

## **ADMINISTRATIVE PANEL DECISION**

Bytedance Ltd. v. Himanshu Saxena

Case No. D2022-4195

### **1. The Parties**

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

The Respondent is Himanshu Saxena, India.

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

The disputed domain name <capcutforpc.net> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 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 (Privacy service provided by Withheld for Privacy ehf), and contact information in the Complaint. The Center sent an email communication to the Complainant on November 7, 2022, 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 November 9, 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 the Respondent of the Complaint, and the proceedings commenced on November 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 12, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on December 16, 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 a Chinese Internet technology company headquartered in Beijing and incorporated as a limited share company in the Cayman Islands, United Kingdom. The Complainant operates a principal website at “www.bytedance.com”. The Complainant and its subsidiaries, including Lemon Inc. (also incorporated in the Cayman Islands, United Kingdom), develop and distribute Internet and mobile products that enable consumers to create and manage content.

After the Complainant’s TikTok video hosting service became popular worldwide, the Complainant launched its CapCut app in April 2020. CapCut is a video editor that allows users of mobile devices to edit their videos for TikTok and other platforms “on the go,” adding features such as zooming, stickers, filters, and a green screen. The CapCut app was an instant success. There were 140 million downloads of the app in the first half of 2021, making it the world’s ninth most downloaded mobile app, according to app tracking firm Sensor Tower. More than 100 million users have downloaded the CapCut app from Google Play to date, and the app is ranked number six in the “Photo & Video” category in the Apple Store. The Complainant also operates a website devoted to the app at “www.capcut.com,” where the app is promoted and can be downloaded and used on a personal computer, tablet, or other device.

The Complainant or its subsidiary Lemon Inc. have obtained a number of trademark registrations for CAPCUT, including the following:

MARK	OWNER	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE
CAPCUT (word)	Bytedance Ltd.	India	4526907	June 9, 2020
CAPCUT (combined, word in two forms of letters)	Bytedance Ltd.	Singapore	40202012059Y	November 25, 2020
CAPCUT (word)	Lemon Inc.	Malaysia	TM2020011434	June 16, 2020
CAPCUT (word)	Lemon Inc.	United Kingdom	UK00003501065	March 5, 2021
CAPCUT (word)	Lemon Inc.	European Union	018255581	May 14, 2021
CAPCUT (word)	Lemon Inc.	United States of America	6847261	September 12, 2022

According to the Registrar’s Whois database, the disputed domain name was created on November 17, 2021, and registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Himanshu Saxena, listing a postal address in India.

The Complaint attaches a screenshot of the website at “www.capcutforpc.net” to which the disputed domain name resolved in July 2022 (the “Respondent’s former website”). The Panel notes that more pages of this website can be found through the Internet Archive’s Wayback Machine. The Respondent’s former website displayed the Complainant’s word mark and design logo and was headed “CapCut for PC”, with images and text copied from the Complainant’s website at “www.capcut.com”, as well as original text commenting on features and uses of the Complainant’s CapCut application. A disclaimer on the home page stated, “We are not the official the [sic] developer of this application, game or product.” The website operator was not identified, however. The copyright notice was in the name of “CapCut FanSite”, but there is no indication that this corresponds to a legal entity. Instead, the “About Us” page described the operators as follows:

“Our Team

We are a group of video bloggers cum editors. We love shooting videos at different part of the world and this is how we came to know about this excellent app, CapCut. We have been using this for almost a year. We have watched tons of videos on youtube and learnt this ourselves. But We find that there is still a gap of knowledge transfer on using this app. So, we decided to launch a fan website on CapCut and share our knowledge to the whole world.”

Although the archived screenshots do not include third-party commercial advertising, the Respondent’s former website had a page labelled “Advertise with Us” with the following message soliciting advertisers:

“If you would like to advertise with us, please email at [...]@capcutforpc.net.”

The Respondent’s former website included information and links for downloading the Complainant’s CapCut app. The site also included a blog with information on the CapCut app and discussion of other editing products, including positive reviews of products that compete with the Complainant’s CapCut app.

At the time of this Decision, the disputed domain name does not resolve to an active website.

## **5. Parties’ Contentions**

### **A. Complainant**

The Complainant asserts that the disputed domain name is confusingly similar to its distinctive and registered CAPCUT trademark, which it incorporates in its entirety. The disputed domain name adds the phrase “for pc,” which is misleadingly relevant, as “pc” is a common abbreviation for “personal computer.”

