

ADMINISTRATIVE PANEL DECISION

Lemon Inc. v. Sehar Ijaz, hamza numan
Case No. D2023-3995

1. The Parties

The Complainant is Lemon Inc., United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondents are Sehar Ijaz, Pakistan and hamza numan, Pakistan.

2. The Domain Names and Registrar

The disputed domain names (the “Disputed Domain Names”) <capcutaapk.com> (the “First Disputed Domain Name”) and <capcutsapk.com> (the “Second Disputed Domain Name”) are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 25, 2023. On September 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On September 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 26, 2023, 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 28, 2023.

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 Respondents of the Complaint, and the proceedings commenced on October 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2023. The Respondents did not submit any formal response. Accordingly, the Center notified the Respondents’ default on October 27, 2023. The Center received email communications from one of the Respondents on November 8, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on November 3, 2023. 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 editing an app dedicated to video editing for social media platforms and networks. The Complainant is affiliated with a world-known technology company editing a very popular social media platform for which the Complainant's products and services are widely used across the world.

The Complainant is the owner of several registered trademarks incorporating the term "CapCut" (the "CAPCUT Trademarks"), including:

- the Indian wordmark CAPCUT, No. 4526907 registered on June 10, 2020, for products and services in classes 9, 41, and 42;
- the United States of America wordmark CAPCUT No. 6847261 registered on September 13, 2022, for products in class 9;
- the European Union wordmark CAPCUT No. 018255581 registered on May 15, 2021, for products and services in class 9, 41, 42, and 45;
- the United Kingdom wordmark CAPCUT No. UK00003501065 registered on March 5, 2021, for products and services in class 9, 41, and 42;
- the Indonesian wordmark CAPCUT No. IDM000899112 registered on October 13, 2021, for products in class 9;
- the Indonesian figurative mark CapCut Logo  No. IDM001051262 registered on January 24, 2023, for services in class 45.

The Complainant also provides its services through a website accessible at <capcut.com>.

The First Disputed Domain Name was registered on April 28, 2023, and resolves to a blog containing articles on the Complainant and its business model and Chinese cooking recipes.

The Second Disputed Domain Name was registered on January 20, 2023, and resolves to a website containing articles explaining how to download a hacked version of the Complainant's app.

5. Parties' Contentions

A. Complainant

First, the Complainant submits that the two Disputed Domain Names are under common control since (i) they were registered through the same privacy service with the Registrar, (ii) they are resolving to websites which are offering modified versions of the Complainant's app, (iii) the Second Disputed Domain Name claimed to be affiliated with the First Disputed Domain Name and (iv) they are hosted on the same DNS nameservers.

Then, the Complainant stands that the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which it has rights. The Complainant considers that the mere addition of the letter “s” or “a” with the abbreviation “apk” for Android Package Kit does not prevent a finding of confusing similarity. The Complainant asserts that this confusing similarity is enhanced by the use of the CAPCUT Trademarks and logo in the websites linked to the Disputed Domain Names.

The Complainant also submits that the Respondents have no rights or legitimate interests in respect of the Disputed Domain Names. The Complainant explains that it has not authorized or granted licenses to the Respondents to use its CAPCUT Trademarks and that the Respondents are not commonly known by the Disputed Domain Names. The Complainant considers that the use of a privacy service when registering the Disputed Domain Names is further evidence of the absence of a legitimate interest. The Complainant then asserts that the Respondents are not using the Disputed Domain Names with a *bona fide* offering of goods and services since they are trying to pass off as the Complainant by displaying its logo and using the CAPCUT Trademarks.

Finally, the Complainant asserts that the Disputed Domain Names were registered and are being used in bad faith. The Complainant demonstrates that its CAPCUT Trademarks are known internationally and precede the registration of the Disputed Domain Names. The Complainant submits that the Respondents have deliberately registered domain names that are confusingly similar to its CAPCUT Trademarks. For the Complainant this is highlighted by the content of the websites linked to the Disputed Domain Names since they provide information on the Complainant’s app to generate revenue because of third-party ads. The Complainant stands that the use by the Respondents of the Disputed Domain Names constitutes a disruption of its business since they notably offer advice on how to download hacked version of the Complainant’s app.

B. Respondents

None of the Respondents replied to the Complainant’s contentions.

