

ADMINISTRATIVE PANEL DECISION

Bytedance Ltd. v. Edwin Caster

Case No. D2022-4587

1. The Parties

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

The Respondent is Edwin Caster, Mexico.

2. The Domain Name and Registrar

The disputed domain name <tiktokplus18.app> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 1, 2022. On December 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 1, 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 (Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 2, 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 December 2, 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 December 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 29, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on January 16, 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 Internet technology company that operates a series of content platforms, including the “TikTok” video sharing social networking platform.

The Complainant owns various trademark registrations worldwide for its TIK TOK trademark (the “TIK TOK Mark”) and in particular:

- Mexican trademark registration 1909943 for TIK TOK on August 7, 2018, international class 38.
- Mexican trademark registration 2096975 for TIK TOK on July 13, 2020, international class 9.
- United States trademark registration 5653614 for TIK TOK registered on January 15, 2019, international classes 9, 38, 41 and 42.
- United States trademark registration 5974902 for TIK TOK registered on February 4, 2020, international classes 9, 38, 41 and 42.
- United States trademark registration 5981212 for TIK TOK registered on February 11, 2020, international classes 9, 38, 41 and 42.
- United States trademark registration 5981213 for TIK TOK registered on February 11, 2020, international classes 9, 38, 41 and 42 and,
- Hong Kong trademark registration 304569373 for TIK TOK, registered on June 20, 2018, international classes 9, 38, 41 and 42.

The disputed domain name was registered on September 9, 2022. It resolves to websites that feature the TIK TOK logo mark and uses the TIK TOK trademark.

5. Parties’ Contentions

A. Complainant

The Complainant’s services are available in more than 150 different markets, in 75 languages, and has become the leading destination for short-form mobile video. TikTok has global offices including Los Angeles, New York, London, Paris, Berlin, Dubai, Mumbai, Singapore, Jakarta, Seoul, and Tokyo.

More than 500 million users have downloaded the Complainant’s TikTok application in Google Play and the Complainant’s primary “TikTok” website had a total of 728.47 million visitors between July and December 2020 as provided in the Complaint.

The disputed domain name can be considered as capturing, in its entirety, the Complainant’s TIK TOK/TIKTOK trademark and simply adding the generic term “plus 18” to the end of the trademark. The mere addition of this generic term to the Complainant’s trademark does not negate the confusing similarity between the disputed domain name and the Complainant’s trademark.

The Respondent is using the disputed domain name to resolve to a website where it uses the Complainant’s logo to offer for download an app called “TikTok Plus”. This 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 Complainant argues that the Respondent does not have rights or interests to the disputed domain name, and that it was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (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 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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademarks TIK TOK on the basis of its multiple trademark registrations in Mexico, the U.S. and Hong Kong. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see [WIPO Overview 3.0](#), section 1.2.1). In this case, the Complainant's trademarks registrations include trademarks registered in Mexico, the place of origin of the Respondent.

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#). The Panel finds that the disputed domain names are confusingly similar to the Complainant's TIK TOK marks. The Respondent's incorporation of the Complainant's mark in full in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's marks. Mere fact of the addition as a suffix of the word "plus" and the number "18", to the Complainant's trademark TIK TOK do not prevent a finding of confusing similarity with the Complainant's trademarks.

Furthermore, the addition of the generic Top-Level Domain "(gTLD)" ".app" is not sufficient to prevent a finding of confusing similarity either.

The Panel is satisfied that the disputed domain name is confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth.

Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name.

The Complainant claims that the Respondent identified as Edwin Caster has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's TIK TOK trademarks in a domain name or in any other manner.

Furthermore, the disputed domain name directs to a commercial website that allegedly offers the Complainant's services including the downloading of an app without any disclaimer as to the relation with or authorization of the Complainant, exacerbating the user confusion as to the website's affiliation to the Complainant. Such use for deliberately attracting Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant supports a finding that the Respondent lacks rights to or legitimate interests in the disputed domain name.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the 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

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;

(ii) the 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 the respondent has engaged in a pattern of such conduct;

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

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the registration and/or use of the trademark prior to registering the disputed domain name. In this case, the Complainant submits that at the date of registration of the disputed domain name the Respondent would have had constructive, if not actual knowledge of the Complainant's mark TIK TOK. The Panel's finding is reinforced given the construction of the disputed domain name, which combines the TIK TOK mark with the term "plus" and the number "18", both descriptive of the Complainant's services, as well as the fact that the disputed domain name directed to a website that allegedly offers the Complainant's trademarked services.

The Panel is satisfied that by directing the disputed domain name to a commercial website allegedly offering the Complainant's services the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website (see section 3.1.3 of the [WIPO Overview 3.0](#)). Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

The Complainant points out that the Respondent is hiding its identity behind a Whois privacy wall. It is well-established that this, too, can be further *prima facie* evidence of bad faith in certain circumstances.

Having considered the Complainant's submissions and in the absence of a Response, the Panel accepts the Complainant's submission that on the evidence there is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name.

Consequently, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within 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, <tiktokplus18.app> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: January 30, 2023