

## **ADMINISTRATIVE PANEL DECISION**

Bytedance Ltd. v. Sanjay Khan  
Case No. DCO2022-0094

### **1. The Parties**

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

Respondent is Sanjay Khan, India.

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

The disputed domain name <capcutforpc.co> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 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, Redacted for Privacy Privacy service provided by Withheld for Privacy ehf, and contact information in the Complaint. The Center sent an email communication to Complainant on November 7, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 9, 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 Respondent of the Complaint, and the proceedings commenced on November 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 2, 2022.

The Center appointed Bradley A. Slutsky as the sole panelist in this matter on December 12, 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**

Complainant has trademark registrations for a number of “CAPCUT” trademarks, dating back to at least June 2020. The disputed domain name was registered on February 17, 2022, and leads to a web page that contains Complainant’s CapCut logo and/or images from Complainant’s website, while offering a downloadable CapCut application for the PC. This page also describes alternatives to the “CapCut for PC” software offered on the site, and in doing so observes that “many big-name developers, such as ByteDance, which released Cap Cut editor, have already built video editing software”.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant is an Internet technology company known for, among other things, its social media platform TikTok. Complainant launched the CapCut app in April 2020. CapCut is a video editing app and, according to Complainant, “reach[ed] 140 million [downloads] globally in the first half of 2021, making it the world’s ninth-most downloaded mobile app”. Complainant has a website at “www.capcut.com” which, according to Complainant, had more than 41,100 visitors in the 3-month period between April and June, 2022. Complainant notes that the disputed domain name consists of Complainant’s CAPCUT trademark, combined with the preposition “for” and the abbreviation “PC” (with PC being a widely used abbreviation for “personal computer”), combined with the “.co” Top-Level Domain (“TLD”). Complainant asserts that the TLD should be disregarded when assessing confusing similarity, and that the addition of “for PC” to Complainant’s trademark does not prevent a finding of confusing similar and arguably contributes to confusing similarity, especially under the circumstances of this case where Respondent is offering software referred to as “CapCut for PC”. Complainant also asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor has Complainant given Respondent permission to use Complainant’s trademarks. Complainant also asserts that Respondent is not commonly known by the disputed domain name, and observes that the named registrant for the disputed domain name does not relate to CAPCUT or CAPCUTFORPC. Complainant also asserts that the fact that Respondent’s identity was protected by a privacy service further indicates Respondent lacks a legitimate interest in the disputed domain name. Complainant also asserts that “[b]y the time Respondent registered the Disputed Domain Name, the Complainant already had a reputation in its trademark which is 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”. Complainant also asserts that the contents of Respondent’s website, including the use of “CapCut for PC” and Complainant’s logo, and the absence of an effective disclaimer, further demonstrate Respondent’s intention “to take advantage of the fame and goodwill that Complainant has built in its brand”. Complainant asserts that, given the wide recognition of its CAPCUT trademark and Respondent’s use of “CAPCUT” along with “for PC”, Respondent must have known of Complainant’s trademark at the time Respondent registered the disputed domain name, and that Respondent’s registration and use of the disputed domain name therefore “strongly implies bad faith”. Complainant also asserts that the use of its trademark to attract consumers to Respondent’s unauthorized app, and the resulting consumer confusion as to source, sponsorship, affiliation, or endorsement of the disputed domain name and the associated increase in traffic for the disputed domain name – all for Respondent’s commercial gain – constitutes bad faith. Complainant argues that the use of a privacy service, and the fact that MX records exist for the disputed domain name (and thus could be used for misleading emails), also give rise to bad faith. Finally, Complainant alleges that Respondent has engaged in a pattern of bad faith by registering “several other domain names that misappropriate the trademarks of well-known brands and businesses”, such as domain names incorporating, among other things, “Game of Thrones”, “Legend Games”, and “Little Caesars”.

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Pursuant to paragraph 15(a) of the Rules, a panel in UDRP proceedings "shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Under paragraph 4(a) of the Policy, Complainant must prove the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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

Under paragraph 4(a)(i) of the Policy, Complainant must show that the disputed domain name is "identical or confusingly similar to a trademark or service mark in which the complainant has rights".

Complainant's trademark registrations annexed to the Complaint demonstrate that Complainant has rights in the CAPCUT mark.