The Complainant contends that the Respondent has neither permission to use the Complainant’s trademark nor other rights or legitimate interests in the disputed domain name, as the Respondent is not known by a corresponding name and has used the disputed domain name in a “fraudulent” manner, without clearly identifying the Respondent or its relationship with the Complainant, while giving the impression that its former website was associated with the Complainant.

The Complainant argues that the Respondent acted in bad faith, as it was clearly aware of the Complainant and its mark, reproducing the Complainant’s mark and design logo on the Respondent’s former website, discussing the Complainant’s CapCut app on the site, and facilitating downloads of the product through the site. The Complainant argues that the Respondent was misleading Internet users as to its implied association with the Complainant, misdirecting them to other sites for commercial gain, and encouraging them to download unauthorized copies of the Complainant’s app. The Complainant also demonstrates that the disputed domain name has been configured for MX servers in preparation for use with email, which could be used for fraudulent emails impersonating the Complainant. The Complainant argues that there is simply no conceivable good-faith use for the disputed domain name and that the “passive holding” doctrine of *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), should apply even now that the Respondent has taken down its imitative website.

### **B. Respondent’s**

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

## 6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the 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 domain name; and (iii) the domain name has been registered and is being used in bad faith. Under paragraph 15(a) of the Rules, “[a] Panel shall decide a 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 of a UDRP complaint “functions primarily as a standing requirement” and entails “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 Domain Name incorporates the Complainant’s registered CAPCUT trademark in its entirety. The addition of the phrase “for pc” comprised of a dictionary word and abbreviation does not prevent a finding of confusing similarity. See *id.* section 1.8. As usual, the addition of the generic Top-Level Domain “.net” is disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel concludes that the Complainant has established the first element of the Complaint.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the 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) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has demonstrated trademark rights, denies authorizing the Respondent to use the trademark, and demonstrates that the domain name has been used for a website reproducing the Complainant’s mark and logo and evidently linking to unauthorized downloads of the Complainant’s CapCut app. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent. The Respondent did not respond to the Complaint.

From a perusal of the Respondent’s former website, it appears that the Respondent could be one of the otherwise anonymous “team” of video bloggers who launched what they described as a “fan website”. UDRP panels have found that a genuine fan website may represent a “legitimate noncommercial or fair use” of a disputed domain name under certain conditions: the site should be “active, genuinely noncommercial, and clearly distinct from any official complainant site.” See [WIPO Overview 3.0](#), section 2.7.1. Here, the disputed domain name itself does not clearly delineate the domain name as designed for a fan site (see *id.*, section 2.7.3). The Respondent’s former website was active for a time and included some disclaimer

language, but it prominently and confusingly displayed the Complainant's mark and logo while neither identifying the website operators nor explaining their relationship with the Complainant, whose products were linked from the site. The Respondent's former website contemplated commercial use, as it included a page soliciting advertisers. The linked download sites were not authorized and may have caused competitive harm to the Complainant. And the blog commentary included reviews favorable to the Complainant's competitors. On this record, the Panel does not find that the Respondent's former website operated wholly within the parameters of a "fan website" making "legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers".

The Panel finds that the Respondent has failed to meet its burden of production and concludes that the Complainant prevails on the second element of the Complaint.

### **C. Registered and Used in Bad Faith**

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following (in which "you" refers to the registrant of the domain name):

"(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location."

The Respondent was plainly aware of the Complainant and its distinctive and previously registered mark, as the Respondent's former website displayed the Complainant's mark and logo and was largely devoted to discussion of the Complainant's CAPCUT branded app. The Respondent published a website that had some of the elements of a true fan site, with information and a blog about the CapCut app. However, as discussed in the preceding section, the Respondent's former website also discussed competing products and solicited commercial advertising. It was not evident from the nature of the disputed domain name itself that the domain name was intended for a "fan site" and was not associated with the Complainant, and the content of the Respondent's former website was misleading: while there was a footer with a disclaimer, the website operator was not identified, the website prominently displayed the Complainant's mark and logo, and the site provided links to (unauthorized) downloads of the Complainant's CapCut app.

As discussed in the preceding section, the Respondent's former website did not meet the conditions for a legitimate fan website. Rather, the Panel finds that the Respondent created a likelihood of confusion as to source or affiliation, intentionally misdirecting Internet users to its former website for potential commercial gain. This constitutes bad faith within the meaning of the Policy.

The Panel concludes that the Complainant has established the third element of the Complaint, bad faith.

### **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 <capcutforpc.net> be transferred to the Complainant.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: January 3, 2023