

## **ADMINISTRATIVE PANEL DECISION**

Illia Pustovit, Limited Liability Company Ssstik (LLC Ssstik) v. Gabriel Duby,  
43Web Media Inc  
Case No. D2024-2082

### **1. The Parties**

The Complainant is Illia Pustovit, Limited Liability Company Ssstik (LLC Ssstik), Ukraine, represented internally.

The Respondent is Gabriel Duby, 43Web Media Inc, Canada.

### **2. The Domain Name and Registrar**

The disputed domain name <ssstik.link> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2024. On May 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 22, 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 (Redacted for Privacy), and contact information in the Complaint. The Center sent an email communication to the Complainant on May 28, 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 amendment to the Complaint on May 28, 2024.

The Center verified that the Complaint together with the amendment to 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 June 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2024. The Response was filed with the Center on June 19, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on July 4, 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

The first Complainant is a Ukrainian individual and the second Complainant is his related company which carries on a business of providing computer software to download videos from Tiktok under the name "SSSTIK".<sup>1</sup>

The first Complainant owns United States of America ("United States") Registered Trademark No 7,084,349. The trademark is a figurative mark comprised of SSSTIK and a device of an arrow pointing vertically down from a horizontal bar. The trademark was registered in the Principal Register on June 20, 2023 in respect of:

- (a) Downloadable computer programs for editing images, sound, and video in International Class 9; and
- (b) Computer software development in the field of mobile applications; Consulting services in the field of software as a service (SAAS); Design and development of software in the field of mobile applications; Design for others in the field of computer software; Providing a website allowing users to download music and music videos; Providing temporary use of non-downloadable computer software for creating music videos in International Class 42.

The application to register the trademark was filed on April 22, 2022 but claims a first use in commerce on June 10, 2020.

According to the Whols search, one or other of the Complainants registered the domain name <ssstik.fun> on or about March 23, 2022. This domain name resolves to a website from which the Complainant's app may be downloaded. The Complainant also began making its SSSTik application available worldwide through Apple's App Store for iPhone and the Google Play store for Android on June 4, 2022.

The disputed domain name was registered on June 14, 2022. It resolves to a website which, at the time this Decision is being prepared, is headed:

"SSSTikTok - Download TikTok Videos Online Download TikTok videos in high quality MP4 format".

After a box into which TikTok links may be pasted and a "Download" button, the next section is headed (in bold) "Download TikTok videos without watermark for FREE".

The Panel's own review of captures by the Wayback Machine indicates that the Respondent's website has had essentially the same, if not the same, form since June 29, 2022.

Although the disputed domain name was registered only in June 2022, the website currently bears at the foot of the page the following notice:

"2019 - 2023 SSSTikTok. All rights reserved".

Unlike the Complainant's software, the service available through the Respondent's website does not appear to involve downloading an application to download and convert TikTok videos. It appears to be done online. The service offered through the Respondent's website is advertised as free. The website is "monetized through legitimate Google AdSense ads". These are pay-per-click (PPC) links.

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<sup>1</sup> Given the relationship between the Parties, the Panel will refer simply to "the Complainant" unless it becomes necessary to distinguish between them.

According to the Response, the Respondent's website averages 2.4 million Internet users per month. Annex 5 to the Response is a one page (of 10) extract from a report by Ahrefs, an online SAAS platform and provider of SEO tools. The report does state the figure of 2.4 million for organic traffic. The graph alongside it, however, appears to show almost zero traffic in January and February rising to a peak in April just under a third (unspecified) scale level, then a slight fall in May and a much steeper falling off in June.

The report indicates that 89 per cent of the website's traffic came from Indonesia, 5 per cent from Brazil, 3 per cent from Turkey, 1 per cent from Bangladesh and some modest amount registered as 0 percent from Mexico.

## 5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint 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. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

The Complainant has proven ownership of the registered trademark for SSSTIK and device referred to in Section 4 above.

In undertaking the comparison of the disputed domain name to that trademark, it is permissible in the present circumstances to disregard the Top Level Domain (TLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. The figurative elements of the Complainant's trademarks are not so dominating that the verbal element cannot be considered an essential or important part of the trademarks in this case. Accordingly, it is appropriate to apply the usual rule.

Disregarding the ".link" TLD and the device component of the trademark, the disputed domain name is identical to the Complainant's trademark.

The Respondent contends that the form he uses "SSSTik" on his website looks very different to the Complainant's figurative trademark. In addition, the Respondent says he and the Complainant operate in different geographical spheres – he provides services from a website in Canada while the Complainant provides what the Respondent describes as software development services from Ukraine. Accordingly, the Respondent contends, there is no real risk of confusion.

These arguments misunderstand that nature of the inquiry at this stage. 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. Accordingly, the comparison simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.7.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or 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; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a 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 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. 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.

It is not in dispute between the Parties that the Complainant has not authorised the Respondent to use the disputed domain name and the Respondent is not affiliated with the Complainant.

The disputed domain name is not derived from the Respondent's name, either the individual Respondent or the corporate Respondent.

