

ADMINISTRATIVE PANEL DECISION

TikTok Ltd. v. Ryan Kavanaugh
Case No. D2023-2017

1. The Parties

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

The Respondent is Ryan Kavanaugh, United States of America (“United States”), represented by Novian & Novian LLP, United States of America.

2. The Domain Name and Registrar

The disputed domain name <transfertiktok.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 9, 2023, 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 May 9, 2023.

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 May 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2023. The Response was filed with the Center on May 30, 2023. On June 7, 2023, both parties filed supplemental filings.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on June 8, 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 following facts are undisputed and/or have insufficiently been rebutted.

The Complainant¹ is an Internet technology company well-known for globally operating creative content platforms. Its platform TikTok was launched in May 2017 and became the most downloaded application in the United States in October 2018. TikTok reached over a billion users worldwide in September 2021 and currently has over 1.5 billion users as of April 2023. The Complainant's services are available in more than 150 different markets, in 75 languages, and the Complainant has become the leading destination for short-form mobile video. In 2022, the Complainant's Tiktok-app was the No. 1 most downloaded application in the United States and globally, with 672 million 99 million downloads in the United States and 672 million downloads globally.

The Complainant also has a large Internet presence through its primary website "tiktok.com". According to the third-party web analytics website "SimilarWeb.com", "tiktok.com" had a total of 2.0 billion visitors in March 2023 alone, making it the 15th most popular website globally and 21st most popular website in the United States.

The Complainant is the named owner of many registered trademarks including the word element TIKTOK worldwide, including, but not limited to, the United States trademark registration for the wordmark TIK TOK, with registration number 5653614, registered on January 15, 2019 (hereinafter referred to as the "Trademark").

The Respondent sits on the Board of Directors of an American software corporation named Triller, Inc., a company that is involved in a years-long battle with the Complainant.

The Domain Name was registered on December 31, 2022, and redirects Internet users to a competing website operated by Triller, Inc., namely "www.trillerinc.com" (the "Website"). The Website displays, amongst others, the "Perks of Transferring Your TikTok to Triller".

5. Parties' Contentions

A. Complainant

Insofar as relevant, the Complainant contends the following.

The Complainant has rights in the Trademark and the Domain Name is confusingly similar to the Trademark, as the Domain Name consists of the Trademark in its entirety and adds the term "transfer", which addition does not negate the confusing similarity between the Domain Name and the Trademark.

The Respondent has no rights or legitimate interests in the Domain Name. The Respondent is not commonly known by the Trademark and is not authorized or permitted to use the Trademark, nor is the Respondent associated with the Complainant. The Complainant has not given the Respondent permission to use the Complainant's trademarks in any manner, including in domain names.

¹ "The Complainant" in this decision also refers to the affiliated companies of the Complainant, where there is no useful reason to make a distinction between the Complainant and these affiliated companies.

As the Domain Name redirects Internet users to a website of a direct competitor, namely Triller, Inc., the Respondent is not using the Domain Name to provide a *bona fide* offering of goods or services as allowed under Policy Paragraph 4(c)(i), nor a legitimate noncommercial or fair use as allowed under Policy Paragraph 4(c)(iii).

The Respondent registered the Domain Name on December 31, 2022, which is significantly after the registration of the Trademark. By the time the Respondent registered the Domain Name, Complainant already had a worldwide reputation in the Trademark, which is fully adopted in the Domain Name. Therefore, it is evident that the Domain Name carries a high risk of implied affiliation with the Complainant, which cannot be considered a fair use of the Domain Name.

The Domain Name was registered and has been used in bad faith. The Trademark predates the registration date of the Domain Name. At the time of registration of the Domain Name, the Respondent knew, or should have known, the existence of the Trademark and therefore registered the Domain Name in bad faith.

Furthermore, 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 Domain Name was registered.

The Respondent’s use of the Domain Name constitutes a disruption of the Complainant’s business and qualifies as bad faith registration and use under Policy Paragraph 4(b)(iii) because the Domain Name is confusingly similar to the Trademarks and the Website to which the Domain Name redirects, offers the services of the Complainant’s competitor.

Moreover, where the Domain Name comprises the Trademark in its entirety and is used to redirect to a competitor of the Complainant, there is no plausible good-faith reason or logic for the Respondent to have registered the Domain Name.

B. Respondent

The Respondent submitted a comprehensive Response and contends – insofar as relevant – the following.

The Complainant has no rights in the Trademark. It follows from a Court statement in litigation between the Complainant and Triller, Inc. that the Complainant lied about its registration to obtain the marks in the United States. While an exclusive licensee could possibly have standing, the Complainant makes no argument that it is an exclusive licensee or that the trademark users are exclusive licensees. As no evidence of authorization to file a UDRP complaint has been produced, the Panel must find the Complainant has no rights in the mark.

The Complainant has failed to show that the mark is famous. By its own admission, the trademark TikTok is about six years old. The Policy has never before found that such a young mark was famous. It should not do so in this matter.

The Respondent has legitimate rights in the Domain because the Respondent registered the Domain a without intent for commercial gain or misleadingly divert Internet users or to tarnish the Complainant’s service mark.