The disputed domain name consists of the CAPCUT mark, followed by "for PC", with the ".co" TLD at the end. Generally, "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 confusingly similar to that mark for purposes of UDRP standing". WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. "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." [WIPO Overview 3.0](#), section 1.8; see also *American Automobile Association, Inc. v. Nevis Domains LLC*, WIPO Case No. [D2006-0489](#) ("[t]he use of the descriptive term 'automotive' does not serve to eliminate the confusing similarity"). Nor does the addition of the ".co" TLD prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.11.1 ("The applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.").

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a mark in which Complainant has rights, and that paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

Complainant also must demonstrate that Respondent has "no rights or legitimate interests in respect of the domain name", per paragraph 4(a)(ii) of the Policy.

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [Respondent's] rights or legitimate interests to the [disputed] domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [Respondent] of the dispute, [Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

(ii) [Respondent] (as an individual, business, or other organization) ha[s] been commonly known by the [disputed] domain name, even if [Respondent has] acquired no trademark or service mark rights; or

(iii) [Respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue." Policy, paragraph 4(c).

There is no evidence that Respondent was making a *bona fide* use of the disputed domain name before receiving notice of this dispute, or that Respondent has been commonly known by the disputed domain name, or that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. Rather, the disputed domain name carries a risk of implied affiliation with Complainant and is being used to offer video editing software without authorization from Complainant, the website at the disputed domain name uses Complainant's logo without authorization, Respondent registered the disputed domain name in the name of Sanjay Khan and not in the name of anything related to CapCut, and Respondent is diverting consumers to a website that likely confuses them as to whether it is associated with Complainant.

These allegations make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, which Respondent has not rebutted. See, e.g., [WIPO Overview 3.0](#), section 2.5.1; *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#) ("In the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed."); *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#) ("It is clear that no license or authorization of any kind has been provided by Complainant to Respondents to use any of its trademarks or to apply for or use any domain name incorporating those marks. [...] Thus, it is clear that no *bona fide* or legitimate use of the domain names could be claimed by Respondents."); *Beachbody, LLC v. Registration Private, Domains By Proxy, LLC / Trang Pham Thi*, WIPO Case No. [D2019-2123](#) (where Complainant asserted, and Respondent did not rebut, that "Respondent's website significantly copied the Complainant's copyright images and text from its official websites without consent or authorization", the Panel found that, "given the nature of the website to which the Domain Name once resolved i.e. one that at best creates a misleading impression that it is in some way associated with the Complainant and, at worst, is designed to cheat consumers out of their money by purportedly selling legitimate SHAKEOLOGY products but not delivering them, it would be difficult to conclude, without a proper explanation from the Respondent, that there is anything legitimate or non-commercial or fair about the Respondent's use").

Indeed, there are a number of disputes with very similar facts involving Complainant's CAPCUT trademark where respondents were found to have no rights or legitimate interests. See, e.g., *Bytedance Ltd. v. Sharon Rhodes, Scott Ties*, WIPO Case No. [D2022-3779](#) (<capcuteditor.com>); *Bytedance Ltd. v. Polyakov Andrey*, WIPO Case No. [D2022-3693](#) (<capcutapp.net>); *Bytedance Ltd. v. Muhammad Haroon*, WIPO Case No. [D2022-2946](#) (<capcutapk.com>); *Bytedance Ltd. v. Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf / XYZ Pvt Ltd, Jesse Jesse*, WIPO Case No. [D2022-2589](#) (<capcutforpc.com>); *Bytedance Ltd. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / md hridoy*, WIPO Case No. [D2022-2583](#) (<capcutpro.com>).

Accordingly, the record supports a conclusion that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that paragraph 4(a)(ii) of the Policy is satisfied.

### **C. Registered and Used in Bad Faith**

Complainant also bears the burden of establishing that the "domain name has been registered and is being used in bad faith". Policy, paragraph 4(a)(iii). As set forth in the Policy, paragraph 4(b):

“[T]he following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to [C]omplainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [Respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [Respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [Respondent has] engaged in a pattern of such conduct; or

(iii) [Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent’s] website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [Respondent’s] website or location or of a product or service on [Respondent’s] website or location.”

