

## **ADMINISTRATIVE PANEL DECISION**

Bad Kitty's Dad, LDA v. Nayan Bamiya  
Case No. D2023-4986

### **1. The Parties**

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

The Respondent is Nayan Bamiya, India.

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

The disputed domain name <ome-tvs.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 November 30, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 for Privacy, 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 1, 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 December 4, 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 December 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 31, 2023. The Center received email communications from the Respondent between December 1, 2023 and January 3, 2024. On January 3, 2024, the Center informed the Parties that it would proceed with panel appointment.

The Center appointed Adam Taylor as the sole panelist in this matter on January 10, 2024. 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 has operated an online video chat platform under the mark OMETV since 2015, including via a website at “www.ometv.com”. The Complainant’s website achieved some 6.3 million visitors between August and October 2023 and its mobile app has over 100 million downloads.

The Complainant owns a number of trade marks for OMETV including European Union trade mark No. 018021225, registered on June 4, 2019, in classes 9, 35, and 38.

The disputed domain name was registered on April 2, 2022.

The disputed domain name has been used to resolve to a website branded “OmeTV Random Omegle Talk.” The home page contained an introduction that began with the words: “OmeTV is an online platform that connects you with strangers from around the world for casual chatting [...]” followed by a prominent logo consisting of the words “OmeTV” within a television device that was virtually identical to the Complainant’s own logo. The website included advertising as well as links to the Complainant’s competitors.

The footer of the website states: “We are not associated with the Ome.TV.”

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

##### **B. Respondent**

The Respondent’s informal Response effectively contends that the Complainant has failed to satisfy all three of the elements required under the Policy for a transfer of the disputed domain name. Notably the Respondent submits as follows:

- The Respondent’s “OME-Tvs” service is dedicated to the exploration of unique travel experiences.
- The Respondent’s name, which is an acronym for “On My Eleven Train Volvos (OME-Tvs)” reflects its “commitment to delivering information and insights into the world of amaze”.
- The Respondent’s website is an independent platform with no affiliation or connection to any existing trade marks, including “ometv.” Its sole focus is the provision of valuable content and resources for travel enthusiasts.
- The Respondent is committed to transparency and wishes to avoid confusion regarding the nature and purpose of its website. The Respondent is open to guidance on what should be removed from the website.

#### **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

### **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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, the letter "s") may bear on assessment of the second and third elements, the Panel finds the addition of such term does 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.

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 recognised 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.

As to paragraph 4(c)(i) of the Policy and, as further discussed in section 6C below, the Panel considers that the Respondent's explanation of its alleged purpose in registering and using the disputed domain name is not credible and that, instead, the Respondent has used the disputed domain name to impersonate the Complainant. Such use of the disputed domain name could not be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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.

In the present case, the Panel considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain including diversion of users to competitors of the Complainant by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

Not only does the disputed domain name reflect the Complainant's distinctive mark, but the Respondent has used the disputed domain name for a website that effectively impersonates the Complainant including by prominent use of the Complainant's mark and logo and by purporting to offer the same services as the Complainant.

In the Panel's view, the Respondent cannot rely on the disclaimer in the footer of the website, which is far from prominent and unlikely to be seen by most users of the site. In any case, the mere existence of a disclaimer cannot cure bad faith where, as here, the overall circumstances point to bad faith. Indeed, the Panel considers that the Respondent's use of a disclaimer amounts to an admission that users may be confused. [WIPO Overview 3.0](#), section 3.7.

The Respondent claims that it selected the disputed domain name as an acronym for the phrase "On My Eleven Train Volvos" and that the alleged "sole focus" of the Respondent's website is on the provision of content and resources for travel enthusiasts, independently of any third party trade mark. However, the Panel does not find the Respondent's explanation to be credible for the following reasons:

- 1) The phrase "On My Eleven Train Volvos" seems like an inherently unlikely title to choose for a travel website; on the contrary, the name bears all the hallmarks of having been conceived purely to justify registration of the disputed domain name.
- 2) The Respondent has not sought to explain or justify the version of the Respondent's website produced by the Complainant which: prominently displays the Complainant's logo; purports to provide a general online chat service like that of the Complainant, with no mention of a travel focus; and makes no reference to the name "On My Eleven Train Volvos".
- 3) The Respondent has not produced any evidence in support of its contentions including proof of use of the disputed domain name in the manner and for the purpose claimed. In this regard, the Panel notes that claimed examples of use or demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services cannot be merely self-serving but should be inherently credible and supported by relevant pre-complaint evidence. [WIPO overview 3.0](#), section 2.2.

The Panel finds that the Complainant has established the third element of the Policy.

The Respondent asserts that it wishes to avoid confusion regarding the nature and purpose of its site and is open to guidance on changing its website. However, it is not the role of the Panel to provide such guidance. Rather, the usual remedy where a complainant has established the three elements under the Policy is to order transfer of the disputed domain name to the complainant.

## 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-tvs.com> be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: January 24, 2024