ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION

Whaleco Inc., Whaleco Technology Limited v. Lijun Wen, Lijun Wen
Case No. DDO2025-0001

1. The Parties

The Complainants are Whaleco Inc. (the "First Complainant"), United States of America ("U.S."), and Whaleco Technology Limited (the "Second Complainant"), Ireland, represented by Whitewood Law PLLC, U.S.

The Respondent is Lijun Wen, Lijun Wen, China.

2. The Domain Name and Registrar

The disputed domain name <temu.do> is registered with NIC.DO (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 14, 2025. The Complainants expressly requested that English be the language of the proceedings. On January 15, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 16, 2025, 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 Domain Name Dispute Resolution Policy for .DO, approved by the Pontificia Universidad Católica Madre y Maestra (PUCMM) (the "Policy"), the Rules for the Domain Name Dispute Resolution Policy for .DO (the "Rules"), and the Supplemental Rules for the Domain Name Dispute Resolution Policy for .DO (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4 a), the Center formally notified the Respondent in the Spanish of the Complaint, and the proceedings commenced on January 22, 2025. In accordance with the Rules, paragraph 5 a), the due date for Response was February 11, 2025. The Respondent did not submit any response nor comment as to the language of the proceedings. Accordingly, the Center notified the Respondent's default on February 17, 2025.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on February 18, 2025. 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 Complainants are affiliated companies and part of the same economic group that operates an online marketplace under the TEMU trademark available at <temu.com>.

The Complainants' platform was launched in September 2022 and surpassed 100 million downloads on the Google Play store, currently operating in over 70 countries and offering products such as clothing, consumer goods, cosmetics, appliances, and electronics.

The Complainants are exclusive licensees (Annex 1 to the Complaint) of the following, amongst other, trademark registrations owned by Five Bells Limited:

- Dominican Republic Trademark Registration No. 311689 for the word mark TEMU, registered on July 3, 2024, in classes 9, 35, 38 and 42;

- Dominican Republic Trademark Registration No. 311690 for the word and device mark TEMU, registered on July 3, 2024, in classes 9, 35, 38 and 42;

- U.S. Trademark Registration No. 7,164,306 for the word mark TEMU, registered on September 12, 2023, in class 35, claiming first use in commerce on September 1, 2022; and

- U.S. Trademark Registration No. 7,145,476 for the word and device mark TEMU, registered on August 22, 2023, claiming first use in commerce on September 1, 2022, in class 35.

The disputed domain name was registered on September 6, 2022, and does not resolve to an active webpage.

5. Parties' Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants assert to have continuously used the TEMU trademark in commerce throughout the U. S. since at least as early as August 10, 2022, in connection with numerous goods and services, including the provision of an e-commerce platform available online and through mobile applications, through which consumers can purchase a variety of goods.

The Complainants submit that the disputed domain name reproduces entirely the Complainants TEMU trademark.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainants argue that:

i. the Respondent is not commonly known by the disputed domain name;

ii. the Complainants have not licensed or otherwise permitted or authorized the Respondent to use the TEMU trademark, or to apply for any domain name that is identical to the TEMU trademark; and

iii. the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services given that the disputed domain name does not resolve to an active webpage.

Furthermore, the Complainants submit that the disputed domain name was registered just days after the launch of the Complainants' platform in the U.S., being it clear that the Respondent registered the disputed domain name with knowledge of the Complainants' trademark rights in an effort to take advantage of the Complainants' goodwill and substantial resources expended in promoting, protecting and developing the TEMU trademark and platform.

Moreover, the Complainants contend that the Respondent has engaged in a pattern of conduct registering domain names incorporating the Complainants' trademark, as evidenced by a prior decision in *Whaleco Inc. d/b/a Temu v. Lijun Wen*, WIPO Case DRO2024-0003, where the First Complainant was awarded a transfer of the domain name <temu.ro> registered by the Respondent.

As to the use of the disputed domain name in bad faith, the Complainants contend that the present inactive webpage does not prevent a finding of bad faith under the doctrine of passive holding and cannot be regarded as a good faith use under the Policy.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1. Procedural Matter – Language of the Proceeding

The language of the Registration Agreement for the <temu.do> disputed domain name is Spanish. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainants requested that the language of the proceeding be English given that: (i) the Complainants' platform was first launched in the U.S. and is primarily operated in English; (ii) the Respondent is located in China and has already been found of bad faith registration and use of the domain name <temu.ro> in *Whaleco Inc. d/b/a Temu v. Lijun Wen*, WIPO Case No. DRO2024-0003; (iii) there is no evidence here that the Respondent speaks Spanish or is otherwise located in a Spanish-speaking region; and (iv) translating the Complaint in any language other than English would result in additional expenses and unnecessary delay for the Complainants, also not causing any harm to the Respondent.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.5.1).[1]

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

[1] Given the similarities between the Policy and the Uniform Domain Name Resolution Policy ("UDRP"), the Panel finds it appropriate to refer to UDRP jurisprudence, including reference to the WIPO Overview 3.0.

6.2. Substantive matter

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainants:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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 or is being used in bad faith.

The Complainants must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

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 Complainants' trademark and the disputed domain name. WIPO Overview 3.0, section 1.7.

The Complainants have 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 TEMU 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.

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 .DO 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.

In that sense, and according to the evidence submitted, the Complainants have made a prima facie case against the Respondent who has not been commonly known by the disputed domain name and is neither authorized, licensed, or been allowed to use the Complainants' trademarks, whether in the disputed domain name, or in any other way.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

Moreover, according to the evidence submitted by the Complainants, the apparent passive holding of the disputed domain name does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

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

C. Registered or Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(3) 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 or 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 or used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration or use of a domain name is in bad faith.

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

a) the composition of the disputed domain name reproducing the Complainants' trademark in its entirety;

b) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name; and

c) the present non-use of the disputed domain name which as past panels have found would not prevent a finding of bad faith under the doctrine of passive holding. WIPO Overview 3.0, section 3.3.

The Panel finds that the Complainants have 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.do> be transferred to the Complainants.

/Wilson Pinheiro Jabur /
Wilson Pinheiro Jabur
Sole Panelist
Date: March 4, 2025