

ADMINISTRATIVE PANEL DECISION

Lemon Inc. v. David Phuong
Case No. D2023-1753

1. The Parties

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

The Respondent is David Phuong, Viet Nam.

2. The Domain Names and Registrars

The disputed domain names <capcut-pc.info>, <capcut-pro.info>, <capcut-pro-pc.com>, and <capcutpropc.com> are registered with NameSilo LLC (the “Registrar”).

The disputed domain names <video-capcut-pc.com> and <capcut-pc.store> are registered with Dreamscape Networks International Pte Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2023. On April 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 20, 2023, and on April 24, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 May 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 5, 2023.

The Center appointed Emre Kerim Yardimci as the sole panelist in this matter on June 11, 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, Lemon Inc, is affiliated with ByteDance Ltd, which 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,Resso, and the mobile application CapCut.

The CapCut app saw downloads to reach 140 million globally in the first half of 2021, making it the world's ninth-most downloaded mobile app, according to app tracking firm Sensor Tower. At Google Play, more than 100 million users have downloaded CapCut app. The app is ranked as "#6 in Photo & Video" in the Apple Store. The Complainant operates its primary website for its video editing application at "www.capcut.com".

The Complainant is the holder of the following trademarks:

- CAPCUT registered with United States Patent and Trademark Office ("USPTO") under no. 6847261 on September 13, 2022, for class 9;
- CAPCUT registered with European Union Intellectual Property Office ("EUIPO") under no. 018255581 on May 15, 2021, for classes 9, 41, 42, 45;
- CAPCUT registered with United Kingdom Intellectual Property Office ("UKIPO") under no. UK00003501065 on March 5, 2021, for classes 9, 41, 42.

The disputed domain names <capcut-pro-pc.com> and <capcutpropc.com> were registered by the Respondent on February 23, 2023. The disputed domain names <capcut-pc.info>, <capcut-pro.info>, <video-capcut-pc.com>, and <capcut-pc.store> were registered on February 20, 2023.

The disputed domain names do all resolve to an inactive error page.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain names are confusingly similar to the Complainant's trademark CAPCUT and that the addition of the descriptive terms or abbreviations "pc", "video", and "pro" do not prevent the association between the disputed domain names and the Complainant's trademark.

The Complainant considers that the Respondent has no rights or legitimate interests in respect of the disputed domain names, mainly because the Complainant has neither licensed nor otherwise authorized the Respondent to use its marks or to apply for or use any domain name incorporating the trademark CAPCUT.

Lastly, in addressing the question of registration and use of the disputed domain name in bad faith, the Complainant observes that the Respondent is well aware of the Complainant's trademark considering their trademark is so widely well-known that it is inconceivable that the Respondent ignored the Complainant or its earlier rights.

The Complainant, therefore, claims that the Respondent is using the disputed domain names with the aim to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark and for the purpose of disrupting the Complainant's business and targeting the Complainant's

trademark and its clients. Doing that, the Respondent has used privacy shield in order to hide its identity, which together with other elements, reinforces the bad faith.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant is required to prove the presence of each of the following three elements to obtain the transfer of the disputed domain names:

- (i) the disputed domain names are 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 names have been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain names are confusingly similar for the purpose of the Policy to the Complainant's trademark CAPCUT.

The disputed domain names wholly incorporate the Complainant's trademark and hyphens and terms "pro", "video", or "pc" do not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

As regards the generic Top-Level Domain, it is typically disregarded under the confusing similarity test.

For the reasons mentioned above, the Panel finds that the disputed domain names are confusingly similar to the Complainant's CAPCUT trademark. The Complainant has thus fulfilled paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The onus is upon the Complainant to make out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and it is then for the Respondent to rebut this case.

The Panel accepts the Complainant's submissions that the Respondent does not appear to have been known by the disputed domain names, has not made demonstrable preparations to use the disputed domain names, and the Respondent is not making a legitimate noncommercial use of the disputed domain names.

The Respondent has not filed a Response. It has no consent from the Complainant to register any domain names incorporating the Complainant's trademark, it has not used the disputed domain names for a *bona fide* offering of goods or services, and the Respondent is not commonly known by the disputed domain names, nor is it making noncommercial fair use of the disputed domain names.

The current passive holding of the disputed domain name does not give rise to any rights or legitimate interests.

In the Panel's view, the Complainant has made out their *prima facie* case under this element of the Policy and the Respondent, who is in default, has failed to rebut this case.

In the circumstances of this case, and in view of the Panel's discussion below, the Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel accepts the Complainant's assertions that the trademark CAPCUT is a well-known trademark.

The incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith (*Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#); *General Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. [D2001-0087](#); *Microsoft Corporation v. Montrose Corporation*, WIPO Case No. [D2000-1568](#)).

The Respondent is currently not putting the disputed domain names to any material use. Thus, the Respondent is holding the disputed domain names passively. It has long been generally held in UDRP decisions that the passive holding of a domain name that incorporates a well-known trademark, without any actual or contemplated good faith use for an Internet purpose, does not necessarily circumvent a finding that the domain name is in use within the requirements of paragraph 4(a)(iii) of the Policy (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Given the Respondent's lack of participation in this proceeding, the previous use of the disputed domain names consisting on websites that displayed the Complainant's trademarks and were being used to offer a "CAPCUT" application, and the lack of any credible good-faith use to which the confusingly similar disputed domain names could be put, the Panel finds that the requirement of registration and use in bad faith is satisfied, according to the Policy, paragraph 4(a)(iii).

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 names, <capcut-pc.info>, <capcut-pc.store>, <capcut-pro.info>, <capcut-pro-pc.com>, <capcutpropc.com>, and <video-capcut-pc.com>, be transferred to the Complainant.

/Emre Kerim Yardimci/

Emre Kerim Yardimci

Sole Panelist

Date: July 10, 2023