

ADMINISTRATIVE PANEL DECISION

Bytedance Ltd. v. Happy Raj
Case No. D2022-3949

1. The Parties

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

The Respondent is Happy Raj, India.

2. The Domain Name and Registrar

The disputed domain name <capcutappcc.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 October 21, 2022. On October 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 21, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf, Iceland). The Center sent an email communication to the Complainant on October 28, 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 October 31, 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 paragraphs 2 and 4 of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 3, 2022. In accordance with paragraph 5 of the Rules, the due date for Response was November 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 24, 2022.

The Center appointed Yuji Yamaguchi as the sole panelist in this matter on December 1, 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 paragraph 7 of the Rules.

4. Factual Background

The Complainant (including its subsidiaries) is a Chinese Internet technology company with a legal domicile in the Cayman Islands, United Kingdom, that enables users to discover a world of creative content platforms powered by leading technology. The Complainant owns a series of products that enable people to connect with consuming and creating content, including TikTok, which was launched in May 2017 and became the most downloaded application (“app”) in the United States of America (“United States” or “US”) in October 2018. With TikTok’s rise in worldwide popularity, the Complainant globally launched another app called CapCut in April 2020. The CapCut app is a video editing app that allows users to not only add a trove of stickers, filters and effects, but also have a simple-to-use green screen function, a zooming feature and many more. The CapCut app saw downloads to reach 140 million globally in the first half of 2021, making it the world’s ninth-most downloaded mobile app, according to app tracking firm, Sensor Tower.

The Complainant maintains the registration of the CapCut trademarks (the “CapCut Trademarks”) across various jurisdictions, including Indian Trademark No. 4526907 registered on June 10, 2020, Singaporean Trademark No. 40202012059Y registered on June 11, 2020, Malaysian Trademark No. TM2020011434 registered on June 17, 2020, United Kingdom Trademark No. UK00003501065 registered on March 5, 2021, and European Union Trademark No. 018255581 registered on May 15, 2021.

The Complainant also maintains a primary website for the CapCut app at the domain name <capcut.com>. According to SimilarWeb.com, the Complainant’s primary website at the domain name <capcut.com> had a total of more than 41,100 visitors, ranking 899,301st globally and 1,678,873rd in the United States in the 3-month period from April to June 2022.

The Respondent registered the disputed domain name on November 10, 2021.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

First, in creating the disputed domain name, the Respondent has added the generic, descriptive terms “app” and “pc” to the Complainant’s CapCut Trademarks, thereby making the disputed domain name confusingly similar to the Complainant’s CapCut Trademarks. The fact that such terms are closely linked and associated with the Complainant’s CapCut Trademarks only serve to underscore and increase the confusing similarity between the disputed domain name and the Complainant’s CapCut Trademarks. The conjunction of both of these terms with the Complainant’s CapCut Trademarks is likely to heighten confusion in the eyes of Internet users as those familiar with the Complainant’s services would reasonably believe the disputed domain name is associated with a computer app of the Complainant’s services. The Respondent is using the disputed domain name to resolve to a website that features the Complainant’s CapCut logo and/or images from the Complainant’s official website, while offering the downloadable CapCut app for PC. Such use suggests that the Respondent intended the disputed domain name to be confusingly similar to the Complainant’s CapCut Trademarks as a means of furthering consumer confusion.

Second, the Respondent is not sponsored by or affiliated with the Complainant in any way. Nor has the Complainant given the Respondent license, authorization or permission to use the Complainant's CapCut Trademarks in any manner, including in domain names. In the instant case, the disclosed Respondent information identifies the Registrant as "Happy Raj", which does not resemble the disputed domain name in any manner. Thus, where no evidence, including the Whois records for the disputed domain name, suggests that the Respondent is commonly known by the disputed domain name, then the Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain names. By the time the Respondent registered the disputed domain name, the Complainant already had a reputation in its CapCut Trademarks which are fully adopted in the disputed domain name. Therefore, it is evident that the disputed domain name carries a high risk of implied affiliation with the Complainant which cannot be considered a fair use of the disputed domain name. The absence of the Respondent's legitimate rights and interests in the disputed domain name is further evidenced by the Respondent's current use of the Complainant's CapCut Trademarks and logo in the website found at the disputed domain name. Further, by naming the website as "CapCut for PC", the Respondent's use of the disputed domain name is indubitably a direct effort to take advantage of the fame and goodwill that the Complainant has built in its CapCut Trademarks. The Respondent is not only using the confusingly similar disputed domain name, but is also confusing users into believing that some sort of affiliation exists between the Respondent and the Complainant. The inclusion of the Complainant's CapCut Trademarks and logo creates the appearance that the disputed domain name and its website is somehow affiliated with the Complainant, when they are not. The Respondent undoubtedly exploits the reputation of the Complainant's CapCut Trademarks and logo to attract traffic to the websites, and to ultimately pass itself off as the Complainant. There are no disclaimers or any other indication on the website hosted on the disputed domain name accurately discloses the lack of relationship with the Complainant. Therefore, unsuspecting Internet users visiting the disputed domain name may reasonably believe that the Respondent is authorized by the Complainant to offer products in relation to the Complainant's services when this is not the case.

