

ADMINISTRATIVE PANEL DECISION

Lemon Inc. v. King Rtk
Case No. D2024-0320

1. The Parties

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

The Respondent is King Rtk, India.

2. The Domain Name and Registrar

The disputed domain name <resso.pro> is registered with Hostinger Operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 25, 2024. On January 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2024, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 30, 2024, 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 February 2, 2024.

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 February 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 27, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on March 5, 2024. 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

According to information in the Complaint, the Complainant 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, CapCut, Lark and Pico. In May 2019, the Complainant launched Resso, which is a streaming app that lets users express themselves and connect with others through the songs they love and discover new hits. The Resso app saw downloads to reach more than 100 million users on Google Play and ranked as "#8 in Music" in the Apple Store.

The Complainant is the holder of a number of trademarks for RESSO, including the Singapore trademark RESSO No. 40202127025T, registered on April 26, 2022, designating goods and services in international classes 9, 35, 38, 41, 42, and 45. The Complainant maintains a primary website for Resso at "www.resso.com".

The disputed domain name was registered on April 3, 2023, and at the date of the Decision does not resolve to an active website. According to evidence with the Complaint, the dispute domain name was used at the date of the Complaint for a website allegedly offering downloads of the Complainant's RESSO app and displaying the Complainant's trademark and logo.

The Complainant has sent a cease-and-desist letter to the Respondent on August 30, 2023. There is no evidence of an answer from the Respondent to this letter.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name consists solely of the Complainant's RESSO trademark, resulting in a domain name that is identical to the Complainant's RESSO trademark and thus meeting the requirements of the Policy. Moreover, the disputed domain name was used to resolve to a website which featured the Complainant's RESSO trademark and offered users unauthorized downloads of the Complainant's Resso app, which 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.

As regards the second element, the Complainant submits that the Respondent is not sponsored by or affiliated with the Complainant in any way. Nor has the Complainant given the Respondent license, authorization or permission to use the Complainant's trademarks in any manner, including in domain names. Before the Registrar suspended the disputed domain name, the Respondent included the Complainant's RESSO trademark and/or logo on the website at the disputed domain name to take advantage of the fame and goodwill that the Complainant has built in its brand. The Respondent was using the disputed domain name to offer unauthorized downloads of the Complainant's Resso app without complying with the "Oki Data test", as the Respondent has failed to accurately and prominently disclose its relationship, or lack thereof with the Complainant on the website at the disputed domain name.

With respect to the third element, the Complainant argues that it and its RESSO trademark are known internationally, with trademark registrations across numerous countries. The Complainant has marketed and sold its goods and services using this trademark since May 2019, which is before the Respondent's registration of the disputed domain name on April 3, 2023. The Respondent's use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use because the disputed domain name is identical to the Complainant's RESSO trademark and the website at the disputed domain name was being used to offer downloads of the Complainant's Resso application, without the Complainant's authorization or approval. Moreover, the Respondent had employed a privacy service to hide its identity, which past Panels have held serves as further evidence of bad faith registration and use. The Respondent has ignored the Complainant's attempts to resolve this dispute outside of this administrative proceeding and past Panels have held that failure to respond to a cease-and-desist letter may be considered a factor in finding bad faith registration and use of a domain name.

B. Respondent

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

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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

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 3.0](#), section 1.7.

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 mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is the settled view of panels applying the Policy that the Top-Level Domain ("TLD") (here ".pro") should be disregarded under the first element test. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds 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.

Although 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 difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds 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 such as those enumerated in the Policy or otherwise.

From the un rebutted evidence put forward by the Complainant, the website to which the disputed domain name resolved was used for allegedly offering unauthorized downloads of the Complainant’s Resso app, and included the Complainant’s trademark and logo, with no disclaimer as to the relationship or lack thereof with the Complainant. Such use does not confer rights or legitimate interests to the Respondent. See *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and section 2.8 of the [WIPO Overview 3.0](#).

Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In addition, there is no evidence that the Respondent is commonly known by the disputed domain name in the meaning of the second circumstance of paragraph 4(c) of the Policy.

Furthermore, the nature of the disputed domain name, which is identical to the Complainant’s trademark carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel finds 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The disputed domain name was registered after the Complainant had obtained registration of its RESSO trademark. The disputed domain name is identical to the Complainant’s trademark. The website at the disputed domain name included the Complainant’s trademark and logo and offered download of the Complainant’s Resso app. Under these circumstances, the Panel considers that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademark and that it targeted that trademark.

As regards the use of the disputed domain name, paragraph 4(b)(iv) of the Policy has direct bearing to the present case: (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to his website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the said website

location or of a product or service on that website location. The conduct of the Respondent falls under the above provisions. The disputed domain name is identical to the RESSO trademark of the Complainant and is inherently misleading. The website to which the disputed domain name resolved displayed the Complainant's trademark and offered for download the Complainant's app under RESSO trademark with no disclaimer regarding the lack of a relationship between the Respondent and the Complainant.

Panels have held that the use of a domain name for illegal activity, such as impersonation/passing off like the case here, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. 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 Respondent has not provided any evidence of actual or contemplated good faith use and has not responded to the Complainant's cease-and-desist letter or the contentions in the Complaint. The use of a Whois privacy wall is further indication of bad faith in the circumstances of this case.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. Although at the time of this Decision, the disputed domain name is inactive, considering the circumstances of this case, the Panel finds that such non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)).

The Panel finds that the Complainant has established the third element 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 <resso.pro> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: March 19, 2024