

## **ADMINISTRATIVE PANEL DECISION**

AW Media, LLC v. Mridul Mondal  
Case No. D2024-1240

### **1. The Parties**

The Complainant is AW Media, LLC, United States of America (“United States”), represented by Arnold & Porter Kaye Scholer LLP, United States.

The Respondent is Mridul Mondal, India.

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

The disputed domain name <amyywoahhmerch.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 March 21, 2024. On March 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 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 (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 26, 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 amended Complaint on March 28, 2024.

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 April 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2024. The Respondent sent two email communications to the Center on April 3 and April 29, 2024, respectively.

The Center appointed Jeremy Speres as the sole panelist in this matter on August 26, 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 owned by an individual, Amy Troyer, who uses the name “Amy Woahh” as her online personality. She publishes entertaining content on social media. At the time of drafting of this Decision, the Complainant’s YouTube channel, which was created on November 7, 2018, has 8.12 million subscribers, and its TikTok channel has 18.9 million followers. The Complainant’s website is hosted at the domain name <amywoahh.com>, which the Complainant registered on November 6, 2020.

The Complainant’s AMYY WOAHH mark is registered in the United States, including under Registration No. 7211147 for AMYY WOAHH in class 41, having a registration date of November 7, 2023, and a claimed date of first use in commerce of 2016.

The disputed domain name was registered on May 6, 2023, and currently does not resolve to an active website. The Complainant’s evidence establishes that the disputed domain name previously resolved to a website entitled “Amywoahh Merch Store”, containing pictures of the Complainant’s founder, a description of its business, and offering merchandise featuring content and slogans associated with the Complainant for sale.

#### **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 has been used in bad faith to profit from impersonating the Complainant through sale of counterfeit merchandise.

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

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

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

##### **A. Preliminary Issue – Respondent’s Consent to Transfer**

In response to the Complainant’s email indicating that the Complainant would be prepared to resolve this proceeding with the transfer of the disputed domain name, the Respondent stated informally via email “Yes, I agree.” Despite having been sent the standard settlement form, the Respondent does not appear to have signed it.

The Respondent appears to have informally consented to the transfer of the disputed domain name, and the disputed domain name stands to be transferred to the Complainant on that basis alone. However, the Panel believes that it is in the interests of justice to render a substantive decision on the merits given the future relevance of a potential pattern of bad faith conduct on the Respondent’s part under UDRP paragraph 4(b)(ii) or otherwise. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.10.

## **B. 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.

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 Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

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 "merch", 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.

## **C. 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 general impression created by the website to which the disputed domain name resolved previously is one of impersonation of the Complainant. UDRP panels have categorically held that the use of a domain name for illegal activity (here impersonation) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. To the extent that the disputed domain name's website might be considered that of a reseller of the Complainant's products, it does not meet the requirements of the well-known Oki Data test given that the site does not accurately and prominently disclose the Respondent's relationship with the Complainant. *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and [WIPO Overview 3.0](#), section 2.8.

The Panel finds the second element of the Policy has been established.

## **D. 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.

Panels have held that the use of a domain name for illegal activity, here impersonation, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Considering the indicators of impersonation apparent on the Respondent's website highlighted in the Factual Background section above, it is clear that the Respondent intended to impersonate the Complainant. The composition of the disputed domain name, featuring the Complainant's inherently unique and well-known mark plus the term "merch", which is a contraction of "merchandise" and is clearly relevant to the Complainant's business, strengthens this conclusion. [WIPO Overview 3.0](#), section 3.2.1. Paragraph 4(b)(iv) of the Policy is thus eminently applicable. Moreover, while the disputed domain name was registered before the registration of the Complainant's trademark, the Complainant has provided some evidence supporting claims of earlier unregistered trademark rights, and it is clear that the Respondent's intent in these circumstances was to unfairly capitalize on the Complainant's nascent trademark rights. Accordingly, the Panel finds the Respondent registered the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.8.2.

The Panel draws an adverse inference from the Respondent's failure to reply to the Complainant's contentions, where an explanation is certainly called for. [WIPO Overview 3.0](#), section 4.3.

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 <amywoahhmerch.com> be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: September 2, 2024