

ADMINISTRATIVE PANEL DECISION

Chewy, Inc. v. Fredr Jam
Case No. D2022-4680

1. The Parties

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is Fredr Jam, Croatia.

2. The Domain Name and Registrar

The disputed domain name <chewy-shop.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2022. On December 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 8, 2022, 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 amended Complaint on December 13, 2022.

The Center verified that the Complaint together with the amended 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 December 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2023.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on July 13, 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 was founded in 2011 and operates one of the largest online retail stores, with over 9,000,000 square feet of fulfillment warehouses, as well as 24 physical locations across the United States.

The Complainant is the owner of several trademark registrations around the world, among others, the following:

Trademark	No. Registration	Jurisdiction	Date of Registration
CHEWY.COM	4346308	United States	June 4, 2013
CHEWY	5028009	United States	August 23, 2016
CHEWY	016605834	European Union	August 10, 2017
CHEWY	TMA1045601	Canada	July 30, 2019
CHEWY	2060121	Australia	August 10, 2020

The Complainant owns, among others, the domain name <chewy.com>, which resolves to the Complainant's official website and was registered on April 18, 2004. The disputed domain name was registered on September 29, 2022. At the time of filing the Complaint, it resolved to a website that appeared to be offering for sale pet supply products identical to the products offered by the Complainant, displaying the Complainant's product photographs and descriptions.

5. Parties' Contentions

A. Complainant

The Complainant contends:

That it has over 20,000 employees and offers more than 100,000 products from about 3,000 different brands. That it had net sales of over USD 8 billion and maintained more than 20 million active customers in its 2021 fiscal year. That it was featured on the Fortune 500 list for 2022, ranked 394.

That in 2019 the Complainant went public under the ticker symbol CHWY and has expanded its services into veterinary, telehealth, and pet wellness.

1. Identical or Confusingly Similar

That the disputed domain name is identical or confusingly similar to the CHEWY trademarks owned by the Complainant.

That the disputed domain name fully and identically incorporates the CHEWY trademarks.

That the only differences between the Complainant's trademarks and the disputed domain name are the added hyphen, the generic term "shop", and the addition of the generic Top-Level Domain ("gTLD") ".com".

That the use of a trademark in its entirety is sufficient to establish confusing similarity, and that the addition of hyphens, generic terms, and gTLD extensions to an identical trademark is insufficient to escape a finding of confusing similarity.

2. Rights or Legitimate Interests

That the Respondent has no rights to or legitimate interests in the disputed domain name.

That the Respondent has never been authorized by the Complainant to use the CHEWY trademarks in any manner, much less as a part of the disputed domain name.

That, on information and belief, the disputed domain name does not reflect the Respondent's common name; rather, that the Respondent is using the disputed domain name to infringe and cybersquat upon the Complainant's rights in its globally famous and well-known CHEWY trademarks.

That the Respondent has no legitimate interest in the disputed domain name, given that it was registered by the Respondent well after the Complainant had used and registered the CHEWY trademarks and established extensive goodwill.

That the disputed domain name is used to load the contents of the Complainant's website into the website to which the disputed domain name resolves via an iframe, which use does not confer rights to or legitimate interests in the disputed domain name.

That the Respondent is unfairly capitalizing on the valuable goodwill that the Complainant has built in its trademarks, to draw Internet users to the Respondent's website.

That the use of the disputed domain name for impersonation of the Complainant's website does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use.

That the Complainant's trademarks used in the disputed domain name and the pet supplies and services that are featured across the website are so closely and uniquely associated with the Complainant that there can be no credible and legitimate intent that would not capitalize on the reputation and goodwill inherent in the Complainant's trademarks.

That panels appointed under the Policy have categorically held that the use of a domain name for illegal activity, including impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent.

3. Registered and Used in Bad Faith

That the disputed domain name has been registered and used in bad faith.

That the Respondent uses the Complainant's well-known trademarks to deceive consumers into believing that the Respondent is an affiliate of the Complainant, which constitutes registration and use in bad faith under paragraph 4(b)(iii) of the Policy.

That this activity harms consumers, harms the Complainant by redirecting consumers seeking the Complainant's legitimate website, and harms the goodwill associated with the Complainant's trademarks.

