

ADMINISTRATIVE PANEL DECISION

Whaleco Inc. d/b/a Temu v. David Alvarado
Case No. D2024-2470

1. The Parties

Complainant is Whaleco Inc. d/b/a Temu, United States of America (“United States”), represented by Whitewood Law PLLC, United States.

Respondent is David Alvarado, United States.

2. The Domain Name and Registrar

The disputed domain name <temudiscountcode.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 June 18, 2024. On June 18, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on June 20, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on June 20, 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”).

Respondent sent an email communication to the Center on June 20, 2024, expressing Respondent’s willingness to “delete the site”. On the same day, the Center sent the Possible Settlement email to the Parties. However, Complainant did not request a suspension for settlement talks.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on July 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2024. Respondent did not submit any formal response.

The Center appointed Scott R. Austin as the sole panelist in this matter on July 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

Without contest by Respondent, Complainant asserts in its Complaint as amended, and its Annexes attached provide evidence sufficient to support that:

Complainant is a Delaware corporation headquartered in Boston, Massachusetts, which provides online shopping platform services under the business name and trademark TEMU (the “TEMU Mark”) on its official website located at “www temu.com” (the “Official TEMU Mark Website”) accessed through its official domain name <temu.com> and accessed through Complainant’s mobile applications. Consumers use Complainant’s online platform services to purchase a growing selection of merchandise in product categories such as clothing, consumer goods, cosmetics, appliances, and electronics.

Complainant asserts through a declaration signed by its senior legal counsel that it launched in the United States in September 2022, and quickly became the most downloaded e-commerce app for the fourth quarter of 2022, which rapid rise Complainant credits to its innovative combination of online shopping and entertainment known as “discovery-based shopping.”

Through an affiliated entity which serves as licensor, Complainant, is the exclusive licensee of numerous valid and subsisting registrations for the TEMU Mark in the United States and European Union, including:

- United States Trademark Registration No. 7,164,306, TEMU, registered on September 12, 2023, for “Provision of an online marketplace for buyers and sellers of goods and services,” in International Class 35 and claiming a first use date of September 1, 2022;
- United States Trademark Registration No. 7,157,165, TEMU, registered on September 5, 2023, for “Downloadable computer application software for mobile phones, namely, software for online shopping; computer programs, downloadable for online shopping; Downloadable computer software for online shopping; Downloadable computer software for use as an electronic wallet; Recorded computer programs for online shopping,” in International Class 9 and claiming a first use date of September 1, 2022;
- European Union Trademark Registration No. 018816488, TEMU, registered on April 18, 2023, for a range of services in International Classes 36, 39, 41 and 45; and
- European Union Trademark Registration No. 018742564, TEMU, registered on November 18, 2022, for a range of goods and services in International Classes 9, 35, 38 and 42.

The disputed domain name was registered on April 4, 2024, and resolves to a copycat website configured to impersonate Complainant by prominently displaying Complainant’s TEMU Mark throughout the website, mirroring content from the Official TEMU Mark Website and mobile app such as promotional banners and cards, and a copyright legend using Complainant’s corporate name, as well as offering unverified discount codes, purportedly to lead consumers to believe Respondent’s copycat website originates with or is affiliated with Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not submit any formal response or substantively reply to Complainant's contentions. In Respondent's informal communication to the Center on June 20, 2024, Respondent expressed his willingness to "delete the site". Complainant did not request a suspension for settlement and allowed the proceeding to continue to decision.

6. Discussion and Findings

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of the probabilities that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

A. Identical or Confusingly Similar

To prove this element, Complainant must first establish that there is a trademark or service mark in which it has rights. Based on the facts referenced in Section 4 and supporting documents submitted, Complainant has shown rights in the TEMU Mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

With Complainant's rights in the TEMU Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's TEMU Mark. It is well accepted that the first element functions primarily as a standing requirement and that the 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.

Prior UDRP panels have held the fact that a domain name which wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other words to such marks. [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"); see also *BNP Paribas v. Ronan Laster*, WIPO Case No. [D2017-2167](#).

The disputed domain name incorporates Complainant's TEMU Mark in its entirety and adds the terms "discount code". Respondent's addition to Complainant's TEMU Mark of these terms does not prevent a finding of confusing similarity as noted in the UDRP precedents cited above. Complainant also contends Respondent's selection of these terms is to enhance confusion of consumers, an issue more appropriately considered under the second and third elements of the Policy. The addition of the Top-Level Domain ("TLD") ".com" is irrelevant in determining whether the disputed domain name is confusingly similar. See, *Research in Motion Limited v thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#); [WIPO Overview 3.0](#), section 1.11.

Based on the above, this Panel finds that the added terms "discount code" do not prevent a finding of confusing similarity between the disputed domain name and Complainant's TEMU Mark. Complainant's TEMU Mark remains fully recognizable as incorporated in its entirety into the disputed domain name. Accordingly, the Panel finds the disputed domain name confusingly similar to the TEMU Mark in which Complainant has rights and Complainant has thus satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, the complainant has to make out a prima facie case that the respondent does not have rights to or legitimate interests in the disputed domain name, and if successful the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the disputed domain name. If the respondent fails to come forward with such evidence, a complainant is deemed to have satisfied the second element.

[WIPO Overview 3.0](#), section 2.1. See also *The American Automobile Association, Inc. v. aaaaautoinsurance.com Privacy--Protect.org, aaa-netaccess.com Privacy--Protect.org, aaanetacceess.com Privacy--Protect.org, Isaac Goldstein*, WIPO Case No. [D2011-2069](#).

Paragraph 4(a)(ii) of the Policy also directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or legitimate interests.

The first example, under paragraph 4(c)(i) of the Policy, is where "before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services".

