

ADMINISTRATIVE PANEL DECISION

Chewy, Inc. v. Alexandr Anton
Case No. D2024-2975

1. The Parties

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is Alexandr Anton, Republic of Moldova.

2. The Domain Name and Registrar

The disputed domain name <chewy-co.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 22, 2024. On July 23, 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 the Complainant on July 29, 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 August 3, 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 August 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 26, 2024. The Respondent sent an email communication to the Center on August 9, 2024. The Center sent an email regarding the possible settlement to the Parties on August 13, 2024. On August 19 and August 26, 2024, the Respondent sent further email communications to

the Center. Pursuant to paragraph 6 of the Rules, the Center informed the Parties of the commencement of the panel appointment process email on August 27, 2024.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on September 6, 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

Founded in 2011 as a customer-service focused online retailer for pet supplies, the Complainant operates one of the largest online retail stores in the United States and also has fulfillment warehouses and fulfillment centers corporate offices, and customer service centers in multiple locations in the country. Since going public in 2019, the Complainant has increasingly expanded into veterinary, telehealth, and pet wellness services.

The Complainant owns various word and figurative trademarks for the CHEWY mark, the “C” logo, and its variations in multiple jurisdictions. The relevant trademark registrations include, inter alia, the United States Trademark Registration No. 6,788,620 for CHEWY in Class 9 registered on July 12, 2022, the United States Trademark Registration No. 6,847,058 for CHEWY in Classes 18 and 25 registered on September 13, 2022, the United States Trademark Registration No. 5,834,442 for CHEWY in Class 35 registered on August 13, 2019, the United States Trademark Registration No. 4,346,308 for CHEWY.COM in Class 35 registered on June 4, 2013, European Union Trademark Registration No. 016605834 for CHEWY in Class 35 registered on August 10, 2017, and Australia Trademark Registration No. 2060121 for CHEWY in Class 35 registered on January 2, 2020 (the “Complainant’s Trademark”).

The Complainant’s Trademark is also fully incorporated in the Complainant’s domain name <chewy.com> (the “Complainant’s Domain Name”) and resolves to the Complainant’s primary website (the “Complainant’s Website”).

The Disputed Domain Name was registered on May 6, 2023, many years after the Complainant registered the Complainant’s Trademark. At the time of the filing of the Complaint, the Disputed Domain Name resolved to a website that displays the CHEWY Mark, offers pet food, products, and supplies, and purportedly incorporates the Complainant’s copyrighted content from the Complainant’s Website. At the time of the rendering of this Decision, the Panel notes that the Disputed Domain Name resolves to an inactive website (the “Respondent’s Website”).

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:

(a) The Disputed Domain Name is confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. The only differences between the Disputed Domain Name and the Complainant’s Trademark are a hyphen, a descriptive term “co”, and the generic Top-Level Domain (gTLD) “.com”, which should not prevent a finding of confusing similarity and may be disregarded.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent is not affiliated with the Complainant in any way, and the Respondent has not obtained any authorisation from the Complainant to use the Complainant's Trademark as part of a domain name or otherwise. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or the Complainant's Trademark. Moreover, the Respondent cannot claim prior rights or legitimate interests in the Disputed Domain Name as the Complainant's registration and use of the Complainant's Trademark significantly predates that of the Respondent's registration of the Disputed Domain Name. Furthermore, the Disputed Domain Name appears to be registered by the Respondent for the fraudulent purpose of impersonating the Complainant and/or misleading Internet users that the Disputed Domain Name is associated with the Complainant. Such use of the Disputed Domain Name does not constitute a bona fide offering of goods or services or legitimate noncommercial or fair use of the Disputed Domain Name.

(c) The Respondent has registered the Disputed Domain Name and is using it in bad faith. Given the goodwill and reputation that the Complainant has acquired in the Complainant's Trademark, the Respondent must have been fully aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered and used the Disputed Domain Name. The Respondent attempted to impersonate as the Complainant in the Respondent's Website with the aim to create a likelihood of confusion with Complainant's Trademark and to divert business away from the Complainant by using the Complainant's Trademark in the Disputed Domain Name and the Respondent's Website and using the Complainant's proprietary photographs and information from the Complainant's Website. Furthermore, the Respondent has also placed a copyright notice on the Respondent's Website to give it an air of legitimacy and purports to provide tools allowing Internet users to sign in, chat, and message the Respondent. These tools may deceive third parties into providing their email addresses, suggesting that the Respondent may potentially engage in illicit phishing activity. Therefore, the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

The Respondent sent email communications to the Center on August 9, 19, and 26, 2024, respectively. In the email dated August 9, 2024, the Respondent stated that he agreed to settle the matter with the Complainant and transfer the Disputed Domain Name to them. In the email dated August 19, 2024, he reiterated that he agreed to explore settlement options, and confirmed that he agreed to transfer the Disputed Domain Name to the Complainant as requested. On August 26, 2024, the Respondent informed the Center that the Complainant's representative had not responded to his settlement request. Apart from the correspondence with the Center above, the Respondent did not file any formal response to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the 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 by the Respondent in bad faith.

