

ADMINISTRATIVE PANEL DECISION

Ustwo Limited v. Kowe, Icd
Case No. D2023-2480

1. The Parties

The Complainant is Ustwo Limited, United Kingdom, represented by Lewis Silkin LLP, United Kingdom (“U.K”).

The Respondent is Kowe, Icd, China.

2. The Domain Name and Registrar

The disputed domain name <ukustwo.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2023. On June 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 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 (Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 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 June 16, 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 June 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 18, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on July 20, 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.

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

United Kingdom Trademark USTWO (device) registration No. UK00003354189, registered on April 12, 2019, covering, *inter alia* "Computer games programs; video games programs; electronic games pre-recorded on CDs, DVDs, disks and other data carriers; digital games" in Class 9, and "Design of computer software; design of computer games programs and video games programs" in Class 42;

United Kingdom Trademark USTWO (word) registration No. UK00003354184, registered on February 8, 2019, covering, *inter alia* "Computer games programs; video games programs; electronic games pre-recorded on CDs, DVDs, disks and other data carriers; digital games" in Class 9, and "Design of computer software; design of computer games programs and video games programs" in Class 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 with the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant claims that:

- (a) the disputed domain name is confusingly similar to the Complainant's trademark;
- (b) the Respondent lacks any rights or legitimate interests in the disputed domain name; and
- (c) the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to obtain the transfer of the disputed domain name, paragraphs 4(a)(i)-(iii) of the Policy require that the Complainant must demonstrate to the Panel 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 rights in the USTWO trademark.

The disputed domain name consists of the USTWO trademark combined with the letters “UK”. These letters can be easily understood by the public as the initials of the United Kingdom, namely the location of the Complainant’s headquarters.

See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements”.

The generic Top-Level Domain (“gTLD”) suffix is generally disregarded under the test for confusing similarity for the purposes of the Policy.

The Panel finds that the Complainant’s USTWO trademark is clearly recognizable in the disputed domain name, and that the addition of the the letters “UK” does not prevent a finding of confusing similarity.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant’s trademark. The Respondent does not appear to be commonly known by the disputed domain name, the name “ukustwo”, or by a similar name. The Respondent does not appear to make any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. In fact, it appears that the Respondent has used without any authorization the Complainant’s USTWO (device) trademark on its website in what appears to be an attempt to mislead the Internet users into believing that the Respondent’s website was linked to and/or authorized by the Complainant. This finding is reinforced given that the Respondent intentionally combined the Complainant’s trademark with the geographic acronym “UK”, which is where the Complainant is located, in further attempt to (falsely) impress an association with the Complainant. Finally, the Respondent has not replied to the Complainant’s contentions, alleging any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel, on the basis of the evidence presented, accepts, and agrees with the Complainant’s contentions that the disputed domain name was registered in bad faith and has been used in bad faith.

The term “USTWO” is not descriptive in any way, nor does it have any generic, dictionary meaning.

The Complainant’s trademark registrations predate the disputed domain name registration.

The Respondent does not appear to have any trademark registration and/or any other rights to the sign “ukustwo” or similar.

It is therefore unlikely that the Respondent chose the disputed domain name without the intention of invoking a misleading association with the Complainant. It is also evident from the Respondent’s use of the disputed domain name that the Respondent knew of the Complainant’s USTWO trademarks when registering the

disputed domain name. In fact, it appears that the Respondent copied the Complainant's USTWO device trademark on its website after registering the disputed domain name.

Thus, it appears that the Respondent was aware of the existence of the Complainant's trademarks when registering the disputed domain name.

The Panel believes it is beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name without the intention of invoking a misleading association with the Complainant.

It is evident from the Respondent's use of the disputed domain name that the Respondent registered and has used the disputed domain name with the intention to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's USTWO trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

This Panel finds that the above use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under paragraph 4(b)(iii) of the Policy.

The Respondent has not responded to (nor denied) the assertions made by the Complainant in this proceeding.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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 <ukustwo.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: August 1, 2023