“Given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to Complainant’s trademark would also satisfy Complainant’s burden.”

[WIPO Overview 3.0](#), section 3.1.

Complainant asserts that its CAPCUT trademark is well-known and that Respondent’s use of “CAPCUT” along with “for PC” demonstrates that Respondent was aware of Complainant’s trademark at the time Respondent registered the disputed domain name. Indeed, Respondent’s website states “many big-name developers, such as ByteDance, which released Cap Cut editor, have already built video editing software”. By virtue of having typed or pasted this information into its website, Respondent necessarily would have been aware of Complainant’s mark. Complainant also asserts that Respondent is using Complainant’s trademark to attract consumers to Respondent’s unauthorized app, for commercial gain, and that Respondent has engaged in a pattern of bad faith by registering “several other domain names that misappropriate the trademarks of well-known brands and businesses”. Respondent has not rebutted any of these allegations.

The registration and unauthorized commercial use of a domain name that is known to be confusingly similar to another party’s trademark is evidence of bad faith under paragraph 4(b)(iv) of the Policy. *Bytedance Ltd. v. Sharon Rhodes, Scott Ties*, WIPO Case No. [D2022-3779](#) (“by registering a domain name that fully incorporates the CAPCUT trademark, by displaying the Complainant’s CAPCUT trademark and logo in a brand-like manner that allows users to download the unauthorized CapCut app, the Respondent causes consumer confusion and profits from such confusion which indicates bad faith use of the disputed domain name”); *Bytedance Ltd. v. Polyakov Andrey*, WIPO Case No. [D2022-3693](#) (“There can be little doubt that the Respondent was well aware of the Complainant’s trademark when he registered the disputed domain name. ... In addition, the Respondent’s website reproduces a faithful copy of the Complainant’s CAPCUT logo trademark. ... The Complaint also includes evidence that the Respondent currently holds at least five other domain names which appear to trade on third party trademarks. ... As the Complainant contends, therefore, the Panel finds that the Respondent has engaged in a pattern of registering abusive domain names. Further, it also appears that the Respondent registered the disputed domain name to attract Internet users to his website by using a domain name confusingly similar to the Complainant’s trademark and so misrepresenting that his website and his application is the Complainant’s application or in some way associated with it. ... In these circumstances, therefore, the Panel finds the Respondent has registered and used it in bad faith.”); *Bytedance Ltd. v. Muhammad Haroon*, WIPO Case No. [D2022-2946](#)

(“The Complainant’s registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name resolves to a website reproducing the Complainant’s trademark and logo. Given the distinctiveness of the Complainant’s trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademarks, and to target those trademarks. As regards the use, the disputed domain name resolved to a website where the Complainant’s trademark and logo were displayed, while offering downloadable Cap[C]ut mobile application files. The Panel is of the view that in light of the Respondent’s use of the disputed domain name, paragraph 4(b)(iv) of the Policy applies”); *Bytedance Ltd. v. Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf / XYZ Pvt Ltd, Jesse Jesse*, WIPO Case No. [D2022-2589](#) (using CapCutforPC in a domain name, using website content such as Complainant’s logo, lack of relationship with Complainant, and failure to respond to the Complaint led to a finding of bad faith); *Bytedance Ltd. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / md hriday*, WIPO Case No. [D2022-2583](#) (“the Panel is convinced that the Respondent intentionally registered the disputed domain name in order to generate traffic to its own website. The prominent use of the CAPCUT trademark, the content and overall design of the website associated to the disputed domain name, and the nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and CAPCUT trademark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.”).

The other factors cited by Complainant also are evidence of bad faith. [WIPO Overview 3.0](#), section 3.1.1 (“If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent’s likely knowledge of the complainant’s rights, (ii) the distinctiveness of the complainant’s mark, (iii) a pattern of abusive registrations by the respondent, (iv) website content targeting the complainant’s trademark, e.g., through links to the complainant’s competitors ... (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, ...”).

Accordingly, the Panel finds that the record supports a conclusion that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(a)(iii) of the Policy is satisfied.

## 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.co>, be transferred to Complainant.

/Bradley A. Slutsky/

**Bradley A. Slutsky**

Sole Panelist

Date: December 26, 2022