

## **ADMINISTRATIVE PANEL DECISION**

Whaleco Inc. d/b/a Temu v. Mo AU  
Case No. D2024-0929

### **1. The Parties**

The Complainant is Whaleco Inc. d/b/a Temu, United States of America (“United States”), represented by Law Office of David Gulbransen, United States.

The Respondent is Mo AU, Egypt.

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

The disputed domain name <temuapp.dev> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2024. On March 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 4, 2024, 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 March 7, 2024, 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 March 7, 2024.

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 March 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2024. The Respondent sent an email communication to the Center on March 8, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on April 16, 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, since September 2022, operated an online marketplace under its TEMU mark, accessible from its website at “www.temu.com” and mobile applications.

The Complainant owns numerous trademark registrations for its TEMU mark in numerous jurisdictions, including United States Trademark Registration No. 7,164,306 TEMU in International Class 35, with a registration date of September 12, 2023, and a first use in commerce date of September 1, 2022.

The disputed domain name was registered on December 3, 2023. The Complainant’s evidence establishes that the disputed domain name previously resolved to a website entitled “TEMU APP”, purporting to be “THE ULTIMATE GUIDE FOR TEMU SHOPPERS”. The website featured a prominent orange color scheme, images sourced from the Complainant’s website, depictions of the Complainant’s TEMU logo, and various articles purporting to offer guidance on using the Complainant’s marketplace. A disclaimer was included at the bottom of the website in a font that was significantly smaller than that used throughout the rest of the website. The disclaimer read as follows:

“Disclaimer: Temuapp.dev is not affiliated with ‘temu.com’ or endorsed by any party named ‘Temu’ or related entities. Any name similarities are coincidental, with no implied partnerships. We encourage users to confirm the legitimacy of any online entity they engage with.”

Currently the disputed domain name redirects to a website at the domain name <shopperhand.com>. The website is largely as described above, except that site is entitled “SHOPPER HAND”.

#### **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 that the disputed domain name was registered and used in bad faith in order to drive traffic to the disputed domain name for the Respondent’s commercial gain by creating a false impression of association with the Complainant’s TEMU brand.

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

The Respondent did not substantively reply to the Complainant’s contentions. The Respondent’s informal communication of March 8, 2024, merely stated:

“...we wish to confirm our commitment to finding a collaborative and amicable resolution to this dispute...Furthermore, we are open to any suggestions you might have on how we can proceed towards a resolution that respects the interests of both parties while upholding the principles of fairness and integrity.”

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

##### **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 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 "app", 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 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 Respondent's website purports to provide advice to users of the Complainant's platform. Paragraphs 4(c)(i) and (iii) of the Policy are thus potentially relevant. It is, however, well accepted that in order to rely on these safe harbors, a respondent's offering must be without cybersquatting intent, and it must be made clear to users visiting the respondent's website that it is not operated by or associated with the complainant, amongst other requirements. [WIPO Overview 3.0](#), sections 2.2 and 2.5.2. Given the similarities with the Complainant's website addressed above in the Factual Background section, including the shared orange color scheme, images sourced from the Complainant's website and depictions of the Complainant's TEMU logo, the general impression created by the Respondent's website is that it is associated with, if not operated by, the Complainant. This is compounded by the Respondent's erstwhile, prominent use of "TEMU APP" as the title of its website, suggesting that the website is in fact the Complainant's application.

The disclaimer employed by the Respondent is insufficient to prevent user confusion or deception. In order to be effective, disclaimers should be clear and sufficiently prominent, and where the overall circumstances of a case point to the respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. [WIPO Overview 3.0](#), section 3.7.

By analogy, in relation to resellers and distributors that use a brand owner's mark, the consensus view under the Policy is that the reseller/distributor must "accurately and prominently disclose the registrant's relationship with the trademark holder". [WIPO Overview 3.0](#), section 2.8.1. Here, putting aside that the composition of the disputed domain name and aspects of the website give a false impression of sponsorship, the disclaimer is in a much smaller font than that employed throughout the rest of the website and is included

right at the bottom of the website where users may not notice it. It is thus not sufficiently prominent, and again any distinguishing effect it may have is overcome by the dominating similarities with the Complainant's website.

The composition of the disputed domain name likewise points to an association with the Complainant. Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1. Here, the disputed domain name consists of the Complainant's well-known mark plus a term directly associated with the Complainant's business -- "app" -- which indicates bad faith targeting -- and therefore a lack of rights or legitimate interests. [WIPO Overview 3.0](#), section 3.2.1.

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.

The evidence in the record establishes that the Complainant's TEMU mark was well-known prior to registration of the disputed domain name. For the reasons addressed in the Rights or Legitimate Interests section above, it seems clear that the Respondent's intention was to take advantage of the Complainant's reputation by creating the impression that the website to which the disputed domain name resolves is associated with or operated by the Complainant. Paragraph 4(b)(iv) of the Policy is thus eminently applicable.

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 <temuapp.dev> be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: April 24, 2024