

## **ADMINISTRATIVE PANEL DECISION**

Bad Kitty's Dad, LDA v. Dipali Kaushik  
Case No. D2023-4987

### **1. The Parties**

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

The Respondent is Dipali Kaushik, India.

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

The disputed domain name <ometvs.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) 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 5, 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 Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 3, 2024.


The Center appointed Andrea Mondini 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 is a company based in Portugal which specializes in games, entertainment software, and application (“app”) development with development teams in Ukraine, Europe, and the United States. OmeTV is a free online video chat platform developed and launched by the Complainant in 2015.

The Complainant holds several domain names containing the term “ometv”, among them <ome.tv> which was registered in 2015 and hosts its website.

The Complainant owns trademark registrations for OMETV in several jurisdictions, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS
	Portugal	604088	November 15, 2018 (application date June 23, 2018)	9, 35, 38
OMETV	United Kingdom	UK00918021225	June 4, 2019	9, 35, 38
OMETV	European Union	018021225	June 4, 2019	9, 35, 38
OMETV	Portugal	618348	February 6, 2019	9, 35, 38
OMETV	United States	5833264	August 13, 2019	38
OMETV	United States	5833267	August 13, 2019	45

Because the Respondent did not file a Response, not much is known about the Respondent.

The disputed domain name was registered on September 14, 2018.

According to the evidence submitted with the Complaint, the disputed domain name resolves to a website that provides an online video chat platform and claims to be “Ome TV”, including the Complainant's trademark and also logo.

#### 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.

Notably, the Complainant contends as follows:

The Complainant's platform was launched in 2015, has more than 100 million downloads on Google Play and averaged 6.3 million visitors from August 2023 to October 2023.

The fact that the disputed domain name was registered before the Complainant's OMETV trademarks were registered does not have an impact on the first element required under the Policy. The disputed domain name is confusingly similar to the OMETV trademark in which the Complainant has rights, because it incorporates this trademark in its entirety and the addition of the letter "s" to the end of the OMETV trademark is not sufficient to avoid confusing similarity. It is also well established that the generic Top-Level Domain ("gTLD"), such as ".com," is viewed as a standard registration requirement in a disputed domain name and as such is typically disregarded.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark OMETV has been extensively used to identify the Complainant and its products and services. The Respondent has not been authorized by the Complainant to use this trademark, is not commonly known by the disputed domain name, and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a bona fide offering of goods and services. To the contrary, the website posted under the disputed domain name reproduces the Complainant's trademark and official logo to offer services similar to those offered by the Complainant, thereby taking advantage of its fame and goodwill.

The Respondent registered the disputed domain name on September 14, 2018. This date is after (i) the Complainant filed an application for its OMETV trademark with the Portuguese trademark office, (ii) the Complainant's launch of the OMETV brand in 2015, and (iii) the Complainant's registration of its primary domain name <ome.tv> on September 9, 2015. As a result, by the time the Respondent registered the disputed domain name, the Complainant had already established goodwill and reputation in its OMETV brand, which makes it highly unlikely that the Respondent did not know of the Complainant's rights in the OMETV name at the time it registered the disputed domain name.

The disputed domain name was therefore registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well-known trademark OMETV at the time it registered the disputed domain name.

The website posted under the disputed domain name displays the Complainant's trademark and logo and offers services similar to those offered by the Complainant without any disclaimer. Therefore, unsuspecting Internet users would likely believe that the website is authorized by the Complainant which is not the case. The Respondent is therefore using the disputed domain name in bad faith to attract, for commercial gain, Internet users to the website associated with the disputed domain name by creating a likelihood of confusion with the Complainant and its OMETV trademark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name or of goods/services provided through the disputed domain name (paragraph 4(b)(iv)).

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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 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 trademark 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 trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The fact that the disputed domain name was registered before the Complainant has acquired rights in the trademark OMETV does not by itself preclude the Complainant's standing to file a UDRP case, nor a finding of identity or confusing similarity under the first element ([WIPO Overview 3.0](#), section 1.1.3).

The entirety of the OMETV mark is reproduced within the disputed domain name.

The addition of the letter "s" to the disputed domain name is considered an intentional misspelling of the Complainant's mark and does not prevent a finding of confusing similarity under the Policy. [WIPO Overview 3.0](#), section 1.9.

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.

The Panel further notes that the disputed domain name is being used to host a website impersonating the Complainant, reproducing the Complainant's trademark and logo on the basis of a domain name that is a typo of the relevant mark. Therefore, no rights or legitimate interests can be found in favor of the Respondent.

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.

The Panel notes that in the present case the disputed domain name was registered on September 14, 2018, i.e., after the filing date of the Complainant's trademark OMETV (logo) in Portugal (June 23, 2018) but before the registration date of this trademark (November 15, 2018).

Considering, however, that (i) the Complainant had launched the OMETV brand in 2015, (ii) had registered its primary domain name <ome.tv> already on September 9, 2015 and (iii) that the disputed domain name resolves to a website featuring the Complainant's trademark and official logo, the Panel finds, that the Respondent, more likely than not, registered the disputed domain name with knowledge of the Complainant and its brand and that the Respondent's intent in registering the domain name was to unfairly capitalize on the Complainant's emerging trademark rights. In the circumstances of this case, this is evidence of registration in bad faith. [WIPO Overview 3.0](#), section 3.8.2. The disputed domain name – a typo of the relevant mark – resolves to a website impersonating the Complainant by using the Complainant's trademark and logo and offering services similar to those offered by the Complainant under the trademark OMETV, without disclosing the Respondent's lack of relationship with the Complainant. The impression given by this website would cause Internet users to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds 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 mark as to the source, sponsorship, affiliation, or endorsement of its web site in the sense of Policy, paragraph 4(b)(iv).

Moreover, panels have held that the use of a domain name for illegal activity such as in the present case impersonating the Complainant constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy with regard to the disputed domain name.

## 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 <ometvs.com> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: January 23, 2024