

ADMINISTRATIVE PANEL DECISION

Bytedance Ltd. v. Sharon Rhodes, Scott Ties
Case No. D2022-3779

1. The Parties

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

The Respondent is Sharon Rhodes, Scott Ties, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <capcuteditor.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 10, 2022. On October 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 11, 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 13, 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 October 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 14, 2022.

The Center appointed Beatrice Onica Jarka as the sole panelist in this matter on November 17, 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 and its subsidiary are the owners of trademark registrations across various jurisdictions.

Among different trademark registrations, the Complainant is the holder of the following trademarks.

- CAPCUT registered with United States Patent and Trademark Office (“USPTO”) under no 6847261 in September 13, 2022, for class 9
- CAPCUT registered with Mexican Institute of Industrial Property (“IMPI”) under 2145112 in September, 23, 2020 for class 9
- CAPCUT registered with European Union Intellectual Property Office (“EUIPO”) under no. 018255581 in May 15, 2021 for classes 9, 41, 42, 45
- CAPCUT registered with United Kingdom Intellectual Property Office (“UKIPO”) under no. UK00003501065 in March 5, 2021 for classes 9, 41, 42
- CAPCUT registered with Intellectual Property India (“IPIN”) under no. 4526907 in June 10, 2020 for classes 9, 41, 42
- CAPCUT registered with Intellectual Property of Singapore (“IPOS”) under no. 40202012059Y in November 26, 2020 for classes 9, 41, 42

The Complainant is an Internet technology company that enables users to discover a world of creative content platforms powered by leading technology. It owns a series of products that enable people to connect with consuming and creating content, including TikTok, Helo and Resso.

With TikTok’s rise in worldwide popularity since its launching in May 2017, the Complainant globally launched in April 2020 another application (“app”) called CapCut. CapCut is a video editing app that allows users to not only add a trove of stickers, filters and effects, it also has a simple-to-use green screen function, a zooming feature and many more - which make the app like an accessible final cut on the go.

Over 100 million users have downloaded CapCut app. The app is ranked as “#6 in Photo & Video” in the Apple Store.

The Complainant also maintains a primary website for CapCut at “www.capcut.com”.

The Respondent who is an individual called Sharon Rhodes registered the disputed domain name on August 15, 2021.

The disputed domain name resolves to a website displaying Complainant’s trademark and logo, and which purportedly allows users to download the unauthorized CapCut app.

5. Parties’ Contentions

A. Complainant

By the Complaint, the Complainant contends that:

- The disputed domain name is identical or confusingly similar to the Complainant’s trademark CAPCUT as it incorporates entirely the Complainant’s trademark, while adding the generic, descriptive term “editor”, a term which is closely linked and associated with the Complainant’s trademark and CapCut

product which is a video editing app.

- The Respondent's use of the disputed domain name contributes to the confusion, as the disputed domain name resolves to a website that features the Complainant's CapCut logo and/or images from the Complainant's official website, while offering downloadable CapCut mobile application files.
- Such use suggests that the Respondent intended the disputed domain name to be confusingly similar to the Complainant's trademark as a means of furthering consumer confusion.
- The granting of registrations by the USPTO, IMPI, EUIPO, UKIPO, IPIN and IPOS to the Complainant for the CAPCUT trademark is a *prima facie* evidence of the validity of the term "capcut" as a trademark and of the Complainant's exclusive right to use the CAPCUT trademark in commerce on or in connection with its goods and/or services.
- The Respondent is not sponsored by or affiliated with the Complainant in any way. Nor has the Complainant given to the Respondent license, authorization or permission to use the Complainant's trademarks in any manner, including in domain names.
- The Respondent is not commonly known by the disputed domain name, which evidences a lack of rights or legitimate interests.
- Center's Notice of Registrant Information identified the underlying Registrant as "Sharon Rhodes, Scott Ties", which does not resemble the disputed domain name in any manner.
- Furthermore, at the time of filing the Complaint, the Respondent was using a privacy service, which past UDRP panels have also found to equate to a lack of legitimate interest.
- The Respondent registered the disputed domain name on August 15, 2021, which is effectively after the Complainant's application dates for its CAPCUT trademark with USPTO, IMPI, EUIPO, UKIPO, IPIN and IPOS and after the Complainant's first use in commerce of its CAPCUT trademark in April 2020 and after the Complainant's registration of its <capcut.net> domain name on June 3, 2020.
- 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 Respondent's current use of the Complainant's trademark and logo in the website found at the disputed domain name is an indication of lack of legitimate rights and interests.
- By naming the website as "CAPCUT Editor", 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 brand.
- The Respondent's inclusion of a disclaimer at the bottom of the website is not sufficient to displace the likelihood of confusion caused by the identity of the disputed domain name and the contents of the website.
- The disputed domain name was registered and is being used in bad faith, as the Complainant and its CAPCUT trademark are known internationally, with trademark registrations across numerous countries including in the United States where the Respondent appears to be located.
- The Complainant has marketed and sold its goods and services using this trademark since April 2020, which predates the Respondent's registration of the disputed domain name.
- By registering a domain name that fully incorporates the Complainant's CAPCUT trademark along with the generic, descriptive term "editor", the Respondent has created a domain name that is confusingly

similar to the Complainant's trademark, as well as its <capcut.com> domain and has demonstrated a knowledge of and familiarity with Complainant's brand and business. Further, considering the disputed domain name resolves to a website displaying the Complainant's logo and offers to download 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 brands at the time the disputed domain name was registered.

