

ADMINISTRATIVE PANEL DECISION

Lemon Inc. v. Muhammad shoaib

Case No. D2023-3975

1. The Parties

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

The Respondent is Muhammad shoaib, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <capcutmodi.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 September 22, 2023. On September 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 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 (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 September 26, 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 September 27, 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”).

The Respondent sent an email communication to the Center on September 26, 2023. The Center acknowledged receipt of the communication on October 2, 2023.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2023. The Respondent did not submit any formal response. The Center notified the Parties of the commencement of the panel appointment process on October 24, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on November 14, 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 an affiliate of ByteDance Ltd, which is a multinational Internet technology holding company. The CapCut mobile application was launched in April 2020, and it is a video editing application (“app”) that allows users various functions such as to add a trove of stickers, filters and effects, having a simple-to-use green screen function and a zooming feature. *Inter alia*, the CapCut app had 140 million downloads in the first half of 2021 and was ranked as no. 6 in the Photo & Video section in the Apple Store.

The Complainant is the owner of trademark registrations across various jurisdictions for the mark CAPCUT, such as the following:

- the United States of America trademark registration number 6847261 for the word CAPCUT, filed on June 11, 2020, registered on September 13, 2022, covering goods in Nice class 9; and
- the European Union trademark registration number 018255581 for the word CAPCUT, filed on June 16, 2020, and registered on May 15, 2021, covering goods and services in Nice classes 9, 41, 42, and 45.

The Complainant owns domain names reflecting its trademark, such as <capcut.com> registered on March 28, 1997 (the main website) with more than 18 million visitors in August 2023 alone, or <capcut.net> registered on June 3, 2020.

The disputed domain name <capcutmodi.com> was registered on January 24, 2023 and at the time of filing the Complaint, it was used in connection with a website featuring the Complainant’s trademark and logo, offering information about the Complainant’s CapCut app and how to use it; and was also offering modified or unlocked version of the Complainant’s CapCut app for download without the Complainant’s authorization, or approval, and without any disclaimer displayed on such website.

The Respondent was involved in at least one prior UDRP dispute involving a third party’s trademark. See *CHARTER COMMUNICATIONS HOLDING COMPANY, LLC v. Muhammad Shoaib /XMart Host*, NAF Case FA2303002036964 (Forum, April 27, 2023).

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name to it.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its reputable trademark, adding to the CAPCUT trademark the generic descriptive term “modi”, a common abbreviation for the word “modification”, a term which ultimately describes the Complainant’s products for download on an Android device; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith for a website providing

various information about the Complainant's CapCut app, using the Complainant's logo and trademark and without any disclaimer by attempting to pass itself off as being connected to the Complainant's CAPCUT brand. Such use also constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use.

B. Respondent

The Respondent did not reply to the Complainant's contentions; he only sent an email communication to the Center on September 26, 2023 stating basically that he "didn't amend the complaint and didn't do anything with domain email (...)"

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

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. See also section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other term here, "modi", may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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. [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 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 disputed domain name resolves to a website impersonating the Complainant, promoting similar goods, and displaying the Complainant's trademark and logo without any consent or statement clarifying such. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Further, the composition of the disputed domain name which combines the Complainant's trademark with a term referring to the Complainant's products, suggests an affiliation with the trademark owner. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel notes that the disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because it incorporates the Complainant's distinctive trademark together with a descriptive abbreviation, "modi". Furthermore, the use of the disputed domain name in relation to promoting similar goods and displaying the Complainant's logo corroborates this judgement.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but 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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark with additional descriptive term related to the Complainant's product CapCut, and the website operated under the disputed domain name displays the Complainant's trademark, is providing information on the Complainant's CapCut app, as well as unauthorized modified or unlocked versions of the Complainant's CapCut applications, indeed in this Panel's view, the Respondent has intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated with or related to the Complainant, for the Respondent's commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

Paragraph 4(b)(ii) of the Policy provides another circumstance of bad faith registration and use when the respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. The Respondent was involved in at least one prior UDRP dispute solved against it, see case listed under Section 4 above. UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration. [WIPO Overview 3.0](#), section 3.1.2.

Based on the available record, the Panel finds 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 that the disputed domain name <capcutmodi.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: November 28, 2023