

ADMINISTRATIVE PANEL DECISION

Bytedance Ltd. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) /
md hridoy

Case No. D2022-2583

1. The Parties

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

The Respondent is Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / md hridoy, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <capcutpro.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (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 19, 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 24, 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. Although no formal response was filed, emails were received from the Respondent on August 4, 5, 6, and 28, 2022. On August 24, 2022, the Center sent out the Commencement of Panel Appointment Process notice.

The Center appointed Kaya Köklü as the sole panelist in this matter on September 5, 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, which operates various popular online content platforms. In April 2020, the Complainant launched a smart phone application named “CapCut”, which is a popular video editor (Annex 5 to the Complaint). Globally, this application has gained a high popularity and was downloaded about 140 million times alone in the first half of 2021 (Annex 7 to the Complaint).

The Complainant is the owner of the trademark CAPCUT, which is registered and used in various jurisdictions. Among others, the Complainant is the owner of the Indian Trademark Registration No. 4526907, registered on June 10, 2020, and Singapore Trademark Registration No. 40202012059Y (registered on June 11, 2020) for CAPCUT, covering protection for various products and services in classes 9, 41, and 42 (Annex 1 to the Complaint).

The Complainant operates its primary website for its video editing application at “www.capcut.com”.

The disputed domain name was registered on December 14, 2020.

The Respondent is located in Bangladesh.

The screenshots, as provided by the Complainant, show that the disputed domain name resolves to a website in the English language, offering an allegedly video editing application for free download (Annex 3 to the Complaint). On the website, the CAPCUT wordmark of the Complainant is prominently used in combination with the word “pro” without any visible disclaimer describing the (lack of) relationship between the Parties.

5. Parties’ Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its CAPCUT trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In this regard, it is particularly argued that the Complainant has no commercial relationship with the Respondent and that the Respondent has never been granted with a license or any other authorization to use the Complainant’s CAPCUT trademark.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant believes that the Respondent must have been well aware of the Complainant’s CAPCUT trademark when registering the disputed domain name, particularly as the Respondent uses the Complainant’s trademark on the website linked to the disputed domain name without an authorization and any disclosure of the lack of relationship between the Complainant and the Respondent.

B. Respondent

The Respondent sent various informal email communications to the Center on August 4, 5, 6, and 28, 2022. In its email communications to the Center, the Respondent stated that it “does not in any way infringe upon company or individual rights” by arguing that the disputed domain name is different to the Complainant’s trademark (“Capcut is a trademark but if you notice that my full domain name is Capcutpro and it is not trademarked in any way”).

However, the Respondent offered to transfer of the disputed domain name to the Complainant by stating that “if you give me \$ 2,00,000 I can give you the domain”.

In addition to these informal email communications to the Center, the Respondent did not file a formal response.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

The Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in CAPCUT (Annex 1 to the Complaint).

The Panel further finds that the disputed domain name is confusingly similar to the Complainant’s registered CAPCUT trademark, as it fully incorporates the Complainant’s trademark.

As stated at 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 would generally not prevent a finding of confusing similarity. The mere addition of the term “pro” (which is a common abbreviation for “professional”) does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant’s CAPCUT trademark.

The Panel particularly notes that, different to the Respondent’s argumentation in its email communications to the Center, the addition of the term “pro” does not prevent the Complainant’s trademark CAPCUT from being recognizable in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license to use the Complainant's CAPCUT trademark in a confusingly similar way within the disputed domain name.

In return, the Respondent has failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name. Rather, the Panel is convinced that the Respondent deliberately has chosen the disputed domain name to cause confusion with the Complainant's video editing application and its CAPCUT trademark. Particularly, the look and feel of the website linked to the disputed domain name creates the false impression that it may be operated by the Complainant itself to promote a "pro" version of its popular video editing application.

In addition, the Panel notes that the nature of the disputed domain name, which fully incorporates the Complainant's CAPCUT trademark in its entirety, carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

In light of the above, the Panel also does not see any indication for assessing a *bona fide* offering of goods or services by the Respondent.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's CAPCUT trademark in mind when registering the disputed domain name. It even appears that the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant and its video editing application.

After having reviewed the Complainant's screenshots of the website linked to the disputed domain name (Annex 3 to the Complaint), 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.

Also, the Panel finds the Respondent's offer to sell the disputed domain name to the Complainant seeking a payment of "\$ 2,00,000", which likely exceeds the Respondent's out-of-pocket costs directly related to the disputed domain name, to be additional evidence of the Respondent's bad faith.

Taking all facts of the case into consideration, the Panel finds that this is a typical cybersquatting case, which the UDRP was designed to stop.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant has also satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <capcutpro.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: September 19, 2022