However, the Panel did receive informal communications from one of the Respondents where it declares to be open to the change of its domain name (the First Disputed Domain Name).

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondents have 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.

A. Preliminary Issue – Consolidation of Respondents

The Complaint relates to two Disputed Domain Names which the Complainant wishes to deal with in a single administrative proceeding.

According to the Policy, paragraph 10(e) a Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

A Panel can decide to consolidate a complaint filed against multiple respondents when (i) the disputed domain names or related websites are under common control and (ii) the consolidation would be fair and equitable to all parties (see section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

To assess whether several disputed domain names are under common control, Panel may take into consideration a range of factors typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants’ identities including pseudonyms, (ii) the registrants’ contact information including email addresses, postal address(es), or phone numbers, including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s) (see section 4.11.2 of the [WIPO Overview 3.0](#)).

Prior UDRP panel decisions have also taken into consideration (i) the limited period in which the disputed domain names were registered (ii) the generic Top-Level Domain (“gTLD”), registrar and hosting services used or (iii) the location of the respondents, (iv) the content of the websites linked to the disputed domain names (see *Virgin Enterprises Limited v. LINYANXIAO aka lin yanxiao*, WIPO Case No. [D2016-2302](#); *Bayerische Motoren Werke AG v. MIKE LEE*, WIPO Case No. [D2016-2268](#); *Lancôme Parfums Beauté et compagnie and L’Oréal v. Din Mont and Yunleng Mercyk*, WIPO Case No. [D2016-1721](#) and *VICINI S.P.A v. runs yao / delao dkeo*, WIPO Case No. [D2014-1000](#)).

First, the Panel finds that both Disputed Domain Names are construed in an identical way and begin with the CAPCUT Trademarks followed by the acronym “apk” and end with the gTLD “.com”.

Both Disputed Domain Names were registered with the same Registrar using the same privacy services. The Disputed Domain Names are also hosted on the same DNS nameservers.

Then, the Panel finds that both Disputed Domain Names redirect to blogs publishing articles on the Complainant and its app.

Based on an independent research using the website “www.archive.org”, the Panel has found out that the privacy policy of both Disputed Domain Names was nearly identical. Moreover, the privacy policy of the First Disputed Domain Name was removed following the notification of the Complaint which is further evidence that both Disputed Domain Names were under common control.

Furthermore, the Panel finds that a section on the website linked to the Second Disputed Domain Name has claimed affiliation with the First Disputed Domain Name.

Finally, the Disputed Domain Names were registered in a three-month timeframe and by people located in the same province in Pakistan.

The Respondents also had the opportunity to respond to the Complaint but did not do so formally nor denied any affiliation with the other.

Accordingly, the Panel finds that the Complainant has established more likely than not that the Disputed Domain Names are subject to common ownership or control. The Panel finds such common control to justify consolidation of the Complaint against both Respondents.

In light of the above, the Respondents may be referred to collectively as “the Respondent” hereafter.

B. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the CAPCUT Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially 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. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP (see section 1.7 of the [WIPO Overview 3.0](#)).

The Panel finds that the First Disputed Domain Name is composed of:

- the CAPCUT Trademarks;
- the letter "a";
- the acronym "apk" for Android Package Kit; and
- the gTLD ".com".

The Panel finds that the Second Disputed Domain Name is composed of:

- the CAPCUT Trademarks;
- the letter "s";
- the acronym "apk" for Android Package Kit; and
- the gTLD ".com".

According to prior UDRP panel decisions, it is sufficient that the domain name incorporates the entirety of a trademark, in order to consider the domain name as confusingly similar to that mark for purposes of UDRP standing.

Furthermore, the mere addition of a word to a mark does not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#); *Hoffmann-La Roche Inc., Roche Products Limited v. Vladimir Ulyanov*, WIPO Case No. [D2011-1474](#); *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); *Bayerische Motoren Werke AG v. bmwcar.com*, WIPO Case No. [D2002-0615](#); *Swarovski Aktiengesellschaft v. mei xudong*, WIPO Case No. [D2013-0150](#); *RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. [D2010-1059](#)).

Therefore, the Panel considers that the combination of the CAPCUT Trademarks, an additional letter "a" or "s" and of the acronym "apk" which directly refers to the Complainant's activities, does not prevent a finding of confusing similarity between the Disputed Domain Names and the Complainant's trademarks.

