

## ADMINISTRATIVE PANEL DECISION

Whaleco Inc., Whaleco Technology Limited v. Lijun Wen  
Case No. DMD2024-0007

### 1. The Parties

The Complainants are Whaleco Inc., United States of America (“U.S.”) and Whaleco Technology Limited, Ireland, represented by Whitewood Law PLLC, U.S.

The Respondent is Lijun Wen, China.

### 2. The Domain Name and Registrar

The disputed domain name <temu.md> is registered with Information Technology and Cyber Security Service (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 17, 2024. On December 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 23, 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 (Name Redacted) and contact information in the Complaint.

The Center sent an email communication to the Complainants on December 23, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on December 24, 2024.

On December 23, 2024, the Center informed the parties in Romanian and English, that the language of the registration agreement for the disputed domain name is Romanian. On December 24, 2024, the Complainants confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainants’ submission.

The Center verified that the Complaint together with the amendment to 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 of the Complaint, and the proceedings commenced on January 3, 2025. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 27, 2025.

The Center appointed Mihaela Maravela as the sole panelist in this matter on January 29, 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**

According to information in the Complaint, the Complainant Whaleco Inc. ("Complainant No. 1") is a company organized under the laws of the U.S., while Whaleco Technology Limited ("Complainant No. 2") is a company organized under the laws of Ireland. Both companies 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 the Complainants' official website at "www.temu.com", as well as through mobile applications. It was launched in the U.S. in September 2022 and quickly became the most downloaded e-commerce app, surpassing 100 million downloads on the Google Play Store alone, and has been one of the most downloaded free applications on both the Google Play Store and the Apple App Store to date.

The 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 various registered trademarks, including the U.S. trademark No. 7157165 registered on September 5, 2023, for TEMU for goods and services in class 9 (filing date: August 10, 2022, citing first use in commerce: September 1, 2022).

The disputed domain name was registered on September 6, 2022, and resolves to an inactive webpage.

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

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

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that they have continuously used the TEMU trademarks in commerce throughout the U.S. since at least as early as September 1, 2022, for various goods and services, including the provision of an e-commerce platform available online and through mobile applications, and that the TEMU trademarks are distinctive, closely identified with the Complainants, and represent substantial, valuable goodwill. The disputed domain name was created on September 6, 2022, days after the Complainants established rights in the TEMU trademarks. Furthermore, because the disputed domain name incorporates only the term TEMU in its entirety, the Complainants submit they have established that the disputed domain name is identical to the Complainants' TEMU trademarks.

As regards the second element, the Complainants submit that they have not licensed, otherwise permitted or authorized the Respondent to use the TEMU trademarks or brand, or to apply for any domain name that is confusingly similar to the TEMU mark or brand. In addition, the Respondent's actions in connection with the disputed domain name cannot be considered a bona fide offering of goods or services, nor a legitimate noncommercial or fair use as the Respondent is not making any use of the disputed domain name, nor is there any evidence that a webpage or other online presence is in the process of being established under the disputed domain name.

With respect to the third element, the Complainants argue that the disputed domain name was registered just days after the launch of the Complainants' "TEMU.COM" platform in the U.S. Considering the timeline and the fact there is no evidence of an association between the Respondent and the trademark TEMU, nor does the term "Temu" have any other recognizable meaning apart from it serving as a brand name of the Complainants, it is clear that the Respondent registered the disputed domain name with knowledge of the Complainants' TEMU trademark rights to take advantage of the Complainants' goodwill and substantial resources expended in promoting, protecting and developing the TEMU trademarks and relevant platform. The fact that the Respondent keeps a domain name inactive does not prevent the Panel from considering that the disputed domain name is registered and used in bad faith.

## **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

### **6.1. Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Romanian. 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 for several reasons, including the fact that (i) the Registration Agreement and the registry website are also available in English, (ii) the Whois information for the Respondent indicates that the Respondent is located in China, not Moldova, (iii) the Complainants do not communicate in Romanian, nor, on information and belief, does the Respondent communicate in Romanian.

The Respondent did not comment on the Complainants' request for the language of the proceeding be English.

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, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2. Consolidation of multiple Complainants**

Given that the Complainant No. 1 and the Complainant No. 2 belong to the same group of companies (d/b/a "Whaleco" or "TEMU") and enjoy in that position registered rights in the TEMU trademark, both the Complainants obviously have a specific common grievance against the Respondent why it is appropriate in the case at hand and in line with the panelists' majority view to accept this Complaint filed by multiple complainants (see [WIPO Overview 3.0](#), section 4.11.1). The Panel will refer to the Complainants as the Complainant hereinbelow.

### **6.3. Substantive matters**

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant

as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. [WIPO Overview 3.0](#), section 4.2.

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 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 3.0](#), section 1.7.

The Complainant has shown rights in respect of the trademark TEMU for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.2.1 and 1.4.1.

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.

It is the settled view of panels applying the Policy that the Top-Level Domain (“TLD”) (here “.md”) should be disregarded under the first element test.

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 showing that the Respondent holds any rights for TEMU trademarks. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the trademark TEMU. The disputed domain name does not resolve to an active webpage. The Panel considers that the use of the disputed domain name to resolve to an inactive webpage does not represent a bona fide offering of goods or services, or a legitimate noncommercial or fair use, given the reputation and goodwill of the Complainant’s trademark or capacity to otherwise mislead Internet users.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

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.

The contemporaneity of the registration of the disputed domain name with the launch of the Complainant's application under the TEMU trademark, and the identity between the Complainant's trademark and the disputed domain name indicate that the Respondent more likely than not knew that the disputed domain name included the Complainant's trademark when registering the disputed domain name. Registration of the disputed domain name in awareness of the TEMU mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

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 or reputation of the Complainant's trademark, and the composition of the disputed domain name, 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 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.md> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: February 12, 2025