Without more, the Panel would ordinarily consider there was a high risk of confusion between the disputed domain name and the Complainant's trademark given what appears to be a close similarity of functionality.

These considerations would typically lead to the Complainant establishing a prima facie case as required. In the present case as already foreshadowed to an extent, however, the Respondent advances a number of arguments in rebuttal.

First, the Respondent points out that the Respondent registered and began using the disputed domain name almost one year before the Complainant's trademark was registered in the United States. Secondly, the Respondent points to what the Respondent argues is the different business models and the different geographical regions the Parties provide their respective services from resulting in what the Respondent describes as a distinctly different market and context. Coupled with the different appearance of the Parties' respective logos and websites, therefore, the Respondent contends these factors reduce the likelihood of any confusion. Thirdly, the Respondent points to the high level of traffic to its website as indicating it is offering a substantial and genuine service.

The Panel accepts that the Respondent began using the disputed domain name before the Complainant's trademark was formally registered. However, the Respondent did so some two weeks (at least) after the Complainant's products were released under the Complainant's trademark in the Apple App Store and the Google Play store. The Respondent also registered the disputed domain name almost two months after the Complainant applied to register the Complainant's trademark.

Next, the Panel does not accept that the Parties are operating in very different fields and in very different geographical locations. Both Parties' products and services are being offered on the Internet to worldwide audiences. The Complainant is not operating just in Ukraine. There is nothing about the Respondent's website which suggests it is restricted to Canada. Indeed, the Ahref report included in the Response by the Respondent confirms that the Respondent's website is garnering traffic from around the world.

Further, while the class 42 services covered by the Complainant's registered trademark formally cover software development services, they also cover "providing temporary use of non-downloadable computer software for creating music videos". This appears to embrace the service offered by the Respondent.

Further yet, the nature of the service provided by use of the Complainant's product and the service provided by the Respondent's website appear to all intents and purposes to serve the same object – enabling users to download TikTok videos.

Further yet still, the resemblance between the disputed domain name and the Complainant's trademark is very close notwithstanding the stylistic differences. To the Panel it appears that the verbal element, SSSTIK, of both is the key distinctive feature so that consumers are very likely to think that source of one is the source of the other, if not the same.

The similarity between the functionality being offered by the Parties is so similar that it seems very unrealistic to think consumers would think there could be no association between the two providers because of the different technological implementation. On the contrary, it seems more likely that consumers would consider one form was a natural extension or complement of the other.

As both Parties are operating in the global marketplace and the Complainant has priority in time, therefore the Panel considers the use of a conflicting and confusingly similar disputed domain name does not qualify as a good faith offering of goods or services for the purposes of paragraph 4(c)(i) of the Policy.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent, however, has not rebutted that prima facie case successfully. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

### C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Group One Holdings Pte Ltd v. Steven Hafto*, WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In the Response, the Respondent specifically asserts:

“The Respondent registered the domain name before the Complainant obtained the Trademark for “SSSTIK”, and the Respondent had no (prior) knowledge of the Complainant’s plans or trademark before registering the domain name when it did. In other words, the Respondent’s domain name registration predates the Complainant’s Trademark.”

It is true that the Respondent registered the disputed domain name before the Complainant’s trademark was formally registered. As already noted, however, the Respondent registered the disputed domain name after the Complainant both started using its trademark and also after the Complainant applied to register its trademark in the United States. In such circumstances, a finding of registration in bad faith may arise where it appears the Respondent has sought to capitalise on the Complainant’s incipient trademark rights. See e.g. [WIPO Overview 3.0](#), section 3.8.2.

Here, the Respondent does appear to claim it had no knowledge of the Complainant’s trademark or, at least, plans before registering the disputed domain name. Weight must be given to that express claim. Nonetheless, this is a case where the Panel considers it appropriate not to accept the claim.

First, the distinctive verbal element of both the disputed domain name and the Complainant’s trademark is identical. In addition, the expression SSSTIK does not appear to be directly descriptive of the applications or services the parties provide. If it is, the Respondent has certainly not advanced any claim or evidence to support such a finding. The disputed domain name is not a dictionary word. As already mentioned, it is not derived from the Respondent’s personal or corporate name.

It is possible that the Respondent has derived the disputed domain name independently. If one allows for 26 letters in the English alphabet and 10 numerals, however, there are over 2 billion possible combinations in a string of six alpha numeric characters. As the particular string registered by the Respondent does not appear to have any direct connection with either the relevant goods or services or the Respondent’s name, therefore, it appears unlikely to have been a coincidence that the Respondent adopted for the disputed domain name the same six letter string as the Complainant’s trademark for essentially the same functionality – downloading and converting TikTok videos – so soon after the Complainant’s product was released in the Apple App store and the Google Play store and also just after the Complainant applied to register its trademark.

Accordingly, on the record in this case, the Panel finds that the disputed domain name was registered to capitalise on the Complainant’s trademark and so in bad faith under the Policy. Further, use of the disputed domain name in connection with a service which appears to overlap directly with the Complainant’s registered rights and, at the very least, so closely related to the product the Complainant offers constitutes use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

## 6. 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 <ssstik.link> be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: July 18, 2024