That this activity is disruptive of the Complainant's business and therefore evidences bad faith under paragraph 4(b)(iii) of the Policy.

That the Respondent's registration and use of the disputed domain name constitutes bad faith since the Respondent uses the Complainant's well-known trademarks to intentionally confuse and mislead Internet users by using an iframe to load the contents of the Complainant's website into the website to which the disputed domain name resolves.

That the only purpose of this scheme is for the Respondent to take advantage of the confusion caused by the disputed domain name and its similarity to the Complainant's trademarks for commercial gain, which is clear evidence of bad faith under paragraph 4(b)(iv) of the Policy.

That the Complainant's trademarks are so well established and have achieved such a level of recognition and fame that the Respondent cannot argue that he is unaware of the CHEWY trademarks.

That the Respondent's registration and use of the disputed domain name was intended to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks.

That the Respondent was on notice of the Complainant's trademarks before registering the disputed domain name, given the fame of the Complainant's trademarks and the Respondent's clear targeting of said trademarks to trade on the goodwill associated thereto.

That since the disputed domain name is configured with MX records, the Respondent is capable of sending emails creating further consumer confusion by deceiving customers into believing that they are receiving an email from the Complainant or an affiliate.

That that Respondent has registered and used the disputed domain name in bad faith in accordance with Section 4(b) of the Policy.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

Given the Respondent's failure to submit a formal response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations, in accordance with paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

A. Identical or Confusingly Similar

The disputed domain name <chewy-shop.com> is confusingly similar to the CHEWY trademark since it includes it entirely, with the addition of the term "shop". The incorporation of a hyphen between the Complainant's trademark and the term "shop" does not prevent a finding of confusing similarity, because the Complainant's trademark CHEWY is recognizable in the disputed domain name (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"; see also *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#); *InfoSpace.com, Inc. v. Hari Prakash*, WIPO Case No. [D2000-0076](#); *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#); and *Six Continents Hotels, Inc., Inter-Continental Hotels Corporation v. South East Asia Tours*, WIPO Case No. [D2004-0388](#)).

The inclusion of the gTLD ".com" in the disputed domain name constitutes a technical requirement of the Domain Name System ("DNS"). Therefore, it has no legal significance in the present case (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

The first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if it did not acquire trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has proven to be the owner of several registrations for the CHEWY trademark in different jurisdictions. Additionally, the Panel agrees with the decision issued in *Chewy, Inc. v. Domain Admin, Privacy Protect, LLC / Tran Dinh Toan* WIPO Case No. [D2022-2671](#), in that the CHEWY trademark is well known.

The Complainant has asserted that it has not granted any authorization to the Respondent to use its CHEWY trademark (see *Beyoncé Knowles v. Sonny Ahuja*, WIPO Case No. [D2010-1431](#), and *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#)). The Respondent did not contest these allegations.

According to the evidence filed by the Complainant, the website to which the disputed domain name resolved displayed the same content as the Complainant's website through an iframe. Therefore, and considering that the disputed domain name entirely incorporates the Complainant's trademark CHEWY, plus the term "shop" divided by a hyphen, the Panel notes that the composition of the disputed domain name carries a risk of implied affiliation since Internet users may think that the website to which the disputed domain name resolves is the Complainant's official website or is otherwise affiliated to or sponsored by the Complainant. The fact that the Respondent used an iframe to display the same content as that of the Complainant's website shows that the Respondent has attempted to impersonate the Complainant. A finding of impersonation prevents a determination of a *bona fide* offering of goods (see section 2.5.1 and 2.13.1 of the [WIPO Overview 3.0](#); see also *Self-Portrait IP Limited v. Franklin Kelly*, WIPO Case No. [D2019-0283](#), *Euro Sko Norge AS v. Whoisguard Inc. / Shier Dede, Shier Dede*, WIPO Case No. [D2020-0194](#); *Bechtel Group, Inc. v. Raman Shuk*, WIPO Case No. [D2020-1469](#); *Biofarma v. Dawn Mason*, WIPO Case No. [D2019-1952](#)).

