

## **ADMINISTRATIVE PANEL DECISION**

Bad Kitty's Dad, LDA v. olcay yigit  
Case No. D2023-4660

### **1. The Parties**

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

The Respondent is olcay yigit, United States of America ("United States").

### **2. The Domain Name and Registrar**

The disputed domain name <ometv.net> is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 9, 2023. On November 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 November 14, 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 November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 13, 2023.

The Center appointed John Swinson as the sole panelist in this matter on December 22, 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 by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

The Complainant is a company registered in Portugal. It operates a free online video chat platform named “OmeTV” which it launched in 2015.

The Complainant is the owner of trademark registrations for the marks OMETV and OME TV including the following:

- Portugal trademark registration number 001496017 for a word mark OMETV, registered on July 17, 2019, with a filing date of February 6, 2019; and

- United States trademark registration numbers 5833264 and 5833267 for word marks OME TV, registered on August 13, 2019, with filing dates of January 16, 2019.

The Complainant operates a website at “www.ome.tv”. The domain name <ome.tv> was registered on September 9, 2015. (The Complainant also uses the domain name <ometv.chat>.) At the present time, the Complainant’s website states “Discover the thrill of random video chat with OmeTV — the best Omegle alternative! Meet new people in the webcam chat or in the free mobile app”.

The Panel notes that the Omegle chat service was a competitor to the Complainant. According to the Omegle website at <omegle.com>, the Omegle chat service commenced in 2009 but recently closed (in 2023). Further details about Omegle can be found in *Omegle.com LLC v. Chukhmanenko Aleksei Aleksandrovich*, WIPO Case No. [DTV2015-0005](#).

The Respondent did not file a Response, so little information is known about the Respondent. According to the Registrar’s records, the Respondent has an address in the United States. However, the address and telephone number details in the Registrar’s records are clearly false, for example, with a non-existent Zip code, a street address of “amerika washington” and a telephone number with the less than the required number of digits.

The disputed domain name was initially registered on September 6, 2016.

In June 2019, the website at the disputed domain name was a pay-per-click (“PPC”) website that included a link to “video chat software”.

At the present time, the disputed domain name resolves to a website that is branded “omegle” and that promotes services to randomly chat with strangers. The heading of the website is “OmeTv Online - video Chat with Your”, which appears to be incomplete. In some places, the website uses the “omegle” logo. The website includes two prominent boxes “Visit Official Site OMETV” and “Visit Official Site OMEGLE”. The first box links to the Complainant’s website. The second box links to “www-omegle.com” which appears to be operated by the Respondent. It is not operated by Omegle which, as stated above, has closed. At the top of the homepage, there is a link “START VIDEO CHAT” which links to <omegle.online> which appears to be a competitor of the Complainant. There are also links to other chat services, such as ChatRandom and ChatRoulette but these links appear to divert back to the website at the disputed domain name.

## 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 hosts a website featuring the Complainant's OMETV trademark while claiming to be associated with the Complainant's brand and offering the Complainant's services, but in fact is promoting services in competition to the Complainant's services.

### B. Respondent

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

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 onus of proving these elements is on the Complainant.

### 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.

Based on the available record, the Panel finds 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 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.

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.

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 Respondent is not an authorized distributor of the Complainant's products. The website at the disputed domain name at the present time prominently promotes products in competition to the Complainant's products. This is not good faith use of the disputed domain name.

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.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

In the present case, the content on the website at the disputed domain name clearly demonstrates that the Respondent is aware of the Complainant and its services.

The Complainant argued that the disputed domain name was transferred to the Respondent between December 2022 and September 2023, and provided evidence to support this. The Complainant submitted that the Respondent's knowledge should be considered at this time (which was after the Complainant's trademarks were registered) and not in September 2016 when the disputed domain name was initially registered. The Panel agrees with the Complainant. Even if the Complainant is incorrect on this point and the Respondent registered the disputed domain name in September 2016 (which is a year after the Complainant launched its business) and it was not transferred as submitted, the Panel is prepared to infer from the circumstances (discussed below) that the Respondent was aware of the Complainant in September 2016 and registered the disputed domain name to take advantage of the Complainant's nascent trademark rights and reputation.

The website at the dispute domain name aims to attract consumers looking for the Complainant but then promotes a competing service over the Complainant's services. The website highlights what are supposed disadvantages of the Complainant's services and the corresponding advantages of the competing service.

Accordingly, the Respondent is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, contrary to paragraph 4(b)(iv) of the Policy.

In addition, 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.

Here, the other relevant circumstances include the following: (1) At one time, the website at the disputed included PPC links to competitors of the Complainant. (2) The Respondent provided clearly false contact information to the Registrar. (3) The Respondent has activated the mail exchange ("MX") records for the disputed domain name, thereby increasing the probability of the disputed domain name being used for email fraud purposes.

Based on the available record, 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 <ometv.net> be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: January 5, 2024