

ADMINISTRATIVE PANEL DECISION

Bad Kitty's Dad, LDA v. Teja Don
Case No. D2023-4684

1. The Parties

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

The Respondent is Teja Don, India.

2. The Domain Name and Registrar

The disputed domain name <ome-tv.net> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 10, 2023. On November 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 13, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 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 amended Complaint on November 15, 2023.

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 November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 7, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on December 11, 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 is an online video chat platform provider with its registered seat in Portugal.

The Complainant is the owner the OMETV and OME TV word and figurative trademarks. Among others, the Complainant is the owner of the European Union Trademark No. 018021225, registered on June 4, 2019, for OMETV; the United Kingdom (“UK”) Trademark Registration No. UK00918021225, registered on June 4, 2019, for OMETV; the Portugal Trademark Registration No. 618348, registered on July 17, 2019, for a OMETV; and the United States of America (“United States”) trademark registrations No. 5833264 and No. 5833267, both registered on August 13, 2019, for OME TV (Annex 1 to the Complaint).

The Complainant also owns and operates its main website at “www.ome.tv.” (Annex 6 to the Complaint).

The Respondent is reportedly located in India.

The disputed domain name was registered on April 5, 2020.

According to evidence submitted by the Complainant, the disputed domain name resolves to a website in the English language that prominently uses the Complainant’s word and figurative trademarks for the promotion of online video chat services. Despite a brief disclaimer at the bottom part of the page, the website creates a look and feel as if the website is operated by the Complainant (Annex 3 to the Complaint). The disclaimer literally states the following: “All the Logos, Trademarks, and Images belongs to their Respective Owners. We are not affiliated with OmeTV. Official Website is ome.tv”.

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.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel might, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

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 OMETV and OME TV trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. The mere addition of a hyphen does in view of the Panel not serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's OMETV and OME TV trademarks. Accordingly, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's OMETV and OME TV marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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.

On the contrary, the Panel finds that, despite the small disclaimer at the bottom of the associated website, which may go unnoticeable to Internet users the Respondent is using the disputed domain name to attract customers of the Complainant. Noting that the disputed domain name is identical to the Complainant's OMETV and OME TV trademarks (with the addition of a hyphen), in combination with the general look and feel of the website, including the reproduction of the Complainant's design mark, the Panel finds that the Respondent's main intent is to impersonate the Complainant.

The Panel also notes that as well being used to offer the same services as the Complainant, the disputed domain name is being used to promote the services of the Complainant's competitors, which is not considered a *bona fide* offering of goods or services nor a legitimate, noncommercial fair use.

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.

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.

In the present case, the Panel notes that the Respondent must have had the Complainant and its OMETV and OME TV trademarks in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent has intentionally registered the disputed domain name in order to generate traffic to its own website by misleading third parties in a false belief that the associated website is operated or at least authorized by the Complainant. The small disclaimer at the bottom of the associated website does not prevent a finding of bad faith use, particularly as the rest of the website indicates the Respondent's intention to impersonate the Complainant. The Respondent's use of the disputed domain name to also promote competitors of the Complainant also amounts to use in bad faith as such use evidently disrupts the Complainant's business. Furthermore, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith.

Based on the available record, 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 <ome-tv.net> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: December 25, 2023