Third, the Complainant and its CapCut Trademarks are known internationally, with trademark registrations across numerous countries. The Complainant has marketed and sold its goods and services using this CapCut Trademarks since April 2020, which is before the Respondent's registration of the disputed domain name. By registering a domain name that fully incorporates the Complainant's CapCut Trademarks along with the generic, descriptive terms "app" and "pc", the Respondent has created a domain name that is confusingly similar to the Complainant's CapCut Trademarks, as well as its <capcut.com> domain name. Here, the Respondent creates a likelihood of confusion with the Complainant by registering a domain name that fully incorporates the CapCut Trademarks with the Respondent then attempting to profit from such confusion by displaying the Complainant's CapCut Trademarks and logo in a brand-like manner and purporting to be a fan website that allows users to download the unauthorized CapCut app. As such, the Respondent is attempting to cause consumer confusion in a nefarious attempt to profit from such confusion. The impression given by the disputed domain name and its website would cause consumers to believe the Respondent is somehow associated with the Complainant when, in fact, it is not. The Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, and the Respondent is thus using the fame of the Complainant's CapCut Trademarks to improperly increase traffic to the website listed at the disputed domain name for the Respondent's own commercial gain. It is well established that such conduct constitutes bad faith. In addition, the disputed domain name currently appears to be set up with mail exchanger (MX) records. This shows that, as well as its current use to impersonate the Complainant, the disputed domain name may also be actively used for email purposes. Emails emanating from the disputed domain name could not be reasonably used for any good faith purpose, given the confusing similarity of the disputed domain name with the Complainant's CapCut Trademarks. As such, the disputed domain name is likely to be used to facilitate fraudulent activity such as phishing, impersonating, or passing off as the Complainant. Such use is indicative of bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must assert and prove the following three elements are present:

- (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.

A. Identical or Confusingly Similar

The Complainant is the owner of the CapCut Trademarks and has sufficient standing to file this UDRP case. See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The disputed domain name incorporates the CapCut Trademarks in their entirety with the addition of two words "app" and "pc" and the generic Top-Level Domain ("gTLD") suffix ".com".

The two words "app" and "pc" are common abbreviations used to refer to "application" and "personal computer", respectively. The Complainant's CapCut is a video editing app, and thus, adding the term "app" to the Complainant's CapCut Trademarks ultimately describes the Complainant's software product. The inclusion of a term that relates to the Complainant's business or product does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's CapCut Trademarks (see *Inter IKEA Systems B.V. v. Franklin Lavall?e / IkeaCuisine.net*, WIPO Case No. [D2015-2042](#)).

As noted in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element in paragraph 4(a) of the Policy. The addition of the two words "app" and "pc" does not prevent a finding of confusing similarity, as the CapCut Trademarks remain clearly recognizable within the disputed domain name (see *Bytedance Ltd. v. Polyakov Andrey*, WIPO Case No. [D2022-3399](#) (<capcutpc.com>); and *Bytedance Ltd. v. Polyakov Andrey*, WIPO Case No. [D2022-3693](#) (<capcutapp.net>)).

Further, the gTLD ".com" may be disregarded for the assessment of confusing similarity under the first element in paragraph 4(a) of the Policy. See section 1.11.1 of the [WIPO Overview 3.0](#).

In light of the above, the disputed domain name should be considered confusingly similar to the Complainant's CapCut Trademarks, and thus, the first element in paragraph 4(a) of Policy is satisfied.

B. Rights or Legitimate Interests

As the Complainant asserts, the Respondent is not sponsored by or affiliated with the Complainant. The Respondent was not given any license, authorization or permission to use the Complainant's CapCut Trademarks by the Complainant. In the absence of any license or permission from the Complainant to use its CapCut Trademarks, actual or contemplated *bona fide* or legitimate use of the disputed domain name could not be reasonably claimed (see *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

Whois records for the disputed domain name also shows that the Respondent is not considered to be commonly known by the disputed domain name (see *Bytedance Ltd. v. Happy Raj*, WIPO Case No. [D2022-3618](#) (<capcut.org>)).

As stated in section 2.5.1 of [WIPO Overview 3.0](#), the disputed domain name which consists of the CapCut Trademarks plus certain additional terms within the Complainant's field of commerce or indicating services related to the CapCut Trademarks may sometimes trigger an inference of affiliation, and in this case, the Panel find that the content, look and feel of the website explaining "CapCut for PC" associated with the disputed domain name is highly likely to deceive or cause confusion of Internet users as to the affiliation between the Respondent and the Complainant (see *Bytedance Ltd. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / md hridoy*, WIPO Case No. [D2022-2583](#) (<capcutpro.com>)).

As the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to establish that the Respondent has rights or legitimate interests. See section 2.1 of the [WIPO Overview 3.0](#). However, the Respondent has not submitted any response or provided any evidence whatsoever, despite the opportunity given.

The Respondent having failed to discharge the burden of production, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and then the second element of paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The Panel finds that the Complainant's CapCut Trademarks are well recognized worldwide and in the industry. In consideration of the fact that the disputed domain name resolves to the website displaying the Complainant's CapCut Trademarks and logo and offering Internet users a desktop download of the CapCut app, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's CapCut Trademarks at the time when the disputed domain name was registered (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). The registration of the disputed domain name that is confusingly similar to such widely-known CapCut Trademarks by the Respondent create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

According to the screenshot of the website reachable through the disputed domain name, the Panel is convinced that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the website by creating the impression among Internet users that the website is related to, associated with, or endorsed by the Complainant, which conduct constitutes bad faith under paragraph 4(b)(iv) of the Policy (see *Bytedance Ltd. v. Happy Raj*, WIPO Case No. [D2022-3618](#) (<capcut.org>)).

For the reasons set out above, the third element of paragraph 4(a) of the Policy is satisfied and the Complainant is entitled to the remedy requested, namely that the disputed domain name be transferred to the Complainant.

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 <capcutapppc.com> be transferred to the Complainant.

/Yuji Yamaguchi/

Yuji Yamaguchi

Sole Panelist

Date: December 15, 2022