

ADMINISTRATIVE PANEL DECISION

Bytedance Ltd. v. Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf / XYZ Pvt Ltd, Jesse Jesse
Case No. D2022-2589

1. The Parties

The Complainant is Bytedance Ltd., United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf, Iceland / XYZ Pvt Ltd, Jesse Jesse, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <capcutforpc.com> 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 15, 2022. On July 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 15, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 18, 2022 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 July 25, 2022.

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 July 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 24, 2022.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on August 29, 2022. 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 an Internet technology company that provides various content platforms to enable people to connect with consuming and creating content, including “TikTok”, “Helo”, and “CapCut”. The Complainant’s “CapCut” platform is a video editing app that was launched in April 2020. The Complainant maintains a primary website for “CapCut” at “www.capcut.com”.

The Complainant owns various trademark registrations for the CAPCUT trademark, including:

Indian Trademark Registration No. 4526907, CAPCUT, registered on June 10, 2020, in Classes 9, 41, and 42;

Singapore Trademark Registration No. 40202012059Y, CAPCUT, registered on June 11, 2020, in Classes 9, 41, and 42;

United Kingdom Trade mark Registration No. UK00003501065, CAPCUT, registered on March 5, 2021, in Classes 9, 41, and 42; and

European Union Trade Mark Registration No. 018255581, CAPCUT, registered on May 15, 2021, in Classes 9, 41, 42, and 45, (collectively the “CAPCUT mark”).

The disputed domain name was registered on May 13, 2021, and it resolves to a website in English language that features the CAPCUT trademark as well as its logo, and offers information about this app and how to use it, as well as an option for downloading this app for personal computers (“PCs”). This site further offers various “Alternatives to CapCut for PC”, including information about other different video editing apps, and various banners of publicity. The “About Us” section of this website includes the following text:

“Hello, I’m Jesse. I’m pursuing my graduation in IT engineering. I love to record and edit videos creatively and I found this CapCut app is more useful than anything. Editing video to the next level is my hobby though. I’ve created this blog to share my tips, expertise, and experience with the CapCut app. I hope you find this blog useful.”

At the bottom of the site, it is indicated, “This is an unofficial source for educational purpose only.”

5. Parties’ Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The Complainant has made significant investment to advertise and promote its trademark worldwide in media and the Internet. As a result, the CAPCUT brand is well recognized worldwide in its sector. More than 100 million users have downloaded “CapCut” app, and it is ranked the world’s ninth-most downloaded mobile app.

The disputed domain name is confusingly similar to the CAPCUT mark. The disputed domain name incorporates the CAPCUT mark adding the terms “for pc”, which closely relate to and describe the

Complainant's platform, meaning the Complainant's platform for use on a PC . The use of the disputed domain name further contributes to the confusion, and the generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement disregarded under the first element confusing similarity test.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name, is not sponsored by or affiliated with the Complainant, and has no authorization to use the CAPCUT mark. The Respondent used a privacy Whois service to hide its identity, and is not making a *bona fide* offering of goods and services. The disputed domain name is used to exploit the Complainant's reputation, generating confusion and affiliation with the Complainant and its trademark to increase the traffic of the Respondent's website for commercial gain. While this website appears to be a tutorial-style site, which publish information and guides on the Complainant's app, the amount of sponsored advertisements found on this site do not support a claim of fair use. This use of the disputed domain name generates revenues from the advertisements displayed to the Respondent.

The disputed domain name was registered and is being used in bad faith. The well-known character of the CAPCUT mark, its incorporation in the disputed domain name as well as in the Respondent's website, and the content of this site, demonstrates the Respondent's knowledge of the Complainant's brand, suggesting opportunistic bad faith. The Respondent creates a likelihood of confusion with the Complainant and its trademark to increase the traffic to its website, and purports to be a tutorial-style website but attempts to profit from the confusion including sponsored advertisements. The Respondent used a privacy service to hide its identity, which is a further evidence of bad faith.

The Complainant has cited previous decisions under the Policy that it considers supportive of its position, and requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered identical or confusingly similar to that mark for purposes of the Policy. In such cases, the addition of terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element, although the nature of such additional term(s) may bear on assessment of the second and third elements. See sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Furthermore, the applicable generic Top-Level Domain ("gTLD") in a domain name is considered a standard technical registration requirement and, as such, is generally disregarded under the first element confusing similarity test. See section 1.11, [WIPO Overview 3.0](#).

