

ADMINISTRATIVE PANEL DECISION

Bytedance Ltd. v. Polyakov Andrey
Case No. D2022-3399

1. The Parties

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

Respondent is Polyakov Andrey, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <capcutpc.com> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2022. Also on September 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same September 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint.

The Center sent an email communication to Complainant on September 22, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 23, 2022.

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 Respondent of the Complaint, and the proceedings commenced on September 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 13, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 19, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on October 25, 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. Further Procedural Considerations: Respondent's location

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. Noting that Respondent's disclosed location appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue. Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel has reached this conclusion in part due to Respondent's apparent awareness of the proceeding and control over the Domain Name. Further to the Rules, the Center transmitted the Written Notice of the Complaint to both the named Privacy Service and Respondent. The Center also sent the Notification of Complaint by email to Respondent at its email address as registered with the Registrar and to a postmaster email address as specified by the Rules. There is no evidence that the case notification email to the disclosed Respondent email address was not successfully delivered.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that Respondent registered and has used the Domain Name in bad faith. The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

Complainant is an internet technology company in the field of creative content platforms. It owns a series of content platforms that enable people to connect with, consuming and creating content through machine learning technology, including "TikTok" and "Helo".

Complainant globally launched an app called "Capcut" in April 2020. "Capcut" is a video editing app that allows users to add stickers, filters and effects, while it also has a simple-to-use green screen function, a zooming feature and more. The "Capcut" app had downloads that reach 140 million globally in the first half of 2021, making it the world's ninth-most downloaded mobile app, according to app tracking firm Sensor Tower. At Google Play, more than 100 million users have downloaded the "Capcut" app. The app is ranked as "#6 in Photo & Video" in the Apple Store. Complainant also maintains a primary website for "Capcut" at "www.capcut.com".

Complainant and its subsidiary are the owners of trademark registrations for CAPCUT across various jurisdictions, including:

- the International Trademark Registration No. 4526907, CAPCUT, registered June 10, 2020, for goods and services in international classes 9, 41 and 42; and
- the European Union Trademark Registration No. 018255581, CAPCUT, registered May 15, 2021 for goods and services in international classes 9, 41, 42 and 45.

Complainant is also the owner of the domain name <capcut.net> registered on June 3, 2020.

The Domain Name was registered on September 17, 2021. It was used to host a website (“the Website”) that featured Complainant’s CAPCUT trademark and logo, while offering unauthorized versions of Capcut app for Linux, Windows and Mac users. The Website appeared to be a blog-style page, which published information and guides on Complainant’s Capcut app, however a close perusal of the Website’s historical screenshots showed that Respondent was promoting its own product to users for profit. Respondent had two versions of its “Capcut PC” – the Lite version was for free, while the Standard version had to be purchased by users. The following statement was found on the Website: “capcutpc.com is not an official representative or the developer of this application, game or product. Copyrighted materials belong to their respective owners.”

Complainant first tried to contact Respondent on May 17, 2022, through their hosting provider. Per Complaint, on May 20, 2022, Respondent sent an email stating that they were authorized by Complainant to use the Domain Name, but later on retracted such statement and claimed that there was a “misunderstanding”. Respondent then removed the home page of the Website, while the rest of the pages remained active. Only after Complainant specifically requested for all pages of the Website to be removed that Respondent removed all infringing content found on the Website.

Currently the Domain Name leads to an inactive website.

6. Parties’ Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to the Complainant’s contentions.

7. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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

The Domain Name incorporates Complainant’s CAPCUT trademark in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#)).

The addition of the letters “pc”, short for “personal computer”, does not prevent a finding of confusing similarity, as the CAPCUT trademark remains clearly recognizable within the Domain Name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8).

The generic Top-Level Domain (“gTLD”) “.com” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

The Panel finds that the Domain Name is confusingly similar to Complainant’s CAPCUT trademark.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name was used to host the Website to impersonate Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the Website originate from Complainant. Such use demonstrates neither a *bona fide* offering of goods nor a legitimate interest of Respondent (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#)).

A distributor or reseller can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and (iv) respondent must not try to “corner the market” in domain names that reflect the trademark.)

These requirements are not cumulatively fulfilled in the present case. The disclaimer placed by Respondent on the Website did not adequately disclose the relationship, or lack thereof, between Respondent and Complainant. On the contrary, the website’s “About” page does not make any mention of Respondent’s relationship, or lack thereof, with Complainant. Furthermore, Respondent promoted and made available an unauthorized version of CAPCUT for users to download and use in their personal computers through the Website.

The Domain Name falsely suggested that the Website is an official site of Complainant or of an entity affiliated to or endorsed by Complainant. The Website extensively reproduced, without authorization by Complainant, Complainant's trademark, without any clear disclaimer of association (or lack thereof) with Complainant.

In addition, the nature of the Domain Name, comprising Complainant's trademark in its entirety in combination with the letters "pc", carries a risk of implied affiliation (See [WIPO Overview 3.0](#), section 2.5.1.).

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

(ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Because the CAPCUT mark had been widely used and registered by Complainant before the Domain Name registration, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

Respondent should have known about Complainant's rights, as such knowledge is readily obtainable through a simple browser search and also due to Complainant's nature of business, provided also online, namely online sales (see *Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

Furthermore, the content of the Website gave the impression that it originated from Complainant, prominently displaying CAPCUT signs on the Website, thereby giving the false impression that the Website emanated from Complainant. This further supports registration in bad faith reinforcing the likelihood of confusion, as Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4).

The above further indicates that Respondent knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc.*, WIPO Case No. [D2015-0403](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name was employed to host a Website which appeared falsely to be that of Complainant.

The Domain Name has been operated by intentionally creating a likelihood of confusion with Complainant's trademark and business. This further supports the finding of bad faith use (*Arkema France v. Aaron Blaine, supra*; *Aktiebolaget Electrolux v. Priscilla Quaiotti Passos*, WIPO Case No. [D2011-0388](#) and [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

Furthermore, Respondent has been involved as named respondent in a large number of UDRP cases, such as *GoTo Technologies USA, Inc. v. Privacy service provided by Withheld for Privacy ehf / Polyakov Andrey*, WIPO Case No. [D2022-0983](#) (WIPO August 26, 2022), *Ryzac, Inc. v. Privacy service provided by Withheld for Privacy ehf / Polyakov Andrey*, WIPO Case No. [D2022 0658](#) (WIPO August 19, 2022). The Panel finds that Respondent is a "systematic cybersquatter" engaged in a series of domain name registrations that infringe trademarks of third parties

The Panel considers also the apparent concealment of the Domain Name holder's identity through use of a privacy shield at the time of filing the complaint, to be further indicative of bad faith (*BHP Billiton Innovation Pty Ltd v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#)).

Lastly, on May 20, 2022, Respondent sent an email stating that they were authorized by Complainant to use the Domain Name, but later on retracted such statement and claimed that there was a "misunderstanding". Respondent then removed the home page of the Domain Name's website, while the rest of the pages remained active. Only after Complainant specifically requested for all pages of the website to be removed that Respondent removed all infringing content found on the Website.

The Domain Name currently leads to an inactive website. The non-use of a domain name would not prevent a finding of bad faith (See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3).

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii)

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, <capcutpc.com> be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: November 8, 2022