to the Policy, paragraph 4(a)(i).

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

The Complainant asserts that the Respondent does not hold any trademark rights, license or authorization whatsoever to use the mark OMETV/OME TV, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, 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 fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not replied to the Complainant's contentions to advance a claim to any rights or legitimate interests in the disputed domain name.

The mere allegations that it created and provides an "alternative" website to the Complainant's official website, does not meet the *bona fide* use criteria, but to the contrary it can be considered a recognition, that the Respondent was well aware of the Complainant and the corresponding industry.

Further, according to the records before it, the Respondent has used the disputed domain name in connection with a website providing similar services to those offered by the Complainant and was also diverting Internet users to third parties sites, competitors of the Complainant. UDRP panels have constantly found that the use of a domain name to redirect users (e.g. to a competing site) would not support a claim to rights or legitimate interests. See section 2.5.3 of the [WIPO Overview 3.0](#).

In addition, and without prejudice to the above, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

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

The Complainant holds trademark rights for OMETV/OME TV since at least February 2019, domain name since 2015 and its trademark has gained substantial recognition in its industry.

The disputed domain name was registered in November 2019, reproduces the Complainant's mark OMETV exactly and is very similar to the Complainant's corresponding domain name. Furthermore, the website under the disputed domain name provides similar services to those of the Complainant.

For the above reasons, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business and particularly targeting the Complainant's trademark.

The Respondent is using without permission the Complainant's distinctive trademark in order to get Internet traffic on its web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant. This impression is created particularly by the incorporation of the Complainant's trademark in the disputed domain name, and the content on the website provided thereunder which includes the offering of similar services as the Complainant.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark exactly and the website operated under the disputed domain name provides services in competition with those provided by the Complainant, displays the OMETV trademark, and also diverts Internet users on third parties' competing websites, indeed in this Panel's view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

Paragraph 4(b)(ii) of the Policy provides another circumstance of bad faith registration and use when the respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. According to Annex 9 to the amended Complaint, the Respondent was apparently involved in another UDRP dispute targeting a well-know third party trademark. UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration. See section 3.1.2 of the [WIPO Overview 3.0](#).

The Respondent has not provided any substantial response in the present proceedings and to the Complainant's cease-and-desist letters in order to put forward any arguments in its favor and apparently provided false or incomplete contact details in the WhoIs. Such facts, together with all the other elements in this case, in the eyes of this Panel, supports a finding of bad faith behavior.

Furthermore, it was consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar to a third party's famous or widely-known trademark can create, by itself, a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

## 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.tv> be transferred to the Complainant.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: July 4, 2023