

## **ADMINISTRATIVE PANEL DECISION**

**Bad Kitty's Dad, LD v. Ome and Sanjay Bambhaniya**  
Case No. D2023-2400

### **1. The Parties**

The Complainant is Bad Kitty's Dad, LD, Portugal, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Ome, India, and Sanjay Bambhaniya, India.

### **2. The Domain Name and Registrar**

The disputed domain name <ome-tv.com> is registered with BigRock Solutions Pvt Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 2, 2023. On June 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 6, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent Ome is listed as the registrant and providing the contact details.

The Center received email communications from the Respondent on June 7, June 8, and June 9, 2023.

The Center verified that 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 June 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 29, 2023.

The Center received further email communications from the Respondent dated June 11, June 12, June 18, and June 28, 2023. The Center acknowledged the last of these emails as the Response in this proceeding and informed the Parties that it would proceed with the panel appointment process.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 7, 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. Identity of Respondent**

The Center received email communications from the Respondent Sanjay Bambhaniya in response to the Complaint. In reply to the Center's request for clarification, the said individual identified himself as the beneficial holder and registrant of the disputed domain name, which he said he had registered in the name of the Respondent Ome. The Panel directs in the circumstances that Sanjay Bambhaniya be joined as a Respondent in the proceeding. References to the Respondent in the remainder of this Decision shall therefore encompass both the registrar-disclosed registrant Ome and Sanjay Bambhaniya.

#### **5. Factual Background**

The Complainant is a company registered in Portugal. It operates a free online video chat platform named "OmeTV" which it launched in 2015.

The Complainant is the owner of trademark registrations for the marks OMETV and OME TV including the following:

- European Union Trade Mark registration number 018021225 for the word mark OMETV, registered on June 4, 2019, with a filing date of February 9, 2019;
- United Kingdom, ("UK") trade mark registration number UK00918021225 for the word mark OMETV, registered on June 4, 2019, with a filing date of February 9, 2019;
- Portugal trademark registration number 001496017 for a word mark OMETV, registered on July 17, 2019, with a filing date of February 6, 2019; and
- United States of America ("United States") trademarks registration numbers 5833264 and 5833267 for word marks OME TV, registered on August 13, 2019, with filing dates of January 16, 2019.

The Complainant operates a website at "www.ome.tv", the domain name <ome.tv> having been registered on September 9, 2015. The Complainant's website includes a design in the form of an old-fashioned television set with an antenna and the words "Ome TV" shown on the screen in orange and green (the "Complainant's Logo").

The disputed domain name was registered on July 11, 2018.

According to evidence submitted by the Complainant, the disputed domain name has resolved to a website at "www.ome-tv.com". The website was headed with an "Ome TV" logo in orange and blue and promoted "Omegle TV Webcam Free Chat". It included a logo highly similar to the Complainant's Logo, save that the words "Ome TV" were shown in black.

#### **6. Parties' Contentions**

##### **A. Complainant**

The Complainant states that its platform has grown in popularity since its launch in 2015 and connects individuals from all around the world. It claims 6.4 million visitors between December 2022 and February 2023 and that its app has been downloaded more than 100 million times on Google Play. It submits that it

has made significant investment in the OMETV mark over the years and that the name has become distinctive and uniquely associated with its products and services.

The Complainant submits that: “Respondent registered the Disputed Domain Name on July 11, 2018, which is significantly after Complainant filed for registration of its OMETV trademark with the UKIPO, EUIPO, INPIPT and USTPO trademark offices...”

The Complainant submits that the disputed domain name is identical to its trademark OMETV, assuming the hyphen in the disputed domain name is disregarded.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its OMETV trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name. Instead, the Complainant contends that the Respondent chose the disputed domain name to impersonate the Complainant and has used the disputed domain name to pass itself off as the Complainant.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It refers to the Respondent’s website, which it contends that, in addition to using the OMETV trademark and the Complainant’s Logo, has a similar look and feel to the Complainant’s website and uses a similar colour scheme. It states that the Respondent’s website includes no relevant disclaimers. It submits that it is implausible that the Respondent registered the disputed domain name otherwise than to take unfair advantage of the Complainant’s OMETV trademark and that, by using the disputed domain name, the Respondent has sought to attract Internet users to its own website by causing a likelihood of confusion with the Complainant’s trademark.

