

ADMINISTRATIVE PANEL DECISION

TikTok Ltd. v. Shoeb Alam, and Shaniyal Malik
Case No. D2023-2185

1. The Parties

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

The Respondents are Shoeb Alam (the “First Respondent”) and Shaniyal Malik (the “Second Respondent”), India.

2. The Domain Names and Registrars

The disputed domain names are <tiktok18apk.com>, and <tiktok18apk.net> and are 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 18, 2023. On May 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 19, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 23, 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 24, 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 June 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2023.

The First Respondent emailed the Center on June 10, 2023, requesting an extension for almost two months to respond to the Complaint. The Center granted the Respondent the automatic extension of the Response

due date to June 26, 2023. The First Respondent sent a second email communication on June 19, 2023, regarding the possibility of settlement discussions. The Second Respondent sent an email communication to the Center on June 19, 2023, informing that he wanted to cancel and delete the <tiktok18apk.net> disputed domain name. The Center sent an email communication to the Parties on the same day about possible settlement discussions, but the Complainant did not request a suspension of the proceeding. The Center accordingly informed the Parties on July 3, 2023, of its commencement of Panel appointment process.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on July 6, 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.

The Panel notes that a third domain name (<tiktok18apk.org>) was originally included in this proceeding but its previous registrant appears to have deleted this domain name during the proceeding. The Complainant requested a withdrawal of the domain name <tiktok18apk.org> from the proceeding on July 11, 2023, and further to the procedural instructions from the Panel informing the Parties on July 12, 2023, noting the absence of any further communication from the Parties regarding this domain name, the domain name <tiktok18apk.org> is withdrawn from the proceeding.

The First Respondent submitted further informal email communications the Center on July 6, July 12, and July 15, 2023.

Email communications were sent regarding the domain name <tiktok18apk.org> to the Center on July 7, and 8 2023.

4. Factual Background

The Complainant is an Internet technology company providing content platforms that enable users to connect while consuming and creating content as well as applications (“apps”) for its video-sharing social networking services, such as TikTok which allows users to create and upload short videos.

Tik Tok was launched in May 2017 and reached over a billion users in 2021, currently having over 1.5 billion users and being available in more than 150 different markets, in 75 languages.

The Complainant is the owner, amongst several others, of the following trademark registrations (Annex 1 to the Complaint):

- European Union Trademark Registration No. 017913208 for the mark TIK TOK, registered on October 20, 2018, covering products and services in classes 9, 25, 35, 42 and 45; and
- United States of America (“United States”) Trademark Registration No. 5653614 for the mark TIK TOK, registered on January 15, 2019, covering products and services in classes 9, 38, 41 and 42.

The first disputed domain name, <tiktok18apk.com>, was registered on June 22, 2022, and presently resolves to an active webpage offering the download of the “TikTok 18+ APK” described as “a new app for our adult users” and a “simply modified version of the official TikTok app”, reproducing the Complainant’s trademark and logo.

The second disputed domain name, <tiktok18apk.net>, was registered on April 9, 2023, and has been used in the past in connection with a webpage offering the download of the “TikTok 18+ APK” described as “a new app for our adult users” and a “simply modified version of the official TikTok app”, reproducing the Complainant’s trademark and logo. Presently no active webpage resolves from the second disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant asserts that TikTok was launched in May 2017 and rapidly became the most downloaded app in the United States in October 2018 (Annex 6.1 to the Complaint), having ranked in 2022 as the #1 download app globally (Annexes 6.2, 7.1 and 7.2 to the Complaint).

The Complainant further asserts that according to "SimilarWeb.com", its domain name <tiktok.com> had a total of 2.0 billion visitors in March 2023 alone, ranking 15th globally and 21st in the United States (Annex 8 to the Complaint), what leads to TIK TOK being a well recognized and famous brand worldwide.