The Complainant has made a *prima facie* case asserting that there is no evidence of the Respondent's use of the disputed domain name in connection with a *bona fide* offering of goods or services and that the Respondent has not been commonly known by the disputed domain name. The Respondent has not submitted evidence to prove otherwise.

Thus, the second element of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or the respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online 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 its web site or location.

As stated previously, the Complainant has ascertained its rights over the CHEWY well-known trademark. The dates of registration of the Complainant's trademarks significantly precede the date of registration of the disputed domain name.

The fact that the Respondent registered the disputed domain name, which entirely reproduces the Complainant's well-known trademark CHEWY, shows that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#); *Dream Marriage Group, Inc. v. Romantic Lines LP, Vadim Parhomchuk*, WIPO Case No. [D2020-1344](#); *Valentino S.p.A. v. Qiu Yufeng, Li Lianye*, WIPO Case No. [D2016-1747](#); *Landesbank Baden-Württemberg (LBBW) v. David Amr*, WIPO Case No. [D2021-2322](#) "Given the distinctiveness of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the Disputed Domain Name with full knowledge of the Complainant's trademarks, constituting opportunistic bad faith. The Panel finds it hard to see any other explanation than that the Respondent knew of the Complainant's well-known trademark.").

Previous panels appointed under the Policy have found that the mere registration by an unauthorized party of a domain name that entirely incorporates a well-known trademark can constitute a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *Ferrari S.p.A. v. Ms. Lee Joohee (or Joo-Hee)*, WIPO Case No. [D2003-0882](#)). Given the circumstances of this case, the Panel finds that this is so in the present proceeding.

The fact that the Respondent chose to register the disputed domain name which resolved to a website that displayed the same content as that of the Complainant's website through an iframe, suggests that the Respondent knew the Complainant, its trademarks, and its business when registering the disputed domain name, and that the Respondent has targeted the Complainant by intending to exploit its reputation and goodwill (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *Self-Portrait IP Limited v. Franklin Kelly, supra*, and *Deutsche Telekom AG v. Heihachi Ltd WHOIS-PROTECTION*, WIPO Case No. [D2010-1225](#): "The Panel finds that there is no reasonable explanation for such use of the disputed domain name except that the Respondent seeks to exploit the reputation and goodwill of the Complainant's marks by attracting Internet traffic to the Respondent's website or to mislead customers to believe that the Complainant is in some way associated with the Respondent's website.").

According to the evidence submitted by the Complainant, the Respondent has used the disputed domain name in an attempt to impersonate the Complainant for commercial gain, which also constitutes bad faith under the Policy (see *1IQ PTY LTD v. 1337 Services LLC*, WIPO Case No. [D2017-2156](#) ("It follows from this and the conclusions as to impersonation so far as rights and legitimate interests is concerned, that the Domain Name was also both registered and used in order to unfairly impersonate the Complainant and its mark and therefore in bad faith"); see also *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#): "This Panel considers that, in appropriate circumstances, a failure to pass the impersonation test may properly lead to a finding of registration and use in bad faith because of the fact that, at its heart, such a domain name has been selected and used with the intention of unfairly deceiving Internet users, notably those who are (actual or potential) consumers of the trademark owner."; *Philip Morris Products S.A. v. Domain Administrator, Registrant of iqosatismaganiz.com (apiname com) / Anl Girgin*,

Teknoloji Sarayi, WIPO Case No. [D2019-0466](#); *Self-Portrait IP Limited v. Franklin Kelly*, *supra*; and *Friedman and Soliman Enterprises, LLC v. Gary Selesko, M&B Relocation and Referral, LLC*, WIPO Case No. [D2016-0800](#)).

The use of an iframe to display the same content as that of the Complainant's website shows that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the website to which the disputed domain name resolves, by creating the impression among Internet users that said website is related to, associated with, or endorsed by the Complainant, which conduct constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#), see also *Deutsche Telekom AG v. Heihachi Ltd WHOIS-PROTECTION*, *supra*).

Finally, the fact that the disputed domain name currently resolves to an inactive website does not prevent a finding of bad faith.

In light of the above, the third element of the Policy has been met.

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, <chewy-shop.com>, be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: July 28, 2023