

## PANEL DECISION

### Whaleco Inc. and Whaleco Technology Limited v. Tomasz Nowak Case No. DEU2024-0006

#### 1. The Parties

Complainants are Whaleco Inc., United States of America (“United States”) (“Complainant No. 1”), and Whaleco Technology Limited, Ireland (“Complainant No. 2”) (collectively referred to as “Complainants”), represented by Law Office of David Gulbransen, United States.

Respondent is Tomasz Nowak, Poland.

#### 2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <temuapp.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is Porkbun LLC.

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 29, 2024. On March 1, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On March 4, 2024, the Registry 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 (not disclosed) and contact information in the Complaint. The Center sent an email communication to Complainants on March 4, 2024, providing the registrant and contact information disclosed by the Registry, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amended Complaint on March 7, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified Respondent of the Complaint, and the proceedings commenced on March 7, 2024. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was March 27, 2024. On March 8, 2024, Respondent sent an email to the Center. The Center sent an email regarding the possible settlement on March 8, 2024.

However, Complainants did not request suspension of the proceeding by the due date. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on April 2, 2024. Respondent sent an email to the Center on April 2, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on April 8, 2024. 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 ADR Rules, Paragraph B(5).

#### **4. Factual Background**

Complainant No. 1 is a company organized under the laws of the United States, while Complainant No. 2 is a company organized under the laws of Ireland. Both belong to the same group of companies d/b/a "Whaleco" or "TEMU", operating an online shopping platform connecting consumers with sellers, manufacturers, and brands around the world, which is accessible through Complainants' official website at "www temu.com" as well as through mobile applications.

Complainants have demonstrated that both of them, through the Whaleco group of companies' affiliate Five Bells Limited organized under the laws of the British Virgin Islands, enjoy rights in the following registered trademarks:

- Word mark TEMU, European Union Intellectual Property Office ("EUIPO"), registration number: 018742564, registration date: November 18, 2022, status: active; and
- Word mark TEMU, EUIPO, registration number: 018816488, registration date: April 18, 2023, status: active.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in Poland. The disputed domain name was registered on September 26, 2023, and redirects to a website at "www.ecomguide.org", offering to download a "Temu app" and vouchers, especially clicking on the voucher will redirect the consumers to Complainants' official website, while information on that website directly refer to Complainants' TEMU trademark and shopping platform with no authorization to do so. This website includes a disclaimer stating: "Disclaimer: The website temuapp.org operates independently and is not associated, endorsed, or affiliated with any entity, organization, or individual operating under the name 'temu' or any variations thereof. Any resemblance or similarity in name or operations is purely coincidental and does not imply any form of partnership, sponsorship, or endorsement between ecomguide.org and 'temu'. This disclaimer is meant to provide clear information to all visitors and users of ecomguide.org, ensuring an understanding that there is no relationship or connection between this website and 'temu'. We encourage all visitors to verify the authenticity and identity of all organisations and websites they interact with online."

Complainants request that the disputed domain name be transferred to Complainants.

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

##### **A. Complainants**

Complainants contend that they have satisfied each of the elements required under the ADR Rules for a transfer of the disputed domain name. Notably, Complainants contend to have continuously used the TEMU trademark as early as April 2023, which, due to significant investments in marketing, advertising, and promoting such trademark, is meanwhile distinctive, closely identified with Complainants, and represents substantial valuable goodwill.

Complainants submit that the disputed domain name is confusingly similar to Complainants' TEMU trademark, as it comprises the latter in its entirety, with the mere addition of the common term "app".

Moreover, Complainants assert that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainants have not licensed, otherwise permitted or authorized Respondent to use the TEMU trademark or brand, or to apply for any domain name that is confusingly similar thereto, (2) Respondent is not commonly known by the disputed domain name, and (3) the website under the disputed domain name is using screenshots of Complainants' copyrighted mobile application in an apparent attempt to falsely associate itself with Complainants and the TEMU trademark in an apparent attempt to drive traffic to the disputed domain name for commercial gain. Finally, Complainants argue that Respondent has registered and is using the disputed domain name in bad faith because (1) Respondent registered the disputed domain name with Complainants' TEMU trademark in mind, (2) Respondent uses Complainants' TEMU trademark and other intellectual property in the disputed domain name and throughout the content of the website thereunder without authorization in an effect to falsely associate itself with Complainants and their TEMU trademark in an effort to drive traffic to the disputed domain name for commercial gain, and (3) the disclaimer hidden at the very bottom of the website under the disputed domain name falsely states that such website operates independently and has no relationship with the name "Temu".

## **B. Respondent**

Respondent did not file a formal response, but sent email correspondences to the Center on March 8, 2024, as well as April 2, 2024, informing that the disputed domain name "has been deleted/removed from the registrar".

## **6. Discussion and Findings**

Pursuant to Article 4(4) of European Union ("EU") Regulation 2019/517 as well as Paragraph B11(d)(1) of the ADR Rules, it is for Complainants to establish that:

- (i) the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either
- (ii) the disputed domain name has been registered by Respondent without rights or legitimate interests in the name; or
- (iii) the disputed domain name has been registered or is being used in bad faith.

