

ADMINISTRATIVE PANEL DECISION

NOCAP, Inc. v. Kiryl Laba, Elbax OU
Case No. D2024-3885

1. The Parties

The Complainant is NOCAP, Inc., United States of America (“United States”), represented by Orrick, Herrington & Sutcliffe, LLP, United States.

The Respondent is Kiryl Laba, Elbax OU, Estonia.

2. The Domain Name and Registrar

The disputed domain names <captionsapp.com> and <captionslab.com> 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 September 24, 2024. On September 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 26, 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 September 26, 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 October 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2024. The Respondent sent email communications to the Center on September 26, 2024, and October 2, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on October 28, 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 Complainant provides a widely known mobile application, which offers users access to AI-powered tools for creating digital videos, including video editing, generation of avatars, translating, and many others things.

The Complainant is the owner of the CAPTIONS trademark, which is used by the Complainant in commerce since 2021. Among many others, the Complainant is the registered owner of the United States Trademark Registration No. 7309259, filed on January 25, 2023, and registered on February 20, 2024, for CAPTIONS, covering protection for software products as protected in class 9. First use of the CAPTIONS trademark in commerce is indicated in that United States trademark registration as July 8, 2021. The Complainant is further the registered owner of the International Trademark Registration No. 1749993, filed and registered on July 24, 2023, for CAPTIONS, covering protection for software related products and services in classes 9 and 42, and designating various jurisdictions.

The Complainant further owns and operates its main website at “www.captions.ai”.

The Respondent is reportedly located in Estonia, whereas its true identity remains unclear due to seemingly false or incomplete contact information.

The disputed domain name <captionsapp.com> was registered on April 3, 2023.

The disputed domain name <captionslab.com> was registered on June 13, 2024.

According to the case record, each of the disputed domain names resolved to a website purportedly offering a mobile application with many identical features to those offered by the Complainant under its CAPTIONS trademark, such as video editing, translating, and other AI based features. The associated websites provided for multiple features that created a look and feel as if it was operated by the Complainant (which is not), such as the use of the same color scheme and website format like used by the Complainant, including the prominent use of the Complainant’s CAPTIONS trademark. Further, the Respondent has responded to complaints regarding its services on the Apple App Store and Google Play by identifying itself as the “Captions team”, which Complainant argues is further illustration of the Respondent’s intent to pass-off as the Complainant.

At the time of the Decision, the disputed domain names resolve to a landing page purporting that the disputed domain names allegedly belong to a third party different from the Respondent that allegedly owns the trademark rights to CAPTIONS.

On February 23, 2024, the Complainant’s counsel sent a cease-and-desist letter to the Respondent, and tried to solve the dispute amicably by inter alia requesting the transfer of the disputed domain names. Though the Respondent seems to have acknowledges receipt of such letter, no substantive response was provided to the Complainant.

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 names.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Center merely received three email communications on September 26 and October 2, 2024, all of them without any content.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#), and, where appropriate, will decide consistent with the consensus views stated therein.

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.

The Complainant has shown rights in respect of the CAPTIONS trademark 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 names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "app" and "lab" respectively, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 names. 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 names such as those enumerated in the Policy or otherwise. The Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain names. According to the evidence provided by the Complainant, each of the disputed domain names initially resolved to a website reproducing the Complainant’s CAPTIONS trademark and creating a similar look and feel of the Complainant’s official website. Further, in response to complaints regarding the Respondent’s services, the Respondent has seemingly identified itself as the Complainant, reinforcing the Panel’s view that the disputed domain names are solely used to mislead Internet users as to their affiliation with the Complainant and likely for the Respondent’s commercial gain.

The Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain names as panels have held that the use of a domain name for illegitimate activity, here claimed impersonation and possibly even phishing of sensitive information from misled Internet users, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent must have had the Complainant and its CAPTIONS trademark in mind when registering the disputed domain names. It is obvious to the Panel that the Respondent has deliberately chosen the disputed domain names, which comprises the Complainant’s CAPTIONS trademark in its entirety, to target the Complainant and its mobile application. At the date of registration of the disputed domain names, the CAPTIONS trademark of the Complainants was already widely used in commerce for more than two years. Moreover, the Respondent identified itself as the Complainant when replying to customer complaints. Consequently, the Panel is convinced that the Respondent has registered the disputed domain names in bad faith.

With respect to the use of the disputed domain names in bad faith, the Panel finds that the Respondent has intentionally registered and used the disputed domain names in order to generate traffic to its own websites by misleading third parties in a false belief that each of the associated websites is operated or at least authorized by the Complainant. Particularly, the inherently misleading nature of the disputed domain names and the overall design of the associated websites, including the prominent use of the Complainant’s

CAPTIONS trademark for offering an AI-powered app mimicking the Complainant's mobile application, indicates the Respondent's intention to impersonate the Complainant, apparently for illegitimate if not even illegal purposes.

Panels have held that the use of a domain name for illegitimate activity, here claimed impersonation and possibly even phishing, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Moreover, given the complaints concerning the Respondent's alleged services combined with the Respondent's replies thereto, identifying itself as the Complainant, there is a clear risk of tarnishment to the Complainant's reputation and trademark, which reinforces the Panel's findings on bad faith.

The Respondent further appears to have furnished incomplete or false contact details for purposes of registration of the disputed domain names, as the courier was unable to deliver the Center's written communication, which additionally supports a finding of bad faith.

The fact that the disputed domain names currently resolve to a landing page only does not change the Panel's findings in this respect. [WIPO Overview 3.0](#), section 3.3.

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

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 names <captionsapp.com> and <captionslab.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: November 11, 2024