

ADMINISTRATIVE PANEL DECISION

Lemon Inc. v. Talha Zafar
Case No. D2023-3557

1. The Parties

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

The Respondent is Talha Zafar, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <thecapcut.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 August 23, 2023. On August 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 2023, 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 (Johnny Smith/ Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 24, 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 August 25, 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 August 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2023. The Respondent sent an email communication to the Center on September 4, 2023, inquiring about the possibility of a settlement. On September 6, 2023, the Complainant confirmed by email that they do not wish to settle.

The Center appointed Zoltan Takacs as the sole panelist in this matter on September 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 is a wholly-owned subsidiary of ByteDance Ltd., which is an Internet technology company that enables users to discover a world of creative content platforms powered by leading technology.

In April of 2020, ByteDance Ltd. launched globally a mobile application called CapCut, which is a video editing app that has multiple features and functions, which make the app like an accessible Final Cut on the go.

In the first half of 2021, the CapCut app was downloaded around 140 million times globally, making it the world's ninth-most globally downloaded mobile app.

The Complainant owns a number of trademark registrations for the mark CAPCUT, e.g., the European Union Trademark Registration No. 018255581, registered on May 15, 2021, for goods and services of classes 9, 41, 42, and 45. of the Nice Agreement Concerning the International Classification of Good and Services for the Purpose of the Registration of Marks.

The Complainant also owns the domain name <capcut.com>, which was registered on March 29, 1997, and resolves to its principal website.

The disputed domain name was registered on July 19, 2022, and resolves to a website which features the Complainant's CAPCUT trademark and logo and allegedly allows users to download the Complainant's application including illegally unlocked versions.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its CAPCUT trademark, since it incorporates the trademark with the addition of the term "the";
- the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- the Respondent registered the disputed domain name with the Complainant's trademark in mind and with the intent to unlawfully benefit from the goodwill built up by the Complainant in the CAPCUT trademark.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

However, on February 14, 2023, the Complainant's parent company sent a cease-and-desist letter to the Respondent requesting deletion of the disputed domain name and cease of any use of the CAPCUT mark.

In its February 15, 2023, dated reply the Respondent stated that its website at the disputed domain name functions as a fan base for the CapCut app, and requested permission to use the CAPCUT trademark on its website.

On March 29, 2023, the Complainant's parent company sent another letter to the Respondent reiterating its request for deletion of the disputed domain and prompt removal of any and all references to the CAPCUT trademark. Since the Respondent did not comply with its demands the Complainant filed the Complaint on August 23, 2023.

On September 4, 2023, the Respondent sent the following informal email to the Center:

"Hi! I want to end this dispute on the condition of allowing me to change my domain name. Please ask my Registrar to allow me change my domain as I'm blocked from changing it".

In its September 6, 2023, dated email sent to the Center and the Respondent, the Complainant stated that they "do not want to settle and would like to go through the rest of the UDRP proceeding".

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".

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 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 domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's trademark is reproduced in the disputed domain name. The disputed domain name includes the addition of the term "the" to the trademark in the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has made demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2;
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4, and
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

The Complainant has never assigned, granted, licensed, sold or transferred or in any way authorized the Respondent to register or use its CAPCUT trademark in any manner.

In the present case the Respondent effectively impersonates or suggests sponsorship or endorsement by the Complainant since:

- the disputed domain name consists of the CAPCUT trademark in its entirety, along with the descriptive term “the” and resolves to a website that features the Complainant’s trademark and logo and allegedly allows users to download versions of the CapCut app, including the illegally unlocked versions of it;
- the section of the website at the disputed domain name entitled “About Capcut” includes reference to the Complainant’s parent company (“Thanks for visiting our About Us Page’Sincerely, Bytedance”).

Such use cannot give rise to rights or legitimate interests in the disputed domain name. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, contrary to the Respondent's claim, the website at the disputed domain name clearly does not qualify as a genuine noncommercial fan site. As a matter of fact, it is manifestly commercial in nature and not distinct from the Complainant's official website, which cannot support any rights or legitimate interests of the Respondent in the disputed domain name. [WIPO Overview 3.0](#), section 2.7.2.

Based on the available record, the Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line locations, 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 the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

As mentioned under section 5.B. above, while the Respondent alleges to have registered the disputed domain name to operate a website that functions as a fan base for the Complainant's CapCut app, the facts and circumstances of the case strongly suggest the opposite. The website at issue is clearly commercial in nature, prominently features the Complainant's distinctive trademark and logo, and directly references the Complainant's parent company. Thus, the Respondent obviously had full knowledge of the Complainant's trademark at the time of registration of the disputed domain name and had registered it in order to target the Complainant and its trademark through impersonation or false association. [WIPO Overview 3.0](#), section 3.2.1.

The website at the disputed domain name allegedly allows users to download the CapCut app, including illegally unlocked versions of it. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Based on the available record, the Panel finds that the third element of the Policy has been 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 <thecapcut.com> be transferred to the Complainant.

/Zoltan Takacs/

Zoltan Takacs

Sole Panelist

Date: October 25, 2023