

ADMINISTRATIVE PANEL DECISION

Bad Kitty's Dad, LD v. James Pro

Case No. D2023-2198

1. The Parties

The Complainant is Bad Kitty's Dad, LD, Portugal, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is James Pro, India.

2. The Domain Name and Registrar

The disputed domain name <ometv.cam> (the "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 May 19, 2023. On May 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 22, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 June 8, 2023, 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 June 9, 2023.

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 June 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2023. The Respondent did not submit any formal Response. On June 18, 2023, the Respondent sent an informal email communication. Accordingly, the Center sent to the Parties Commencement of Panel Appointment Process notification on July 20, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on July 23, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant specializes in games and entertainment software and application development with development teams in Ukraine, Europe and the United States of America. OmeTV is a free online video chat platform developed by the Complainant. Since its launch date in 2015, OmeTV has become a popular random chat platform for users seeking to connect with new people from all around the world. It allows users to select a gender filter and is available in multiple languages with a built-in message translator. It is available at “www.ome.tv” and “www.ometv.chat”. The service was ranked the 130th most popular website in its category. On Apple Store, the service ranks No. 39 in the social networking category.

The Complainant owns several trademark registrations such as United States Trademark OME TV reg. No. 5833264 registered on August 13, 2019, and UK Trade mark OMETV registration No. UK00918021225 registered on June 4, 2019.

The Domain Name was registered on February 24, 2023. The Domain Name has resolved to a website where competing video chat services are offered. At the time of drafting the Decision, the Domain Name resolved to an error page.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations and argues that the Domain Name is confusingly similar to the Complainant's trademark. The Domain Name incorporates the Complainant's trademark, the Respondent's inclusion of the generic Top-Level Domain (“gTLD”) “.cam” to the Domain Name does not distinguish the Domain Name from the Complainant's trademark, but rather is likely to heighten confusion in the minds of internet users. The Respondent's use of the Domain Name further contributes to the confusion.

The Complainants argue that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent has not made any demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services. The Respondent had not acquired or owned any trademark or service mark rights in the Domain Name. The Respondent is not commonly known by the Domain Name. Furthermore, the Respondent has used a privacy Whois service which may indicate a lack of legitimate interest.

The Complainant argues that the composition and use of the Domain Name suggest that the Respondent at the time of registering the Domain Name knew of the Complainant and its trademark. The Respondent's use of the Domain Name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use. The Respondent's use of a privacy service to hide its identity, serves as further evidence of bad faith registration and use.

B. Respondent

The Respondent did not reply to the Complainant's contentions, but sent the following informal email to the Center on June 18, 2023:

"Hello sir/mam,

i have just got your courier regarding the domain removal notice. I have just read it and canceled the domain from my side. You can check it, The website is no longer live right now. Thank You."

6. Discussion and Findings

A. Identical or Confusingly Similar

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has rights in the trademark OMETV. The Domain Name is identical to the Complainant's trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the gTLD; see [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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. While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the 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 Domain Name.

The Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. The Respondent's use of the Domain Name is evidence of bad faith, see below.

Based on the available record, 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.

The composition and use of the Domain Name make it clear that the Respondent was aware the Complainant and its prior rights when the Respondent registered the Domain Name. The Respondent has failed to provide any evidence of actual or contemplated good faith use of the Domain Name. The

Respondent's informal email response and use of a privacy service are under the circumstances of this case further evidence of bad faith.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy. The third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders the Domain Name, <ometv.cam> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: August 6, 2023