The Complainant exhibits various “cease and desist” communications dated March 2023 which it says it sent to the Respondent without reply.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent did not submit a formal Response in the proceeding. However, the Panel determines that the Respondent’s various emails referred to above, dated between June 8 and June 28, 2023 inclusive, shall be deemed to constitute its Response.

The Respondent submits that it registered the disputed domain name prior to the Complainant obtaining or filing for any trademark registration for OMETV. It states that it registered the disputed domain name on July 11, 2018, but the Complainant’s first such filing was not until January 2019. The Respondent contends that the Complainant cannot in these circumstances succeed in any proceeding under the Policy.

The Respondent submits that the content of its website is its own work and was not designed to infringe upon any existing trademark rights.

The Respondent makes various references to “a personal negotiation process,” to “a mutually beneficial resolution” of the proceeding and to reaching “a fair agreement” between the Parties.

The Respondent contends that the Complainant has brought this proceeding in bad faith and that the Panel should make a finding of Reverse Domain Name Hijacking.

## **7. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are 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 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**

The Complainant has established that it has registered trademark rights for the mark OMETV. The disputed domain name is identical to that trademark but for the inclusion of a hyphen, which does not prevent the Complainant's trademark being recognizable within the disputed domain name. It is irrelevant for the purposes of the first element under paragraph 4(a) of the Policy (although it may be relevant to the second or third elements) that the disputed domain name was registered before the Complainant filed for or obtained the relevant trademark registrations.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

The Respondent bases its response to this Complaint on the narrow ground that it registered the disputed domain name before the Complainant registered or filed for any relevant trademark. The Respondent contends that the Complainant cannot in these circumstances succeed in its Complaint.

The Panel draws attention at this point to the Complainant's statement that: "Respondent registered the Disputed Domain Name on July 11, 2018, which is significantly after Complainant filed for registration of its OMETV trademark with the UKIPO, EUIPO, INPIPT and USTPO trademark offices..."

This statement appears to the Panel to be incorrect. It is clear from the relevant registrations that the Complainant's earliest filing for any OMETV trademark related to its United States applications, filed on January 16, 2019, with its remaining applications being filed in February 2019.

The Complainant in this proceeding is professionally represented and has provided a signed certificate within the Complaint that "... the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate..."

In the circumstances, the Panel takes an extremely serious view of the inaccurate submission referred to above.

That said, the Panel does not accept the Respondent's submission that its having registered the disputed domain name before the Complainant filed for any relevant trademark is determinative of the case. The Complainant submits that it launched its "OmeTV" platform in 2015, and while it does not provide a satisfactory timeline in that regard, the Panel has independently established (by reference to "www.archive.org") that it operated a website at "www.ometv.com" from at least October 28, 2015, and used the Complainant's Logo on that website from at least April 18, 2017. Moreover, the Panel takes note that the above-referenced United States trademarks cite a first use in commerce date of September 2015, which would seem to support the above submission on the launch of the Complainant's "OmeTV" platform.

Based on the evidence available to it in the proceeding, the Panel finds that, by the date the Respondent registered the disputed domain name, namely July 11, 2018, the Complainant had established common law rights in the nature of unregistered trademark rights in the mark OMETV for video chat services in particular. The Panel also infers, in all the circumstances of the case, that the Respondent was clearly aware of the Complainant's mark OMETV when it registered the disputed domain name and that it did so with the intention of taking unfair advantage of the Complainant's goodwill attaching to that trademark.

Regardless of the date of the Complainant's trademark applications, the Respondent cannot obtain rights or legitimate interests in respect of the disputed domain name having clearly registered it with the intention of targeting the Complainant's rights. The Panel finds in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

### **C. Registered and Used in Bad Faith**

The disputed domain name is essentially identical to the Complainant's mark OMETV and has been used for the purposes of a website which, in the view of the Panel, has clearly been designed to confuse Internet users into believing that it is in some way commercially affiliated with the Complainant. In particular, in addition to using the Complainant's OMETV mark, the website also features the Complainant's Logo and purports to offer web chat services similar to those provided by the Complainant.

The Respondent has offered no explanation for its choice of the disputed domain name or the use it has made of it (save for the unconvincing submission that the website constitutes its own work) and does not successfully refute the Complainant's submissions that both the disputed domain name and its website amount to impersonation of the Complainant. The Respondent bases its case on the proposition that it registered the disputed domain name before the Complainant filed for any relevant trademark, which submission is flawed for the reasons set out above.

The Panel finds in the circumstances that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith.

### **8. 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, <ome-tv.com>, be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: July 21, 2023