

ADMINISTRATIVE PANEL DECISION

Whaleco Inc. d/b/a Temu v. Lijun Wen
Case No. DRO2024-0003

1. The Parties

The Complainant is Whaleco Inc. d/b/a Temu, United States of America (“United States”), represented by Law Office of David Gulbransen, United States.

The Respondent is Lijun Wen, China.

2. The Domain Name and Registrar

The disputed domain name <temu.ro> is registered with ROTLD (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2024. On April 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 23, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 16, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on May 21, 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

It results from the Complainant's undisputed allegations that it operates an online shopping platform accessible through its website available at "www temu.com" and mobile applications available for free to download through the Apple App Store and the Google Play Store. The platform was launched in the United States in September 2022. Its rapid rise is credited to its innovative ecommerce combination of online shopping and entertainment known as "discovery-based shopping". It is an online marketplace that connects consumers with sellers, manufacturers, and brands around the world.

Furthermore, the undisputed evidence provided by the Complainant proves that the Complainant is the exclusive licensee of many trademarks containing and/or consisting of TEMU, which are owned by Five Bells Limited (Virgin Islands), e.g., European Union trademark registration no. 018742564 registered on November 18, 2022, for goods and services in classes 9, 35, 38, and 42 (filing date: August 5, 2022); and United States trademark 7157165 registered on September 5, 2023, for goods and services in class 9 (filing date: August 10, 2022, citing first use in commerce: September 1, 2022).

The disputed domain name was registered on August 31, 2022, and resolves to an inactive webpage.

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 is identical to the trademark TEMU since it incorporates entirely the registered trademark TEMU. The Complainant further contends that the trademark TEMU is distinctive and well known.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, there is no evidence to suggest that the Respondent is commonly known by the disputed domain name. In addition, the Complainant has not licensed, otherwise permitted or authorized the Respondent to use the TEMU trademarks, or to apply for any domain name that is identical to the TEMU trademarks.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the disputed domain name was registered just days after the Complainant applied for the TEMU trademarks and the launch of the Complainant's "www temu.com" platform in the United States. The Respondent knowingly registered the disputed domain name in an effort to capitalize on its potential commercial value and with a purpose to free ride on the back of the goodwill associated with the Complainant, its platform, and rights in the TEMU Trademarks.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "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 requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

- (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 in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 rights in a trademark under the Policy for purposes of standing to file a complaint. [WIPO Overview 3.0](#), section 1.4.1. In fact, the undisputed evidence provided by the Complainant proves that the Complainant is the exclusive licensee of European Union trademark registration no. 018742564 registered on November 18, 2022, for goods and services in classes 9, 35, 38, and 42 owned by Five Bells Limited (Virgin Islands). In addition, the Panel infers the existence of authorization from the trademark owner to file a UDRP case based on the facts and circumstances described in the Complaint (i.e., exclusive license and substantial advertising and promotional efforts made by the Complainant to promote the TEMU marks, as described in the declaration provided by the Senior Legal Counsel for the Complainant). Therefore, the Complainant has standing to file the UDRP complaint.

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

Finally, the country code Top-Level Domain ("TLD") ".ro" of the disputed domain name may be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#) at section 1.11.

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.

Moreover, the Panel notes that the nature of the disputed domain name carries a high risk of implied affiliation, since the disputed domain name is identical to the trademark TEMU and that the trademark TEMU is not a term that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. Generally speaking, previous UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (see [WIPO Overview 3.0](#), at section 2.5.1). The Panel shares this view.

The Panel finds the second element of the Policy has 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 notes that the Respondent, based on the evidence submitted by the Complainant, knew or should have known that the disputed domain name consisted of the Complainant's trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name is identical to the registered trademark TEMU and was registered shortly after the filing of the Complainant's trademark applications in the European Union and the United States, reflecting an intent to target the Complainant's nascent trademark rights.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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 panelists 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 trademark, and the composition of the disputed domain name, 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 <temu.ro> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: June 4, 2024