

ADMINISTRATIVE PANEL DECISION

Whaleco Inc. v. Aniket Rokade
Case No. D2024-2220

1. The Parties

The Complainant is Whaleco Inc., United States of America (“United States”), internally represented.

The Respondent is Aniket Rokade, India.

2. The Domain Name and Registrar

The disputed domain name <temu-reviewer.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 May 30, 2024. On June 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 10, 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 June 12, 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 June 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 3, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on July 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

The Complainant operates the TEMU online shopping platform, available through the website at “www.temu.com”. TEMU was launched in the United States in September 2022, and is an online marketplace acting as an intermediary between consumers and sellers, manufacturers, and brands around the world, offering a growing selection of merchandise in product categories such as clothing, consumer goods, cosmetics, appliances, and electronics. The Complainant also provides TEMU mobile applications available through the Apple App Store and the Google Play Store.

The Complainant’s affiliate Five Bells Limited is the owner of a number of trademark registrations for the sign “TEMU” (the “TEMU trademark”), including the following:

- the United States trademark TEMU with registration No. 7157165, registered on September 5, 2023 for goods in International Class 9, with claimed date of first use on September 1, 2022;
- the United States trademark TEMU with registration No. 7164306, registered on September 12, 2023 for services in International Class 35, with claimed date of first use on September 1, 2022; and
- the European Union trademark TEMU with registration No. 018742564, registered on November 18, 2022 for goods and services in International Classes 9, 35, 38, and 42.

The Complainant submits that it was granted an exclusive license by Five Bells Limited to use the TEMU trademark.

The disputed domain name was registered on February 13, 2024. It is currently inactive. At the time of filing of the Complaint, the disputed domain name directed to a webpage containing information about the benefits of being a TEMU product tester and instructions and tips about how to apply to become one and how to make better product reviews. The website contained a black and orange header with the texts “TEMU Reviewer” and “TEMU Product Tester”, and included the following disclaimer:

“It is not a Official website of temu app it is just a educational website which is created to teach something about temu app. So, please don’t take us as a Official website of temu. And just enjoy our content for entertainment and educational purposes.”

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.

The Complainant states that the disputed domain name is confusingly similar to the TEMU trademark, because it includes it in its entirety, with the addition of a hyphen and the dictionary word “reviewer”.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known under it, has no relevant trademarks, and the Complainant has not authorized it to use the TEMU trademark or to register a domain name that is confusingly similar to it. According to the Complainant, the Respondent is not carrying out a bona fide offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name, because it uses the TEMU trademark and the Complainant’s orange color scheme with a black bar on top that mirrors the design of the Complainant’s official website and mobile application throughout the website at the disputed domain name in an attempt to falsely associate itself with the Complainant and with the TEMU trademark to drive traffic to the disputed domain name for commercial gain.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It points out that the disputed domain name was created well after the Complainant established its rights in the

TEMU trademark, and maintains that the Respondent was well aware of this trademark, which is evident from the text of the disclaimer on its website. The Complainant adds that the Respondent's use of the TEMU trademark in the disputed domain name and throughout the associated website shows that the disputed domain name was registered and is being intentionally used by the Respondent to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's TEMU trademark as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name.

B. Respondent

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

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 the TEMU trademark for the purposes of the Policy. It is affiliated to the owner of the TEMU trademark and submits that it has an exclusive license to use it. As noted in section 1.4.1 of the [WIPO Overview 3.0](#), a trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint.

The Panel finds the TEMU trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the TEMU trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "reviewer") 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 TEMU trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel therefore finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c)(iii) of the Policy provides that a respondent may demonstrate rights or legitimate interests in a domain name by providing evidence of "legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the [complainant's] trademark or service mark."

As discussed in sections 2.5.1 and 2.5.2 of the [WIPO Overview 3.0](#), where a domain name consists of a trademark plus an additional term (at the second or top-level), 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. Certain additional terms within the trademark owner's field of commerce or indicating services related to the brand, or which are not obviously critical (e.g., <okidataparts.com>, <nascartours.com>, <covancecampaign.com>, or <meissencollector.com>), may or may not by themselves trigger an inference of affiliation, and would normally require a further examination by the panel of the broader facts and circumstances of the case - particularly including the associated website content - to assess whether the overall facts and circumstances of the case support a claimed fair use.

The Respondent has not submitted a Response, so the Panel has before him only the statements and the evidence submitted by the Complainant.

The disputed domain name represents a combination between the TEMU trademark and the word “reviewer”, and has been used to resolve to a website that contained information and tips on how to become a product tester for the Complainant’s TEMU platform. The content of the associated website corresponds to the meaning of the combination between “TEMU” and “reviewer” of which the disputed domain name is composed, so on its face there appears to be a connection between the disputed domain name and the corresponding website. The disputed domain name and the associated website may or may not by themselves trigger an inference of affiliation with the Complainant, as product reviewers are typically independent from the merchants whose products they review. At the same time, normally a product reviewer would operate under its own brand name (e.g., a hypothetical “Coffee World Magazine” might review the latest brews from Folgers or Nespresso).

The Complainant does not claim, and the Panel is not aware of, any basis to regard the carrying out of product testing as being in breach of any laws or terms of use of the Complainant’s TEMU platform. There is no indication that the website at the disputed domain name has been used for commercial activities (aside from any remuneration a reviewer would obtain); it does not contain any advertisements or commercial links to third parties, and while the purposes behind the site are unclear (in which case the Panel accepts that there may be some unknown benefit inhering to the Respondent so as to justify its registration), the Complainant has not submitted any evidence in support of its allegation that the Respondent has used the disputed domain name for commercial gain. The website also contained a disclaimer for the lack of relationship with the Complainant, and referred visitors to the Complainant’s website by stating “[f]or more detailed information about becoming a TEMU product tester, you can check their website or get in touch with their support team.” There is also no evidence that the Respondent has engaged in a pattern of registering domain names corresponding to marks held by the Complainant or third parties.

Taken together, and noting that the Respondent has not bothered to explain its motivations, the circumstances of this case raise questions to be answered, but on balance do not support a conclusion that the Respondent has attempted to falsely associate itself with the Complainant or that its aim in registering and using the disputed domain name bore the indicia of a typical cybersquatting case, and this precludes a finding that the Respondent does not have rights or legitimate interests in the disputed domain name.

The Panel therefore finds that the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

Since the Complainant has failed to establish that the Respondent has no rights or legitimate interests in the disputed domain name, it is not necessary to consider whether the same was registered and is being used in bad faith. Should future evidence including later use of the disputed domain name shed a different light on the Respondent’s motivations, it is noted that there might be grounds for a refiling.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: July 19, 2024