The Complainant contends that the disputed domain names are subject to common control and that the consolidation in a single proceeding would be fair and equitable to all parties given that the disputed domain names: i) share the same naming pattern, only differing by the top-level domain; ii) have resolved to the same exact website content; iii) indicate addresses located in India; iv) share the same Registrar and v) privacy service provider.

According to the Complainant, the disputed domain names that consist merely of the Complainant's trademark and the addition of the generic term "18 apk" as suffixes which are closely linked and associated to the Complainant's trademark and only serves to increase the confusing similarity between the disputed domain names and the Complainant's trademark given the use made of the disputed domain names in connection with websites that feature the Complainant's TIK TOK logo and offer for download APK ("Android Package Kit") files called "TikTok 18 Plus", suggesting the Respondents intention to cause consumer confusion (Annex 3 to the Complaint).

As to the absence of rights or legitimate interests, the Complainant argues that:

- i. the Respondents are not sponsored by or affiliated with the Complainant in any way, not having the Complainant given the Respondents any license, authorization or permission to use the Complainant's trademark in any manner, including in domain names;
- ii. the Respondents, named Shoeb Alam and Shaniyal Malik, are not commonly known by the disputed domain names;
- iii. the Respondents are not making *bona fide* offering of goods or services or legitimate, noncommercial fair uses of the disputed domain names given that the Respondents have used the disputed domain names in connection with websites reproducing the Complainant's TIK TOK trademarks and logo (Annex 3 to the Complaint), indubitably a direct effort to take advantage of the fame and goodwill that the Complainant has built in its brands, also confusing Internet users into believing that some sort of affiliation exists between the Respondents and the Complainant, which is not true; and
- iv. the Respondents allowed the download of APK files called "TikTok 18 Plus" on the disputed domain names' websites and promoted these files as "the latest version of Adult TikTok application for your android", when no mobile version of "TikTok 18 Plus" that is associated to or authorized by the Complainant exists, making the Respondent's use of the disputed domain names in connection with APK files featuring adult content further evidence of their lack of rights or legitimate interests in the disputed domain names, as well as a contravention to TikTok's Terms of Service, paragraph 5, which specifically prohibits "any material which is defamatory of any person, obscene, offensive, pornographic, hateful or inflammatory offering for sale "likes" and "followers" what is contrary to TikTok's Terms of Service (Annex 9 to the Complainant) and is neither a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use pursuant to the Policy.

In what it relates to the bad faith registration and use of the disputed domain names, the Complainant asserts that the Respondents' knowledge of the Complainant's trademark is evident given the reproduction of its logotype and business, making it only possible to conclude that the Respondents knew about the Complainant's trademark and reputation, and used them to their advantage in bad faith. Furthermore, the choice to retain a privacy protection service to hide the true identities of the Respondents is a further indicative of their bad faith.

B. Respondents

The First Respondent emailed the Center on June 10, 2023, requesting an extension for almost two months to respond to the Complaint. The Center granted the respondent the automatic extension of the Response due date to June 26, 2023. The First Respondent sent a second email communication on June 19, 2023, regarding the possibility of settlement discussions.

On July 6, 2023, the First Respondent sent an informal message informing his willingness to cancel or transfer the <tiktok18apk.com> disputed domain name, reiterated on July 12, 2023.

On July 15, 2023, the First Respondent wrote a last informal message emphasizing that he "had no intention of causing harm or confusion to any existing brand or trademark holder", having used the first disputed domain name "solely for a personal project", being "any potential overlap" "entirely unintentional", also having taken immediate action to suspend the domain's use and refraining from engaging in any activities that could exacerbate the situation once notified of the proceeding.

The Second Respondent sent an email communication to the Center on June 19, 2023, informing that he wanted to cancel and delete the <tiktok18apk.net> disputed domain name.

6. Discussion and Findings

6.1 Procedural matter – Respondents' consent

Firstly, the Panel has to address the Respondents acceptance as to the voluntary transfer of the disputed domain names without findings of fact or conclusions as to the merits of the case under the UDRP.

