

ADMINISTRATIVE PANEL DECISION

Whaleco Inc. d/b/a Temu v. Muhammad Ahmad
Case No. D2024-1781

1. The Parties

The Complainant is Whaleco Inc. d/b/a Temu, United States of America (“United States”), internally represented.

The Respondent is Muhammad Ahmad, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <temuwebsite.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2024. On April 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Registration Private, Domain By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 30, 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 May 1, 2024.

The Respondent sent two email communications to the Center on April 30 and May 5, 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 May 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2024. The Center notified the Commencement of Panel Appointment Process on May 31, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on June 5, 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

Since September 1, 2022, the Complainant has operated an online shopping platform in the United States under the mark TEMU including via a website at “www.temu.com” and a mobile application.

The Complainant’s affiliate Five Bells Limited, incorporated in the British Virgin Islands, United Kingdom, owns a number of registered trade marks for TEMU including United States trade mark No. 7,164,306, filed on August 10, 2022, registered on September 12, 2023, in class 35.

The disputed domain name was registered on February 12, 2023.

As of March 8, 2024, the disputed domain name resolved to an orange-themed website branded with “TEMU WEBSITE” and “TEMU” logos and headed “Everything You Need To Know About TEMU Website & TEMU App”. The homepage stated: “TEMU Website is a new e-commerce marketplace launched in September 2022 that sells discounted products across categories like fashion, home decor, electronics, beauty and more...” and “TEMU Website is owned and operated by PDD Holdings which is a NASDAQ-listed Chinese e-commerce company”. The site included buttons to download the “TEMU App” and also purported to offer a range of products for sale.

The Complainant sent a cease and desist email to the Respondent on April 4, 2024. The Respondent replied the same day saying that he could transfer the disputed domain name to the Complainant but required compensation as he had made a substantial investment buying the disputed domain name and writing the content. In response to the Complainant’s refusal to pay compensation, the Respondent claimed that he did not buy the disputed domain name in bad faith and that he had written informational content relating to the Complainant’s website that promoted the Complainant’s platform. The Respondent asked why the disputed domain name was available to buy if it infringed copyright and threatened to file a case against the Complainant and the domain name provider.

As of April 26, 2024, the disputed domain name resolved to a similar version of the website to that described above, except the “TEMU WEBSITE” logo at the top had been replaced by an “AbouTechs” logo.

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 sent two informal emails to the Center asking how to “fight for this case” and claiming “to have rights” in the disputed domain name but did not reply to the Complainant’s contentions.

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 claims that it is the exclusive licensee of the United States trade mark mentioned in Section 4 above, owned by its affiliate Five Bells Limited. In these circumstances, and in the absence of any objection from the Respondent, which has not appeared in the proceeding, the Panel thinks it reasonable to infer that the Complainant has rights in the trade mark for the purpose of standing to file the Complaint. [WIPO Overview 3.0](#), section 1.4.1.

Accordingly, 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, "website") 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 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.

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 by creating a likelihood of confusion with the Complainant's trade mark for the purpose of sale of competing products in accordance with paragraph 4(b)(iv) of the Policy.

Not only does the disputed domain name include the Complainant's distinctive TEMU mark, but the Respondent has used the disputed domain name for a website that impersonates the Complainant including by prominent use of the Complainant's mark and of a logo with similar components to that of the Complainant, as well by the adoption of the Complainant's orange colour scheme and by description of the site as "a new e-commerce marketplace launched in September 2022". The Panel also notes the lack of any prominent disclaimer.

Accordingly, the Panel rejects the Respondent's pre-action assertion that its website was purely informational and designed to promote the Complainant's platform.

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 <temuwebsite.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: June 19, 2024