### **A. Consolidation due to multitude of Complainants**

First, as regards the multitude of Complainants, given that Complainant No. 1 and Complainant No. 2 belong to the same group of companies related to PDD Holdings Inc. (d/b/a "Whaleco" or "TEMU") and enjoy in that position registered rights in the TEMU trademark, both Complainants obviously have a specific common grievance against Respondent why it is appropriate in the case at hand and in line with the Uniform Domain-Name Dispute-Resolution Policy ("UDRP") panelists' majority view to accept this Complaint filed by multiple complainants (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.1). <sup>1</sup>

### **B. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law**

Second, the Panel concludes that the disputed domain name is confusingly similar to the TEMU trademark, in which Complainants have demonstrated to enjoy registered trademark rights, which are protected for the territory of the European Union ([WIPO Overview 3.0](#), section 1.4). The disputed domain name incorporates the TEMU trademark in its entirety, simply added by the term "app". Numerous UDRP panels have

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<sup>1</sup> Due to the numerous parallels between the UDRP and the ADR rules, the Panel can also draw on the established award practice in UDRP proceedings in relevant cases.

recognized that incorporating a trademark in its entirety is normally sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark ([WIPO Overview 3.0](#), section 1.7) and that the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and Complainants' TEMU trademark in the case at hand ([WIPO Overview 3.0](#), section 1.8).

Therefore, the Panel holds that the requirements of Paragraph B11(d)(1)(i) of the ADR Rules are met.

### **C. Rights or Legitimate Interests**

Third, the Panel is further convinced, on the basis of Complainants' undisputed contentions, that Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Pursuant to the ADR Rules, Paragraph B11(d)(1)(ii), it is up to complainant to plead and prove accordingly that the disputed domain name has been registered by respondent without rights or legitimate interests therein. The ADR Rules contain in Paragraph B11(e) a non-exhaustive list of case scenarios suitable to prove rights or legitimate interests of a respondent. Inasmuch as it is typically difficult to prove a negative fact (here the absence of rights or legitimate interests), it is in line with the majority view of UDRP panels as well as in .eu ADR proceedings that it is sufficient if complainant establishes a so-called prima facie case. This results in a shifting of the burden of production, and it is then up to respondent to present and prove that there are corresponding rights or legitimate interests in the disputed domain name (see for example: *Lidl-Stiftung & Coupon KG v. Name Redacted*, WIPO Case No. [DEU2018-0012](#)).

It is undisputed between the Parties that Respondent has neither been granted a license nor has it been otherwise authorized by Complainants to use the TEMU trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term "temu". Finally, the disputed domain name redirects to a website at "www.ecomguide.org", offering to download a "Temu app" and vouchers, especially clicking on the voucher will redirect the consumers to Complainants' official website, while information on that website directly refer to Complainants' TEMU trademark and related shopping platform with no authorization to do so. Such making use of the disputed domain name obviously neither qualifies as bona fide nor as legitimate noncommercial or fair within the meaning of the ADR Rules. In this context, the Panel has well-recognized the existence of a disclaimer placed at the bottom of the website under the disputed domain name. This disclaimer correctly states that such website operates independently from Complainants and is not associated with them. By the same time, the disclaimer e.g., states that (1) "Any resemblance or similarity in name or operations" (between the website and the name "temu") "is purely coincidental..." and (2) "there is no relationship or connection between this website and "temu"; those allegations, however, are obviously incorrect as the website under the disputed domain name and in particular the redirection setting for clicking on the voucher, to the very contrary, directly point at Complainants' TEMU trademark and business at the online shopping platform accessible under Complainants' official website at "www.temu.com" as well as through mobile applications. Accordingly, the Panel has no reason to qualify such disclaimer in a way that would have allowed to find for any rights or legitimate interests arising therefrom in relation to the disputed domain name.

Accordingly, Complainants have established a prima facie case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating to the contrary (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has not submitted a formal Response, it has not met that burden.

Therefore, the Panel finds that the disputed domain name was registered by Respondent without any rights or legitimate interests therein, which is why the requirements of Paragraph B11(d)(1)(ii) of the ADR Rules are met, too.

#### **D. Registered or Used in Bad Faith**

For the sake of completeness, the Panel, in addition, holds that the disputed domain name also has been registered or is being used in bad faith.

The redirection of the disputed domain name to a website at “www.ecomguide.org”, offering to download a “Temu app” and vouchers, especially clicking on the voucher will redirect the consumers to Complainants’ official website, while information on that website directly refer to Complainants’ TEMU trademark and shopping platform with no authorization to do so, is a clear indication that the disputed domain name is intentionally used by Respondent to attract Internet users, for commercial gain, to Respondent’s own website, by creating a likelihood of confusion with Complainants’ TEMU trademark as to the source, sponsorship, affiliation or endorsement of Respondent’s website, thus constituting bad faith within the meaning of Paragraph B11(f)(4) of the ADR Rules.

Again, and for the same reasons as set out above under Section C., the wording of the disclaimer available on the website under the disputed domain name is in clear contrast to the website content directly pointing at Complainants and their TEMU trademark, which is why the Panel has no reason to qualify such disclaimer in a way that would have allowed to find for Respondent’s acting in good faith.

Accordingly, the Panel finds that the requirements of Paragraph B11(d)(1)(iii) of the ADR Rules are met, too.

#### **7. Decision**

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name, <temuapp.eu>, be transferred to Complainant No. 2, having its registered office within Ireland, and, thus, satisfies the general eligibility criteria for registration of a .eu domain name as set out in Article 3 of Regulation (EU) 2019/517.<sup>2</sup>

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: April 18, 2024

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<sup>2</sup> The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.