Because the Website provides true comparisons between two marketplace participants, the use of the Trademark would constitute fair use. Therefore, the Respondent registered the Domain in objective good faith and used the website in objective good faith.

The Respondent requests for a finding of Reverse Domain Name Hijacking (RDNH).

6. Discussion and Findings

6.1 Preliminary Matter

Before entering into the merits of the case, the Panel addresses the matter of the unsolicited supplemental filings submitted by the Complainant and the Respondent.

No provision concerning supplemental filings is made in the Rules or Supplemental Rules, except for paragraphs 10 and 12 of the Rules, from which it follows that the panel, in its sole discretion, may determine the admissibility, relevance, materiality, and weight of the evidence, insofar as both parties are treated with equality and are given a fair opportunity to present their case.

Both the Complainant and the Respondent submitted unsolicited supplemental filings which is generally discouraged, as is described in section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). However, when the Complainant proves that the supplemental filing is of utmost importance to the case and it could not have provided the information within its prior complaint, panels may find it justified to accept an unsolicited supplemental filing. The Respondent will then be allowed to respond to the Complainant's unsolicited filing.

The Panel is not satisfied that such exceptional circumstances exist and, therefore, decides that the unsolicited supplemental filing by the Complainant will not be admitted. As a general principle, a complainant has "one bite at the apple". As the Panel does not admit this unsolicited supplemental filing by the Complainant, as set out above, the Respondent's unsolicited filing will also not be admitted.

6.2 Substantive Matter

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (i) the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in the Trademark and, if so, that the Domain Name is identical or confusingly similar to the Trademark. It should be noted that the first element is understood to serve as a standing requirement.

Despite of what the Respondent brought forward, the Complainant provided sufficient evidence proving its rights in the Trademark. According to the evidence provided by the Complainant, the Complainant is the last listed owner of the Trademark. This is also confirmed by a search by the Panel in the Trademark Electronic Search System (TESS) of the United States Patent and Trademark Office. Within the limitations of the proceedings under the Policy, the Panel assumes that the information provided in a national register is correct.

The Panel finds that the Domain Name is confusingly similar to the Trademark. The Trademark is included in its entirety in the Domain Name and the word element "transfer" does not prevent a finding of confusing similarity.

For all the foregoing reasons, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence and the Response, which has been received from the Respondent.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that “tiktok” or “transfertiktok” is the Respondent’s name or that the Respondent is commonly known as “tiktok” or “transfertiktok”. There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever asked, or has ever been permitted in any way by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating the Trademark. On the contrary, the Respondent is on the Board of Directors of a direct competitor of the Complainant in the industry of creative content platforms.

Furthermore, the use of the Domain Name cannot be considered as a *bona fide* offering of goods or services. As the Domain Name redirects Internet users to the Website, being a website of a direct competitor, namely Triller Inc., the Respondent is not using the Domain Name to provide a *bona fide* offering of goods or services as allowed under Policy Paragraph 4(c)(i), nor a legitimate noncommercial or fair use as allowed under Policy Paragraph 4(c)(iii). Numerous panels have confirmed that such use does not bestow legitimate rights or interests upon a respondent. See [WIPO Overview 3.0](#), section 2.5.3: “A respondent’s use of a complainant’s mark to redirect users (*e.g.*, to a competing site) would not support a claim to rights or legitimate interests.”

Moreover, panels have consistently held that selling competing services, coupled with the unauthorized use of a complainant’s trademarks in a confusingly similar domain name, does not qualify as a *bona fide* offering of goods or services under the Policy Paragraph 4(c)(iii).

In addition, the Panel finds that, in the circumstances of this case, the Domain Name, consisting of the Trademark plus the additional term “transfer”, cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Such impersonation or suggestion of sponsorship or endorsement by the Complainant is also not mitigated by accurate and prominent disclosure of the Registrant’s (lack of a) relationship with the Complainant, which is a requirement under the so-called Oki Data Test (referred to in [WIPO Overview 3.0](#), section 2.8), if that test would have applied here.

Accordingly, the Panel finds that the Respondent cannot be said to have rights to or legitimate interests in the Domain Name.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following.

In light of the evidence filed by the Complainant, the Panel finds that the Trademark and the Complainant's activities are well-known throughout the world. Certainly, also in light of the use the Respondent is making of the Domain Name, the Respondent has been aware of the existence of the Complainant's activities and rights at the time the Respondent registered the Domain Name.

The Panel finds that the Respondent, by using the Domain Name, has intentionally attempted to attract, for commercial gain, Internet users to a website of one of the Complainant's main competitors and of which the Respondent is a member of the board, or other online location, by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of his website or location or of a product or service on his website or location. This is a circumstance of registration and use in bad faith pursuant to Policy paragraph 4(b)(iv).

In light of the above circumstances, the Panel is satisfied that the third element of the Policy is met and that the Domain Name was registered and is being used in bad faith.

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 Domain Name, <transfertiktok.com> be transferred to the Complainant.

/Willem J.H. Leppink/
Willem J. H. Leppink
Sole Panelist
Date: June 22, 2023