

ADMINISTRATIVE PANEL DECISION

Bytedance Ltd. v. 张宁 (Zhang Ning)

Case No. D2022-0570

1. The Parties

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

The Respondent is 张宁 (Zhang Ning), China.

2. The Domain Name and Registrar

The disputed domain name <tikrank.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on February 18, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 21, 2022, 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 and contact information in the Complaint. On the same day, the Center sent an email communication to the Complainant 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 in English on February 23, 2022.

On February 21, 2022, the Center also sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on February 23, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with 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 in English and Chinese of the Complaint, and the proceedings commenced on February 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 21, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on March 23, 2022. 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 an Internet technology company that owns a number of content creation platforms and applications, one of which is Tik Tok. Tik Tok enables users to create and upload short videos. The application was launched outside China in May 2017 and by September 2018 had achieved 3.81 million monthly downloads in the United States of America ("United States"). The Tik Tok application has now been downloaded over 500 million times in Google Play and is ranked number 1 among entertainment applications in the Apple Store. The Complainant owns multiple trademark registrations in multiple jurisdictions, including United States trademark registration number 5653614 for TIK TOK, registered on January 15, 2019, with claims of first use in commerce on May 31, 2017 and August 2, 2018, specifying goods and services in classes 9, 38, 41 and 42. The Complainant's affiliate 北京微博视界科技有限公司 (Beijing Weibo Vision Technology Co. Ltd) holds Chinese trademark registrations numbers 28674348 and 28663770, both for TIK TOK, registered on March 14, 2019 and December 28, 2018, respectively, specifying services in classes 41 and 45, respectively. All these trademark registrations remain current. The Complainant's affiliate Tik Tok Ltd has registered the domain name <tiktok.com> that is used in connection with the official Tik Tok website where the platform's content can be viewed. The website prominently displays a logo in the form of a colorful musical note (the "Tik Tok logo"), which is also the Tik Tok application icon.

The Respondent is an individual resident in China. Due to the fact that his contact address in the Registrar's Whols database is incomplete or incorrect, the Written Notice could not be delivered by courier.

The disputed domain name was registered on June 13, 2019. It resolves to a website in English for "Tikrank". The homepage menu bar displays a Tikrank logo and hyperlinks to sites offering downloads of two other applications ("Vimeo" and "Twitch"). The Tikrank homepage features the Tik Tok logo. According to the site, Tikrank has various functions, including saving Tik Tok videos without watermark, supporting bulk downloads, and "Tiktok ranking", which contains influencer data. The website displays a download button and explanatory videos showing how to use Tikrank; the instructions include "Go to tiktok.com".

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's TIK TOK mark.

The Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent is not sponsored by, or affiliated with, the Complainant in any way. Nor has the Complainant given the Respondent any license, authorization or permission to use the Complainant's mark in any manner, including in domain names. The Respondent is not commonly known by the disputed domain name. The Respondent is confusing Internet users into believing that some sort of affiliation exists between it and the Complainant. The Respondent also offers a tool to download Tik Tok videos without watermark contrary to Tik Tok's terms of service.

The disputed domain name was registered and is being used in bad faith. The Respondent has demonstrated a knowledge of, and familiarity with, the Complainant's brand and business. The Respondent is attempting to create confusion in a nefarious attempt to profit from such confusion. The Respondent's use of the disputed domain name also constitutes an attempt to disrupt the Complainant's business.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceeding, and that the website associated with the disputed domain name is in English.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties (See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#)).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. The website to which the disputed domain name resolves is in English, from which it is reasonable to infer that the Respondent understands that language. Moreover, despite the Center having sent an email regarding the language of the proceeding, and the Written Notice, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Analysis and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (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.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the TIK TOK mark.

The disputed domain name includes the first half and dominant feature of the TIK TOK mark as its initial element (*i.e.*, “TIK”). The disputed domain name replaces the second half of the mark (*i.e.*, “TOK”) with the word “rank”, thereby retaining the final letter “k” in the mark. The operational element of the disputed domain name and the trademark both have two syllables. Given that a dominant feature of the TIK TOK mark is recognizable within the disputed domain name, the disputed domain name may be considered confusingly similar for the purposes of standing under the first element of paragraph 4(a) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

Further, the Panel takes note that the website to which the disputed domain name resolves displays the Tik Tok logo and is dedicated to offering a product for use with the Complainant’s Tik Tok application, which confirms that the Respondent is seeking to target the TIK TOK trademark through the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

The disputed domain name includes a generic Top-Level Domain (“gTLD”) “.com”, which is a technical requirement of domain name registration. A gTLD suffix is normally disregarded in the comparison between a disputed domain name and a trademark for the purposes of the first element of the Policy.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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.

As regards the first and third circumstances set out above, the disputed domain name resolves to a website for an online tool named “Tikrank” intended for use with the Complainant’s Tik Tok application. Although the website displays a Tikrank logo, it features the Complainant’s Tik Tok logo and offers explanatory videos showing how to use Tikrank with Tik Tok, including the instructions “Go to tiktok.com”. This all gives the impression that Tikrank is somehow affiliated with the Complainant. Nothing in the evidence on record indicates that the site disclaims such an affiliation. The Complainant submits that it has not given the Respondent any license, authorization or permission to use the Complainant’s mark in any manner, including in domain names. The tool is free to use but the site displays hyperlinks to sites offering downloads of Vimeo and Twitch, which offer paid memberships and subscriptions. The Tikrank site also displays pop-up

advertising.¹ In the Panel's view, this evidence constitutes a *prima facie* case that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance, the Respondent's name is listed in the Registrar's Whois database as "张宁 (Zhang Ning)", not the disputed domain name. There is no evidence indicating that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith. The fourth of these is as follows:

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] website or location.

With respect to registration, the disputed domain name was registered in 2019, after the registration of the Complainant's TIK TOK trademark. The disputed domain name incorporates the initial and dominant feature of that trademark as its initial element, and the final letter as well. The disputed domain name resolves to a website that offers a tool specifically for use with the Complainant's Tik Tok application and that displays the Complainant's Tik Tok logo and refers to the Complainant's domain name. There is little doubt that the Respondent was aware of the Complainant and its TIK TOK trademark at the time that he registered the disputed domain name.

With respect to use, the disputed domain name resolves to a site offering a tool that the Complainant has not authorized for use with the Complainant's Tik Tok application. Although the tool is free to use, the site displays hyperlinks to sites for other applications that offer paid memberships and subscriptions, as well as pop-up advertising, which indicates that it operates for the commercial gain of the registrant and the operators of the linked websites. For the reasons given in Section 6.2B above, the website gives the false or at least confusing impression that it is somehow affiliated with the Complainant. Given these circumstances, the Panel finds that the Respondent is using the disputed domain name intentionally to attract, for commercial gain, Internet users to his website 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 of a service on the Respondent's website, within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

¹ The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has visited the website associated with the disputed domain name, which is publicly accessible, to verify how the Respondent's website operates. The Panel considers this process of verification useful to assessing the case merits and reaching a decision. See WIPO Overview 3.0, section 4.8.

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, <tikrank.com>, be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: March 28, 2022