Here, the Annexes to the Complaint show that the disputed domain name resolves to a copycat website configured by Respondent to pass his business off as Complainant or sponsored or endorsed by Complainant through prominently displaying Complainant's TEMU Mark, mirroring content from the Official TEMU Mark Website and mobile app such as promotional banners and cards, and a copyright legend using Complainant's corporate name, as well as offering unverified discount codes with no evidence of disclaimers. Complainant contends such configuration and content was created by Respondent to lead consumers to reasonably believe Respondent's copycat website originates with or is affiliated with Complainant.

Prior UDRP panels have held that the use of disputed domain names to confuse and attract Internet users through misuse of a well-known trademark, and the provision of content which promote goods and services impersonating and competitive to Complainant cannot be considered use in connection with a bona fide offering of goods or services under Paragraph 4(c)(i). See *The Clorox Company v. WhoisGuard Protected, WhoisGuard, Inc. / Enos Villanueva, Melissa Rosenberg, Yang Ming*, WIPO Case No. [D2021-0603](#).

Prior UDRP panels have also held that the use of a domain name for illegal activity involving impersonation and fraud (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1. See also, *Springer Nature Limited v. Registration Private, Domains By Proxy, LLC / Collections Springer Nature*, WIPO Case No. [D2020-0955](#).

Applying the foregoing decision to these facts this Panel finds the disputed domain name is not being used in connection with a bona fide offering of goods or services sufficient to demonstrate Respondent has any rights or legitimate interests in the disputed domain name under the factors specified by paragraph 4(c)(i) of the Policy.

The second example, under paragraph 4(c)(ii) of the Policy, is a scenario in which a respondent is commonly known by the domain name. Complainant states that Respondent is not related in any way to Complainant, does not carry out any activity for, nor has any business with Respondent. Neither has Complainant granted any license or authorization to Respondent to make any use of Complainant's TEMU Mark or apply for registration of the disputed domain name. Complainant has never authorized Respondent to use the TEMU Mark, or any marks confusingly similar thereto for any purpose, including as a domain name. Prior UDRP panels have found a lack of rights or legitimate interests under the second element of the Policy based on such circumstances. See, e.g., *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX*, WIPO Case No. [D2005-0179](#); *Guerlain S.A. v. H I Investments*, WIPO Case No. [D2000-0494](#).

Complainant also shows that Respondent is not commonly known by the disputed domain name because the original respondent listed in the Whois record submitted with the initial Complaint displayed "Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf". The Registrar identified the underlying registrant in its verification process, "David Alvarado" of the United States, who has been substituted in the amended Complaint as Respondent. Neither bears any resemblance to the disputed domain name whatsoever. Thus, there is no evidence in this case to suggest that Respondent is commonly known by the disputed domain name, that he is licensed or otherwise authorized to use Complainant's trademark, or that he has acquired any trademark rights relevant thereto. As such, the Panel finds this sub-section of the Policy is of no help to Respondent and the facts presented here support a lack of rights or legitimate interests in the disputed domain name. See *Expedia, Inc. v. Dot Liban, Hanna El Hinn*, WIPO Case No. [D2002-0433](#).

In light of the above, and with no Response or other submission in this case to rebut Complainant's assertions and evidence, the Panel finds that the facts of this case demonstrate that Respondent has no rights or legitimate interests in the disputed domain name. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under paragraph 4(a)(iii) of the Policy and may make a finding of bad faith that is not limited to the enumerated factors in Policy paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant shows that prior UDRP panels have found that the TEMU Mark to be distinctive and well-known. See, e.g., *Whaleco Inc. d/b/a Temu v. Mo AU*, WIPO Case No. [D2024-0929](#); *Whaleco Inc. d/b/a Temu v. Hassan Mujeeb ur rehman*, WIPO Case No. [D2024-0931](#)

Complainant further contends that given the disputed domain name incorporates the TEMU Mark in its entirety, shows both Respondent's actual knowledge of the TEMU Mark and its widespread recognition, especially in the United States where Respondent is located, and the TEMU Mark has been in use for almost two years before Respondent registered the disputed domain name. Prior UDRP panels have found that where, as here, it would be implausible to believe that a respondent selected and was using the disputed domain name for any other purpose than to trade on a complainant's trademark rights and reputation, establishes a fact pattern that repeatedly has been held to constitute bad faith registration and use. See *Houghton Mifflin Co. v. THE Weathermen, Inc.*, WIPO Case No. [D2001-0211](#); see also *Philip Morris Inc. v. Alex Tsytkin*, WIPO Case No. [D2002-0946](#).

Complainant also shows that Respondent's resolving website does not have a disclaimer considering it is using Complainant's TEMU Mark throughout and other intellectual property. Prior UDRP panels have held the absence of a disclaimer, as is the case here, supports a finding of bad faith. See *Aktiebolaget Electrolux v. Maksim, SPD CHervinchuk*, WIPO Case No. [D2011-0403](#).

Finally, as noted in Section 6.B above, Respondent has intentionally configured the disputed domain name to enhance confusion and point to association with Complainant and its TEMU Mark by adding descriptive terms common to Complainant's online shopping platform services industry, "discount code", and using the disputed domain name to direct consumers to Respondent's copycat website providing online shopping services purportedly in competition with Complainant's services. The Panel finds that these facts demonstrate a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with Complainant's TEMU Mark as to the source, sponsorship, affiliation or endorsement of Respondent's website, and, therefore, evidence of registration and use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy. See, e.g., *Microsoft Corporation v. Gioacchino Zerbo*, WIPO Case No. [D2005-0644](#); *Royal Bank of Canada v. China Capital Investment Limited*, WIPO Case No. [D2017-1025](#); *Travelscape, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Irwin Periola*, WIPO Case No. [D2020-2741](#).

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) 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 <temudiscountcode.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: August 9, 2024