

ADMINISTRATIVE PANEL DECISION

Whaleco Inc. and Whaleco Technology Limited v. Wen Lijun, Lijun Wen
Case No. DEC2024-0001

1. The Parties

The first Complainant is Whaleco Inc., United States of America (“United States” or “U.S.”); and the second Complainant is Whaleco Technology Limited, Ireland, represented by Whitewood Law PLLC, United States.

The Respondent is Wen Lijun, Lijun Wen, China.

2. The Domain Name and Registrar

The disputed domain name is <temu.ec>.

The Registry of the disputed domain name is NIC.EC (the “Registry”) and the Registrar is TOPNETS GROUP LIMITED (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 17, 2024. On December 18, 2024, the Center transmitted by email to the Registry a request for registry verification in connection with the disputed domain name. On December 19, 2024, the Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On January 3, 2025, the Registrar confirmed that the language of the Registration agreement for the disputed domain name is Chinese.

On January 3, 2025, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On January 3, 2025, the Complainants requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainants’ submission.

The Center verified that the 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 in English and Chinese of the Complaint, and the proceedings commenced on January 6, 2025. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 27, 2025.

The Center appointed Francine Tan as the sole panelist in this matter on January 30, 2025. 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 first Complainant is incorporated in Delaware, U.S., and the second Complainant, in Ireland. Both of the Complainants (collectively, the "Complainant") belong to the same group of companies doing business as "Temu". The Complainant operates an online shopping platform (the "Temu Platform") accessible through its website, "temu.com", and mobile applications.

The Temu Platform was launched in the U.S. in September 2022. It brings together consumers with merchants, brands and manufacturers around the world, offering a growing selection of merchandise in product categories such as clothing, consumer goods, cosmetics, appliances and electronics. The Complainant states that the Temu Platform has become one of the most downloaded free applications on both the Google Play Store and the Apple App Store, operating in over 70 countries around the world.

The Complainant, through its affiliate, Five Bells Limited ("FBL"), is the exclusive licensee of various trade mark registrations for the TEMU word, including the following:

- United States trade mark registration no. 7164306, registered on September 12, 2023;
- United States trade mark registration no. 7157165, registered on September 5, 2023; and
- United States trade mark registration no. 7329132, registered on March 12, 2024;

The Complainant states that the TEMU trade mark has been used in the United States since as early as September 1, 2022, and that substantial resources in marketing, advertising and promoting its website under the TEMU trade mark the have been spent.

The first Complainant's domain name <temu.com> was registered on April 29, 2003.

The disputed domain name was registered on September 5, 2022, and at the time of the filing of the Complaint, resolved to an inactive webpage.

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 TEMU trade mark in which the Complainant has rights. The disputed domain name incorporates the entirety of the distinctive TEMU trade mark, with the mere addition of the country code Top-Level Domain ".ec", which is irrelevant for determining whether the disputed domain name is confusingly similar to the Complainant's trade mark.

- The Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name. The Complainant has not licensed, permitted, or authorized the Respondent to use the TEMU trade mark. The disputed domain name resolves to an inactive webpage and the Respondent is not making any legitimate non-commercial fair use of the disputed domain name.

- The disputed domain name was registered and is being used in bad faith. The disputed domain name was registered just days after the launch of the Complainant's Temu Platform in the United States. Given the short timeline and the fact that there is no association between the Respondent and the term "temu", it is clear that the Respondent registered the disputed domain name with knowledge of the Complainant's trade mark rights, in an effort to take advantage of the Complainant's goodwill and substantial resources expended in promoting, protecting, and developing the TEMU trade mark and the Temu Platform. The Respondent therefore knowingly registered the dispute domain name to capitalize on its potential commercial value with the intent to free ride on the goodwill associated with the Complainant. The Respondent has also engaged in a pattern of conduct in registering domain names with the Complainant's TEMU trade mark. It is not possible to conceive of any plausible, actual, or contemplated active use of the disputed domain name by the Respondent which would be legitimate. The inactivity of the disputed domain name does not prevent a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English because the TEMU platform operates in English and there was an earlier UDRP case involving the same Complainant and Respondent and the Respondent did not object to English being the language of the proceeding.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, the language/script of the domain name particularly where the same as that of the complainant's mark, prior cases involving the respondent in a particular language, and potential or unwarranted delay in ordering the complainant to translate the complaint (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Noting the aim of conducting the proceedings with due expedition, the Panel determines that the language of the proceeding shall be English. It would be unduly burdensome and cause unnecessary delay if the Complainant were required to submit the Complaint in the Chinese language, given the additional expenses and time involved, whereas the Respondent has opted not to respond in this proceeding.

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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

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.

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.

There is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent was not authorized to use FBL's TEMU trade mark or to register a domain name incorporating the trade mark. The disputed domain name resolves to an inactive webpage, and there is no evidence that the Respondent has used or is preparing to use the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain.

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.

In this case, the Panel notes that the Respondent registered the disputed domain name on September 5, 2022, which is just a few days after the date of "first use" declared in FBL's U.S. Registration Nos. 7157165 and 7329132, i.e. September 1, 2022. The Respondent did not file any Response nor provide any explanation for how he came to select the word "temu" for his disputed domain name registration, which is distinctive and does not appear to possess any known meaning in English nor in Chinese. In the absence of any rebuttal arguments or evidence from the Respondent, the Panel is persuaded that the Respondent knew

of and targeted the TEMU trade mark, and registered the disputed domain name in the hope of capitalizing on its potential commercial value with the intent to free ride on the goodwill associated with the Complainant and the TEMU trade mark. Moreover, the Respondent's lack of rights or legitimate interests in the disputed domain name and failure to explain his choice of the disputed domain name further support a finding of bad faith registration in this case.

The fact that the disputed domain name resolves to an inactive webpage does not alter the Panel's view that the disputed domain name is being used in bad faith for the purposes of the Policy. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the TEMU trade mark, the composition of the disputed domain name, the failure to submit a response or to provide any evidence of actual or contemplated good-faith use, and finds that in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel notes that the Respondent provided a false facsimile number and according to courier delivery records, did not accept delivery of the documents dispatched by the Center. The Panel draws an adverse inference from these circumstances.

Apart from one earlier UDRP case which the Complainant referred to, there were no other cases cited so the Panel does not make any finding that there has been a "pattern of conduct" by the Respondent.

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 <temu.ec> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: February 11, 2025