The Complainant indisputably has rights in the registered trademark CAPCUT. The disputed domain name incorporates this mark in its entirety followed by the terms “for pc”. The CAPCUT mark is recognizable in the disputed domain name, and the gTLD “.com” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

B. Rights or Legitimate Interests

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily if not exclusively within the Respondent’s knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the Respondent the burden of production to come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests.

The Complainant’s assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy (without limitation), in order to rebut the Complainant’s *prima facie* case. However, the Respondent has not replied to the Complainant’s contentions, not providing any explanation and evidence of rights or legitimate interests in the disputed domain name.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

A core factor in assessing fair use of a domain name is that it does not falsely suggest affiliation with the Complainant’s trademark. See section 2.5, [WIPO Overview 3.0](#). The disputed domain name incorporates the CAPCUT mark in its entirety, adding terms (“for pc”) that indicate a connection to the Complainant’s platform and its app, to be downloaded for personal computers. The Panel considers that the disputed domain name intrinsically generates an implied affiliation (and risk of confusion) with the Complainant and its app, giving the impression that it may be referred to a site related to a Complainant’s customer service or an assistance downloading an tutorial-style service provided by the Complainant or any related company/person.

In addition to the Panel’s consideration regarding the nature of the disputed domain name, the Panel notes that the disputed domain name resolves to a site allegedly for “educational purposes” or fair use. However, in a balance of probabilities, various circumstances of this case impede to consider this site a pure “educational site” under the umbrella of fair use.

In this respect, the Panel notes that the website linked to the disputed domain name provides some brief information about the owner of the site and its lack of relationship with the Complainant (under its section “About Us” and in the bottom of the site). However, this information is not prominently displayed at its home page or in a way that allow users of the site easily see it. On the contrary, the Panel considers that it may easily go unnoticed by the users of the site.

The Panel has further corroborated that, according to the Complainant’s allegations, the website linked to the disputed domain name contains various banners of publicity for which the Respondent may obtain revenue.

The Panel further notes that this site includes information related not only to the Complainant’s platform, but also to other competing platforms unrelated to the Complainant and its trademark. This site provides comparison of the CapCut app’s features and those of other third parties’ platforms serving same purposes, which are unrelated to the Complainant and its CAPCUT mark.

All these circumstances impede, in the Panel's view, that the use of the disputed domain name may be considered a fair use.

It is further remarkable the Respondent's reaction to the Complaint, not providing any response and not providing any evidence of any right or legitimate interests in respect of the disputed domain name.

All the above-mentioned circumstances lead the Panel to conclude that the Respondent has not rebutted the Complainant's *prima facie* case. Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence". See section 4.2, [WIPO Overview 3.0](#).

The Panel notes the extensive use of the CAPCUT mark and presence over the Internet since its launch in 2020, and considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

(i) the disputed domain name incorporates the Complainant's trademark, adding terms ("for pc") that relates to the Complainant app, reinforcing the intrinsic likelihood of affiliation, as a place to download the app for personal computers;

(ii) the CAPCUT mark is increasingly and extensively used within the sector of video edition for the purposes of shearing content on social media, and the Complainant operates online, being its app available and extensively used worldwide, including in the United States, where the Respondent is located;

(iii) the content of the website linked to the disputed domain name reinforces the Respondent's knowledge about the Complainant's app and its CAPCUT mark, including not only the mark and its logo, but also detailed information about this app and its features;

(iv) the lack of relationship of the Respondent with the Complainant and its trademark is not prominently disclosed in the website linked to the disputed domain name;

(v) the site linked to the disputed domain name includes various banners of publicity for which the Respondent purportedly obtains revenue; and

(vi) the Respondent has not responded to the Complaint, not alleging any rights or legitimate interests in the disputed domain name, and not contesting the Complainant's contentions of bad faith.

In light of the above, taking into consideration all cumulative circumstances of this case, on the balance of probabilities, the Panel considers that the disputed domain name was registered and is being used in bad faith, targeting the CAPCUT mark with opportunistic bad faith. The circumstances of this case show in a balance of probabilities that the Respondent's purpose was to generate a likelihood of confusion and affiliation with the Complainant and its trademark to increase the traffic of its website for commercial gain, which constitutes bad faith under the Policy.

Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the disputed domain name has been registered and is being used in bad faith.

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 <capcutforpc.com> be transferred to the Complainant.

/Reyes Campello Estebaranz/

Reyes Campello Estebaranz

Sole Panelist

Date: September 12, 2022