- The Respondent creates a likelihood of confusion with the Complainant by registering a domain name that fully incorporates the CAPCUT trademark with the Respondent, attempting to profit from such confusion by displaying the Complainant's CAPCUT trademark and logo in a brand-like manner and purporting to be a fan website that allows users to download the unauthorized CapCut app, and attempting to cause consumer confusion in a nefarious attempt to profit from such confusion.
- The Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity.

B. Respondent

Although properly summoned, the Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

First, under this element, considering the numerous trademark registration, this Panel finds that the Complainant has established trademark rights in the trademark CAPCUT.

Second, under this element, the Panel notes that it has been decided by previous UDRP panels that incorporating a trademark in its entirety can be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark, according to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 1.7.

The disputed domain name incorporates the Complainant's CAPCUT trademark as a whole and adds the term "editor", which is a term closely linked and associated with the Complainant's trademark and CapCut product, a video editing app.

As stated at [WIPO Overview 3.0](#), section 1.8., 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.

Consequently, this Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, in which the Complainant has rights, and therefore, the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

On the second element of the Policy, based on the UDRP practice, the Complainant has to show that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes a *prima facie* showing, the burden of production of evidence shifts to the Respondent, with the overall burden of proof always remaining on the Complainant, as per section 2.1 of the [WIPO Overview 3.0](#).

Considering the Complainant's contentions, it is the opinion of this Panel that the Complainant has made a strong *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and this has not been further rebutted by the Respondent.

As alleged by the Complainant, the Respondent appears 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 trademarks in any manner, including in domain names. Such allegations had not been rebutted by the Respondent who failed to provide a Response in these proceedings.

In addition as it results from the Center's Notice of Registrant Information which provides that the underlying Registrant of the disputed domain name as "Sharon Rhodes, Scott Ties", the Respondent appears to not be commonly known by the disputed domain name, which evidences a lack of rights or legitimate interests.

This Panel notes further circumstances inferring a lack of rights and legitimate interest in favour of the Respondent as to the disputed domain name:

- at the time of filing the complaint, the Respondent was using a privacy service;
- the Respondent registered the disputed domain name on August 15, 2021, which is effectively after the Complainant's application dates for its CAPCUT trademark with USPTO, IMPI, EUIPO, UKIPO, IPIN and IPOS and after the Complainant's first use in commerce of its CAPCUT trademark in April 2020 and after the Complainant's registration of its <capcut.net> domain name on June 3, 2020;
- 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 (see [WIPO Overview 3.0](#), section 2.5.1);
- the Respondent's current use of the Complainant's trademark and logo in the website to which the disputed domain name resolves which creates a look and feel of the website linked to the disputed domain name with the false impression that it may be operated by the Complainant itself to promote a "pro" version of its popular video editing application;
- the Respondent's inclusion of a disclaimer at the very bottom of the website is not sufficient to displace the likelihood of confusion caused by the identity of the disputed domain name and the contents of the website.

Not being able to identify any grounds for rights or legitimate interests by the Respondent of the disputed domain name, it is the opinion of this Panel that the Complainant has demonstrated *prima facie*, without the same being rebutted, that the Respondent lacks any rights or legitimate interests in the disputed domain names and consequently, the second element of the paragraph 4(a) of the Policy is therefore established.

C. Registered and Used in Bad Faith

In relation to the third element, and based on the evidence brought by the Complainant in regards of the facts that the disputed domain name fully incorporates the Complainant's trademark and resolves to an website which displays the Complainant's CAPCUT trademark and logo in a brand-like manner, and at the very bottom of the website includes a disclaimer purporting to be a fan website, that allows users to download the unauthorized CapCut app, this Panel notes that this evidence indicates that the Respondent knew of the Complainant's CAPCUT trademark and related services and registered the disputed domain name in bad faith.

Further, this Panel agrees with the Complainant's allegations that 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. The Panel finds that the mere existence of a disclaimer cannot cure bad faith in the circumstances of this case. (See [WIPO Overview 3.0](#), section 3.7: "In such cases, panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused".)

Considering also the circumstance that the Respondent, at the time of initial filing of the Complaint, allowed the use of a privacy service to hide its identity, which past UDRP panels have held serves as further

evidence of bad faith registration and use (see [WIPO Overview 3.0](#) at section 3.6), this Panel finally finds that the disputed domain name has been registered and is being used in bad faith and consequently, the third element of paragraph 4(a) of the Policy is therefore 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 <capcuteditor.com> be transferred to the Complainant.

/De. Beatrice Onica Jarka/

De. Beatrice Onica Jarka

Sole Panelist

Date: November 25, 2022