Lastly, the Panel adds that the gTLD in a domain name is viewed as a standard registration requirement and as such is generally disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Finally, the Panel holds that both Disputed Domain Names are confusingly similar to the CAPCUT Trademarks, and that the Complainant has established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Names.

These circumstances are:

(i) before any notice 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) the respondent (as an individual, business, or other organization) has been commonly known by the 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 *prima facie* that a 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names.

Indeed, it appears that the Complainant has not given any license or authorization of any kind to the Respondent to use the CAPCUT Trademarks. Moreover, the Panel finds that there is no evidence that the Respondent is commonly known by the Disputed Domain Names. This is confirmed by the informal communication received by the Panel from the email address used to register the First Disputed Domain Name where the Respondent states that it is open to change its name if it is already used by someone else.

Furthermore, the Panel considers that there is no evidence that the Respondent has the intent to use the Disputed Domain Names in connection with a *bona fide* offering of goods or services. On the contrary, the First Disputed Domain Name resolves to a blog containing articles on Chinese cooking recipes, on how to earn money online and on the Complainant and its business model. The website linked to the First Disputed Domain Name reproduces the CAPCUT Trademarks and logo in their entirety and does not at any time specify that it is not affiliated with the Complainant thus hinting otherwise. Therefore, the Panel considers that there is a chance that the content hosted on the First Disputed Domain Name may mislead Internet users into thinking there was an affiliation between the Complainant and the Respondent which cannot be considered as a fair use of the Disputed Domain Name.

With respect to the Second Disputed Domain Name, the Panel finds that it resolves to a blog containing articles explaining how to download hacked versions of the Complainant's app. According to prior UDRP panel decisions, panels have categorically held that the use of a domain name for illegal activity (e.g., distributing malware, impersonation/passing off) can never confer rights or legitimate interests on a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#)).

Finally, the Respondent did not formally reply to the Complainant's contentions, and consequently, did not rebut the Complainant's *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Complainant has established that the Respondent does not have any rights or legitimate interests in both Disputed Domain Names.

D. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Names have been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the 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 the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 website or location or of a product or service on the respondent's website or location.

First, according to prior UDRP panel decisions, the mere registration of a domain name that is identical or confusingly similar to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)). Indeed, the Panel considers that it is established that the CAPCUT Trademarks were registered and used well before the registration of the Disputed Domain Names. By adding another letter and the suffix "apk" which is a direct reference to the Complainant's activities, the Respondent has intentionally attempted to confuse Internet users and capitalized on the fame of the CAPCUT Trademarks.

Moreover, as discussed above, the First Disputed Domain Name reproduces the CAPCUT Trademarks and logo in their entirety and redirects to a blog with articles dedicated to the Complainant and its business model and with articles on Chinese cooking recipes. Internet users can also contact the owner of this website by using an email address which is composed entirely of the CAPCUT Trademarks which aggravates the risk of misleading Internet users into thinking they are dealing with the Complainant, or someone affiliated to it.

The Second Disputed Domain Name redirects to a blog containing articles explaining how to download a hacked version of the Complainant's app. There are also sections in the Second Disputed Domain Name claiming affiliation with the First Disputed Domain Name. It also reproduces the CAPCUT Trademarks directly on the website.

The Panel points out that this use of the Disputed Domain Names by the Respondent demonstrates that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the CAPCUT Trademarks as to the source, sponsorship, affiliation, or endorsement. Indeed, several ads are displayed on the blog linked to the Second Disputed Domain Name, which is evidence that the Respondent earns profit of his/her blog articles that promote the downloading of illegal versions of the Complainant's products.

The Panel also finds that the modification of the blog linked to the First Disputed Domain Name after the notification of the Complainant is further indication of a sign of bad faith registration, since the Respondent has removed sections hinting at the affiliation between both Disputed Domain Names.

Finally, the Respondent has not provided any formal response to the Complainant's contentions and the informal communication of one of the Respondents may be perceived as an acknowledgement of registration and use in bad faith.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using both Disputed Domain Names in bad faith according to the Policy, paragraphs 4(a)(iii) and 4(b).

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 <capcutaapk.com> and <capcutsapk.com> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: November 14, 2023