

ADMINISTRATIVE PANEL DECISION

Whaleco Inc. v. Mehmood Ahmad
Case No. D2024-3101

1. The Parties

The Complainant is Whaleco Inc., United States of America, represented by Whitewood Law PLLC, United States of America.

The Respondent is Mehmood Ahmad, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <tamuapp.net> 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 30, 2024. On July 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 30, 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 (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 August 1, 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 August 2, 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 August 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 27, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on September 2, 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 global online shopping platform TEMU, that offers a selection of merchandise in various product categories such as clothing, consumer goods, cosmetics, appliances, and electronics.

Launched in the United States in September 2022 and accessible for free through its official website and mobile applications downloadable through the Apple App Store and Google Play Store, by the end of the fourth quarter of 2022, the Complainant's TEMU application quickly became one of the most downloaded e-commerce applications.

The Complainant, through its affiliate Five Bells Limited which serves as licensor, is the exclusive licensee of several trademark registrations for TEMU, including the following, as per trademark registration details submitted as Annexes 4 and 5 to the Complaint:

- United States trademark registration No. 7164306 for TEMU (word mark), filed on August 10, 2022, and registered on September 12, 2023, in international class 35;
- United States of America trademark registration No. 7157165 for TEMU (word mark), filed on August 10, 2022, and registered on September 5, 2023, in international class 9;
- United States of America trademark registration No. 7145476 for TEMU (figurative mark), filed on September 1, 2022, and registered on August 22, 2023, in international class 35;
- European Union trademark registration No. 018816488 for TEMU (word mark), filed on December 29, 2022, and registered on April 18, 2023, in classes 36, 39, 41, and 45;
- European Union trademark registration No. 018742564 for TEMU (word mark), filed on August 05, 2022, and registered on November 18, 2022, in classes 9, 35, 38, and 42;
- European Union trademark registration No. 018746904 for TEMU (figurative mark), filed on August 12, 2022, and registered on November 25, 2022, in classes 09, 35, 38, and 42.

The Complainant is the owner of the domain name <temu.com>, and is used by the Complainant in connection with its online shopping platform operated under the trademark TEMU.

The disputed domain name <tamuapp.net> was registered on June 26, 2024, and is pointed to a website publishing the Complainant's figurative mark and the title "TEMU App – A Detailed Guide on World's Leading Marketplace in 2024", and promoting the download of the Complainant's TEMU app, using an orange color scheme that recalls the Complainant's official website and application, and displaying sponsored advertisements and other affiliate marketing links leading to third parties' websites. A disclaimer displayed at the bottom of the website reads: "This disclaimer serves as a transparent declaration of non-ownership and non-affiliation with Temu.Com' material, emphasizing the website owner's commitment to respecting intellectual property rights. TemuApp.io is an informational based website which gathers and collects data/information from official website (Temu.Com). Temuapp.io explicitly disclaims any ownership or proprietary rights to materials such as apps, logos, or any content related to Temu.Com mentioned herein".

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 <tamuapp.net> is confusingly similar to the trademark TEMU in which the Complainant has rights as it reproduces the trademark in its entirety, with the mere substitution of the second letter "e" with an "a", the addition the term app (abbreviation for "application") and the generic Top-Level Domain ("gTLD") ".net".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent has in no way been licensed, permitted or otherwise authorized to use the Complainant's TEMU mark in any way and submits that there is no evidence to suggest that it may even be commonly known by the disputed domain name.

The Complainant further underlines that considering i) the disputed domain name has been pointed to a website publishing the Complainant's figurative mark and using the same orange color scheme adopted by the Complainant in its official website; ii) the Respondent intentionally placed a disclaimer at the bottom of the home page to seemingly absolve itself of any liability; iii) in the contact details the Respondent refers to itself as <temuapp.io>, further evidencing its intent to deceive consumers; iv) the Respondent is offering a download link to the Complainant's TEMU app whilst generating further revenue through third party links, and v) all the Respondent's actions appear to be intentionally aimed at creating a likelihood of confusion with the Complainant, in an effort to drive traffic to its website for its own financial gain, the Respondent is neither making a legitimate noncommercial or fair use of the disputed domain name, nor is it using the disputed domain name for a bona fide offering of goods or services.

With reference to circumstances evidencing bad faith, the Complainant indicates that the Respondent registered the disputed domain name with the Complainant in mind, proving, through its use of the Complainant's mark and color scheme and the provision of a link to download the Complainant's application, that it was not only well aware of the Complainant at the time of registering the disputed domain name, but deliberately chose to take advantage of the Complainant's goodwill and renown, to create a likelihood of confusion with the Complainant's TEMU mark as to the source, sponsorship, affiliation or endorsement of its website, for its own financial gain.

The Complainant submits that this is especially true when considering the Respondent also included in its website numerous click-through-revenue links, other affiliate links and/or embedded links in ads leading to third party websites aimed at generating further revenue.

As additional circumstance evidencing the Respondent's bad faith, the Complainant submits that the domain name <temuapp.io> cited in the disclaimer located at the bottom of the Respondent's website was involved in a prior decision where the panel awarded the transfer of said domain name to the Complainant and found that it was registered and used in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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 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 claims that it is the exclusive licensee of the United States of America and European Union trademark registrations 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 filed a Response, the Panel finds that the Complainant has established rights in the trademark 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 trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name as it reproduces the TEMU mark in its entirety, with the mere substitution of a single letter "e" with the letter "a". Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Moreover, as stated in section 1.9 of the [WIPO Overview 3.0](#), "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

Although the addition of the term "app" (abbreviation of "application") 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.

Furthermore, the gTLD ".net" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

Therefore, 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 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 Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks.

Moreover, there is no element from which the Panel could infer a Respondent's right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

As mentioned above, the disputed domain name resolves to a website publishing the Complainant's figurative mark, the title "TEMU App – A Detailed Guide on World's Leading Marketplace in 2024" and using an orange color scheme that recalls the Complainant's official website, providing a link to download of the Complainant's TEMU app. The website contains a disclaimer of non-affiliation, which is however published at the very bottom of the home page and identifies the Respondent as "temuapp.io" without providing further details about the actual website operator. Moreover, the website includes sponsored advertisements and other affiliate marketing links which lead users to third parties' commercial websites.

In view of the above-described use of the disputed domain name, the Panel finds that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Therefore, the Panel finds the second element of the Policy has also 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 finds that, in light of i) the prior registration and use of the Complainant's TEMU mark in connection with the Complainant's popular online shopping platform, ii) the composition of the disputed domain name, which despite the misspelling of the mark clearly recalls the Complainant's TEMU application, and iii) the Respondent's reference to the Complainant's marks and website on the website to which the disputed domain name resolves, the Respondent clearly registered the disputed domain name to target the Complainant, its TEMU mark and platform.

The Panel also finds that, in view of the use of the disputed domain name to divert users to the website described above, featuring the Complainant's mark and a color scheme that mirrors the Complainant's official website whilst promoting the download of the Complainant's application, and publishing many click-through revenue links, other affiliate marketing links, or at the very least, embedded links in ads leading to third parties' websites, the Respondent intentionally attempted to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website, according to paragraph 4(b)(iv) of the Policy. The Panel finds the Respondent's disclaimer to be ineffective in dispelling the confusion caused by the disputed domain name and website content, and notes that Internet users will in any event have been enticed to the Respondent's website before seeing that disclaimer. See *PN II, Inc. v. Tunde Ajetomobi*, WIPO Case No. [D2021-2048](#).

Therefore, the Panel finds that the Complainant has also 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 <tamuapp.net> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: September 16, 2024