

ADMINISTRATIVE PANEL DECISION

Whaleco Inc. d/b/a TEMU v. Tamour Khan, Rukiya Hub
Case No. DIO2024-0011

1. The Parties

The Complainant is Whaleco Inc. d/b/a TEMU, United States of America (“United States”), internally represented.

The Respondent is Tamour Khan, Rukiya Hub, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <temuapp.io> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 29, 2024. On April 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 29, 2024, 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 April 30, 2024, 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 amendment to the Complaint on May 1, 2024.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 2, 2024. The Respondent sent two informal email communications on May 16, 2024, respectively on May 20, 2024. The Center therefore proceeded with informing the Parties of its commencement of Panel appointment proceed on June 4, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on June 10, 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 Rules, paragraph 7.

4. Factual Background

The Complainant, a Delaware corporation, operates an online shopping platform which is accessible through the website available at “www.temu.com” and mobile applications available for free to download. The Complainant’s Temu application was launched in the United States in September 2022.

The Complainant, through its affiliate Five Bells Limited, is the exclusive licensee of the following trademark registrations for TEMU:

- the United States trademark registration number 7164306 for TEMU (word), filed on October 8, 2022, and registered on September 12, 2023, for services in International class 35; and
- the European Union trademark registration number 18742564 for TEMU (word), filed on August 5, 2022 and registered on November 18, 2022, for goods and services in International classes 9, 35, 38, 42.

The disputed domain name was registered on December 17, 2023, and, at the time of filing the Complaint, it was used in connection with a website displaying the TEMU mark, copying the color scheme of the Complainant’s official website, stating in the upper opening page the title “TEMU App – A Detailed Guide on World’s Leading Marketplace in 2024”, without providing any disclaimer.

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 alleges that it made significant investments in creating the Temu application and therefore it became quickly the most downloaded e-commerce application for the fourth quarter of 2022; the disputed domain name is confusingly similar to the Complainant’s mark as it incorporates TEMU trademark with the mere addition of the common term “app”, suggestive for the Complainant’s famous application; that the Respondent has no rights or legitimate interests in respect of the disputed domain name, to the contrary, through the content of the resolving website the Respondent is trying to create confusion with the Complainant and to attract consumers searching for the Complainant’s famous platform to its own website for financial purposes; and that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions. In its informal communications, the Respondent merely claims he acquired the disputed domain name from the Registrar, made investments to rank it on Google and that, a decision against him, will cause significant financial loss.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (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 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 1.7¹.

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the term "app", here, may bear on assessment of the second and third elements, the Panel finds the addition of such term, does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

¹ Given the similarities between the Policy and the Uniform Domain Name Resolution Policy ("UDRP"), the Panel finds it appropriate to refer to UDRP jurisprudence, including reference to the [WIPO Overview 3.0](#).

In its informal communications the Respondent claims he acquired the disputed domain name from the Registrar and invested in its promotion on Internet, and therefore he will suffer financial losses should a decision be rendered against him. When acquiring the disputed domain name the Respondent was aware of TEMU trademark and corresponding application, since no allegation to the contrary was made and having in view the content on the website under the disputed domain name.

Furthermore, the Panel finds that the composition of the disputed domain name, reproducing the Complainant's distinctive trademark, website and application, with an additional descriptive term ("app" which is the common abbreviation for "application"), carries a risk of implied affiliation with the Complainant as it may mistakenly be seen as effectively impersonating or suggesting some connection with the Complainant and its application. Further, according to the evidence provided in the Complaint, the Respondent has used the disputed domain name in connection with a website reproducing the mark and color scheme of the Complainant's website, and without providing a disclaimer or clarification related to its (lack of) relationship with the Complainant. Panels have held that the use of a domain name for illegal activity (such as impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. Registered or 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 the present case, the Panel notes that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its trademark and business particularly because the disputed domain name reproduces the Complainant's trademark, domain name and application name together with the descriptive term "app". Also, the use of the disputed domain name further enhances such finding.

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.

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] web site 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] web site or location or of a product or service on [the respondent's] web site or location" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark with a suggestive term for the Complainant's business, the website operated under the disputed domain name displays the Complainant's trademark and color scheme, without any disclaimer, indeed in this Panel's view, the Respondent has intended to attract unsuspecting 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 with or related to the Complainant, for the Respondent's commercial gain.

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 <temuapp.io> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

June 19, 2024