A. Respondent's Consent to Remedy

As indicated above, the Respondent has unilaterally consented to the remedy requested by the Complainant. Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.10, "where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent". However, panels may still find it appropriate to

proceed with a substantive decision on the merits “(i) where the panel finds a broader interest in recording a substantive decision on the merits – notably recalling UDRP paragraph 4(b)(ii) discussing a pattern of bad faith conduct, (ii) where while consenting to the requested remedy the respondent has expressly disclaimed any bad faith, (iii) where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision, (iv) where there is ambiguity as to the scope of the respondent’s consent, or (v) where the panel wishes to be certain that the complainant has shown that it possesses relevant trademark rights”.

Here, the Panel notes that the Complainant did not reply to the Respondent’s consent to remedy and further to the Panel’s findings below, the Panel believes the Respondent has acted in bad faith with regards the registration and use of the disputed domain name and thus believes there is a broader interest in recording a substantive decision on the merits.

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 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 Complainant’s Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant’s Trademark is reproduced within the Disputed Domain Name. Furthermore, it is well established that the gTLD, “.com” in this case, may be disregarded for the purposes of assessing confusing similarity under the first element. See section 1.11.1 of the [WIPO Overview 3.0](#). Accordingly, the Disputed Domain Name is confusingly similar to the Complainant’s Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, in this case a hyphen “-”, and “co”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s Trademark 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 the 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 the 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.

The Respondent’s failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

The Panel considers that the Respondent's emails dated August 9, 19, and 26, 2024, do not constitute a response to the Complainant's contentions and, in any case, do not satisfactorily address the Complainant's arguments under this element. Rather, such emails appear an admission that the Respondent has no rights or legitimate interests in the disputed domain name and was thus not using it for a bona fide offering.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name. The Panel further notes the distinctiveness and worldwide reputation of the Complainant's Trademark, and the fact that the Complainant has provided no licence or authorization of any kind to the Respondent to use the Complainant's Trademark or to apply for or use any domain name incorporating the Complainant's Trademark. The Respondent would likely not have adopted the Complainant's Trademarks if not for the purpose of creating an impression that the Disputed Domain Name is associated with, or originates from, the Complainant. The reproduction of the Complainant's Trademark together with the term "co", which is a common abbreviation of the word "company" or "corporation", also leads to a risk of implied affiliation as the Disputed Domain Name effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

There is also no evidence to suggest that the Respondent's use of the Disputed Domain Name is in connection with a bona fide offering of goods or services or be regarded as legitimate noncommercial or fair use. The Respondent's Website, although has become inactive at the time of this Decision, was used to impersonate the Complainant, featuring the Complainant's trademark, and allegedly offering the same products such as pet food, pet supplies, gifts, and eGift cards and provide other related information for the purchase of pet supply products that was also available on the Complainant's Website. The Respondent's Website attempts to diverted business away from the Complainant while capitalizing on the goodwill associated with the Complainant's Trademark.

Panels have held that the use of a domain name for illegal activity, such as claimed impersonation or passing off by the Respondent as the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 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.

In the present case, the Panel notes that it is difficult to conceive of any plausible use of the Disputed Domain Name by the unaffiliated Respondent that would amount to good faith use, given that it has incorporated the Complainant's Trademark in its entirety and impersonated the Complainant on the Respondent's Website. The Respondent registered and used the Disputed Domain Name to mislead and divert Internet users to the Respondent's Website for commercial gain by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. See paragraph 4(b)(vi) of the Policy and section 3.1 of the [WPO Overview 3.0](#). Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainant's contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

Panels have previously held that a finding of bad faith can be established where a complainant's trademark is shown to be well-known or in wide use at the time of registration of the disputed domain name (see *LEGO Juris A/S v. store24hour*, WIPO Case No. [D2013-0091](#)). The Respondent must have been fully aware of the Complainant and the Complainant's Trademark when it registered the Disputed Domain Name, given the well-known nature of the Complainant's brand, evidenced by the various trademark registrations for the Complainant's Trademark across the globe that was put into use well before the Respondent registered the Disputed Domain Name. Moreover, the Complainant's trademark was featured in both the composition of the disputed domain name and the website to which the disputed domain name resolved, which also featured the identical pet supplies sold by the Complainant.

Panels have held that the use of a domain name for illegal activity, such as the impersonation or passing off as the Complainant, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel notes that the Disputed Domain Name now resolves to an inactive website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panellists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's Trademarks, the composition of the Disputed Domain Name, and the Respondent's failure to file a Response, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

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 <chewy-co.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: September 20, 2024