A UDRP panel may at its discretion order the transfer of the domain name if the respondent has given its unambiguous consent to transfer without findings under the Policy, paragraph 4(a). WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.10. Some UDRP panels have declined to grant a remedy solely on the basis of respondent's consent where the complainant objects or because the panel finds a broader interest in reaching a substantive determination.

In the present case, considering the Complainant's request for the consolidation of multiple Respondents this Panel finds a broader interest in reaching a substantive determination on the merits.

Therefore, considering all the circumstances of the present case, the Panel will proceed to a decision on the merits, and analyze the three requisite elements under paragraph 4(a) of the Policy.

6.2 Procedural matter - Consolidation of Multiple Respondents

The Complainant requests that this Panel accept multiple Respondents in a single proceeding in view of the facts enumerated at the section 5.A. above.

Section 4.11.2 of the [WIPO Overview 3.0](#) establishes that "[w]here a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario".

All of the aforementioned criteria are present in this case and therefore this Panel accepts such request considering that it would be more procedurally efficient to have the disputed domain names dealt with at the same procedure, given that both disputed domain names: (i) were registered under the same privacy service; (ii) through the same Registrar; (iii) having resolving to identical webpages; (iv) sharing a similar naming pattern; and (v) no objection was made by the Respondents regarding consolidation.

This Panel is satisfied, in view of the evidence submitted and on balance that the disputed domain names are indeed subject to a common control and that consolidation would be fair and equitable to all Parties.

6.3 Substantive matter

Paragraph 4(a) of the Policy sets forth the following three requirements which the Complainant must meet in order for the Panel to order 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; and
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established its rights in the TIK TOK trademark.

The addition of the generic terms “18” and “apk” does not prevent a finding of confusing similarity under the Policy which, as recognized by past UDRP panels involves a “comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name”. See [WIPO Overview 3.0](#), section 1.7.

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate a respondent's rights to or legitimate interests in a domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if it has not acquired trademark or service mark rights; or
- (iii) the respondent is making a 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.

In that sense, the Complainant indeed states that the Respondents are not sponsored by or affiliated with the Complainant in any way, not having the Complainant given the Respondents any license, authorization or permission to use the Complainant's trademark in any manner, including in domain names.

Also, the absence of any trademarks or trade names registered by the Respondents corresponding to the disputed domain names, or any possible link between the Respondents and the disputed domain names, that could be inferred from the details known of the Respondents or the webpages relating to the disputed domain names, corroborate the absence of a right or legitimate interest.

The Respondents have been clearly targeting the Complainant's users to offer "a new app for our adult users" and a "simply modified version of the official TikTok app", reproducing the Complainant's trademark and logo.

Such use clearly contradicts the First Respondent's argument that it had registered the first disputed domain name with no intention of causing harm or confusion to any existing brand or trademark holder and solely for a personal project. As the evidence submitted by the Complainant shows, the Respondents were clearly targeting the Complainant's users and that cannot be considered a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use pursuant to the Policy.

Also, the First Respondent's claim to having taken immediate action to suspend the use of the first disputed domain name is false given that it remains active.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondents do not have rights or legitimate interests with respect to the disputed domain names.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where, by using the disputed domain name, a 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 a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain names in bad faith can be found in view of the reproduction of the Complainant's trademark in connection with the offer of "a new app for our adult users" and a "simply modified version of the official TikTok app" and the Respondents' intentional attempt to attract, for commercial gain, Internet users to their websites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or of a service on the website.

The Respondents' use of the disputed domain names not only clearly indicates full knowledge of the Complainant's trademark but also an attempt of misleadingly diverting consumers for their own commercial gain.

Three other factors corroborate a finding of the Respondents' bad faith: i) the use of privacy protection services; ii) incorrect information in the Whois records (non-existing address relating to the Respondents after the privacy shields were removed); and iii) the current inactive use of the second disputed domain name.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain names pursuant to paragraph 4(b)(iv) 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 names, <tiktok18apk.com> and <tiktok18apk.net>, be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: July 20, 2023