

ADMINISTRATIVE PANEL DECISION

Whaleco Inc. v. Muhammad Irfan Aslam

Case No. D2024-3103

1. The Parties

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

The Respondent is Muhammad Irfan Aslam, Austria.

2. The Domain Name and Registrar

The disputed domain name <temuapp.live> 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, Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 31, 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 July 31, 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 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2024. The Respondent did not submit any formal response except that on August 7, 2024, the Respondent transmitted two nearly identical informal emails. Accordingly, the Center notified the Parties on August 28, 2024, that it would proceed to Panel Appointment pursuant to paragraph 6 of the Rules.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on September 3, 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 following facts are undisputed.

The Complainant is a Delaware corporation headquartered in Boston, Massachusetts, United States, which operates an online shopping platform since September 2022. The Complainant's platform is accessible at "www.temu.com" and via Complainant's mobile applications. Consumers use the platform to purchase products such as clothing, consumer goods, cosmetics, appliances, and electronics.

Through an affiliated entity which serves as licensor, the Complainant is the exclusive licensee of numerous registrations for the TEMU mark:

- United States trademark registration TEMU (word) with number 7,164,306 registered on September 12, 2023, for services in in class 35;
- European Union trademark registration TEMU (word) with number 018742564, registered on November 18, 2022, for a range of goods and services in classes 9, 35, 38, and 42;
- European Union trademark registration TEMU (word) number 018816488, registered on April 18, 2023, for a range of services in classes 36, 39, 41, and 45.

All of these registrations, which also will be referred to in singular as the "Trademark", predate the registration of the disputed domain name in 2023.

The disputed domain name was registered on September 30, 2023. The disputed domain name does not resolve to an active website, but to a suspended account. However, before the Complaint was filed, the disputed domain name resolved to a website which seemed to provide information about the Complainant's platform and applications.

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 the following.

The Complainant has continuously used the Trademark since September 1, 2022. The Complainant made significant investments in promoting the platform for the purchase of goods under the Trademark.

The disputed domain name is confusingly similar to the Trademark. The disputed domain name incorporates the Trademark in its entirety, with the mere addition of the term "app", suggestive of the Complainant's platform. The addition of the descriptive term and the generic Top-Level Domain ("gTLD") does not change the overall impression and does not make the disputed domain name any less confusingly similar to the Trademark.

The Respondent not only uses the Trademark, but also uses the Complainant's widely recognized orange color scheme that mirrors the Complainant's platform in an apparent attempt to further falsely associate itself with the Complainant and its Trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. Notably, there is no evidence that the Respondent is commonly known by the disputed domain name. Also, the Complainant has not licensed, or otherwise permitted or authorized the Respondent to use the Trademark. Further, the Respondent's actions in connection with the disputed domain name cannot be considered a bona fide offering of good or services, nor a legitimate noncommercial or fair use. Moreover, any suggestion by the Respondent that the disputed domain name is being used for purely "free speech" purposes cannot be viewed as a genuine claim.

The Respondent has engaged in bad faith. The Respondent registered the disputed domain name primarily for the purpose of falsely associating itself with the Trademark. The Respondent intentionally created a likelihood of confusion to attract users searching for the platform for its own commercial benefit.

B. Respondent

The Respondent did not submit a formal response or substantively reply to the Complainant's contentions. In the Respondent's informal communications to the Center on August 7, 2024, the Respondent contends to have built an informational blog related to the Complainant's platform. The Respondent offers to sell the disputed domain name and transfer it to the Complainant or to delete the disputed domain name. The Respondent's communications were identical save for the correction of a typo in the initial communication.

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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "app" and the gTLD ".live" may bear on assessment of the second and third elements, the Panel finds the addition of such does not prevent a finding of confusing similarity between the disputed domain name and the 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.

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 in its informal response has alleged that the website to which the disputed domain name resolved was of an informational nature, but the Panel finds that the Respondent has failed to demonstrate that it had rights or legitimate interests in the disputed domain name.

The nature of the disputed domain name, also in combination with the contents of the associated website, and the color scheme used, suggests that the website is either operated or endorsed by the Complainant. As discussed below, the inclusion of a disclaimer at the footer of the website does not impact the overall impersonating nature of the disputed domain name. UDRP Panels have largely held that, even where a domain name consists of a trademark plus an additional term (at the second- or top-level), that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel refers to its considerations under 6.B.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt “to attract, for commercial gain, Internet users to [the respondent’s] web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] web site or location or of a product or service on [the respondent’s] web site or location” is evidence of registration and use in bad faith.

In the present case, the Panel notes that the Complainant and its activities are clearly known to the Respondent and the Respondent has attempted to impersonate the Complainant and/or has sought to align himself with the Complainant’s success.

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

The website to which the disputed domain name previously resolved contains a disclaimer at the bottom - “The website offers shopping guides and is not affiliated, associated, authorized, endorsed by, or in any way officially connected with the ‘TEMU’ e-commerce platform or any of its subsidiaries or affiliates [...]”. The disclaimer is hardly prominent given its location at the footer of the website and also fails to actually identify the owner of the Trademark. Moreover, considering the overall circumstances of this case, especially the composition of the disputed domain name and the deliberate appropriation of the Complainant’s orange color scheme, the Panel finds that such disclaimer this does not cure the Respondent’s bad faith but may rather be deemed as an admission by the Respondent that Internet users may be confused. [WIPO Overview 3.0](#), section 3.7.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes 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 <temuapp.live> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: September 16, 2024