

ADMINISTRATIVE PANEL DECISION

Ustwo Limited v. jim jim
Case No. D2023-3369

1. The Parties

The Complainant is Ustwo Limited, United Kingdom, represented by Lewis Silkin LLP, United Kingdom.

The Respondent is jim jim, China.

2. The Domain Name and Registrar

The disputed domain name <ustwouk.com> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 4, 2023. On August 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 9, 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 (unknown, redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 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 amendment to the Complaint on August 11, 2023.

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 August 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 4, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on September 8, 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, Ustwo Limited, is a U.K. Limited company focused on the development of digital products such as computer games, video games, amongst others.

The Complainant is, *inter alia*, the owner of:

United Kingdom Trademark USTWO (device) registration No. UK00003354189, registered on April 12, 2019, covering, goods and services in international classes 9, 28, 35, 41 and 42, and United Kingdom Trademark USTWO (word) registration No. UK00003354184, registered on February 8, 2019, also covering, goods and services in international classes 9, 28, 35, 41 and 42;

The disputed domain name was registered on April 27, 2023.

At the time the Complaint was filed it was used for a website, which displayed the Complainant's USTWO (device) trademark, together with a request for internet users accessing the website to register an account.

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 confusingly similar to the Complainant's trademark USTWO, since it reproduces the mark in its entirety. According to the Complainant, the term "UK" only serves to describe the location of the Complainant's headquarters.

The Complainant further submits that the Respondent does not own any registered rights in any trademarks which comprise part or all of the disputed domain name. The term "USTWO" is not descriptive in any way, nor does it have any generic, dictionary meaning, and the Complainant has not given its consent for the Respondent to use its registered trademark in a domain name registration.

The Complainant finally submits that the disputed domain name was registered and is being used in bad faith. The Complainant thus submits that the disputed domain name points to a website which copies the Complainant's USTWO logo, together with a request for Internet users accessing the website to register an account. Consequently, Complainant affirms that the Respondent was aware of the Complainant's rights in the USTWO trademark at the time of registration and uses it to commit fraud against the Complainant and unsuspecting Internet users, which constitutes bad faith in its purest form.

B. Respondent

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

6. Discussion and Findings

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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the trademark and service mark USTWO 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 or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, "UK", may bear on assessment of the second and third elements, the Panel finds the addition of such terms do 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.

Therefore, 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.

While 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 often impossible 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. 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 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.

In addition, the Panel notes that the disputed domain name was used for a website reproducing the Complainant's device trademark together with a request for Internet users to register an account, and a link to recover a forgotten password, which indicates a likely attempt to commit fraud against the Complainant and to confuse unsuspecting Internet users. Such use cannot give rise to rights or legitimate interests for the Respondent in the disputed domain name.

Based on the available record, 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.

The Panel considers that the record of this case reflects that the Respondent has used the disputed domain name in an attempt to attract, for commercial gain, Internet users to its website, 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Considering the Respondent's use to impersonate the Complainant and to potentially commit fraud and gather data from unsuspecting Internet users looking for the Complainant, thus, for perpetrating an illegal activity, the Respondent's registration and use of the disputed domain name is considered in bad faith.

The fact that the that disputed domain name no longer resolves to an active website nor appears to be used actively in other ways anymore, does not prevent a finding of bad faith in the circumstances of this proceeding. [WIPO Overview 3.0](#), section 3.3.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <ustwouk.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: September 22, 2023