

## **ADMINISTRATIVE PANEL DECISION**

Lemon Inc. v. saleem abbas

Case No. D2023-4066

### **1. The Parties**

The Complainant is Lemon Inc., United Kingdom (“UK”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is saleem abbas, Pakistan.

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

The disputed domain name <ressomodapk.com> (the “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 28, 2023. On September 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 29, 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 October 4, 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 Respondent of the Complaint, and the proceedings commenced on October 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2023. On October 25, 2023, the Center notified the Parties of the Commencement of Panel Appointment Process.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on October 30, 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.

On October 31, 2023, the Complainant forwarded a communication sent by the Respondent to the Complainant on October 27, 2023.

#### **4. Factual Background**

The following facts are undisputed.

The Complainant is an affiliate company of ByteDance Ltd, which is an Internet technology company operating creative content platforms and series of products that are used for *inter alia* TikTok, CapCut and Pico. In May 2019, ByteDance launched the mobile application called “Resso”. The app Resso has more than 100 million users on Google Play and their official website “www.resso.com” has attracted more than 442,600 visitors between June and August 2023.

The Complainant is the owner of trademark registrations, including but not limited to, the Australian trademark registration number 2170358 for the RESSO (word mark), with registration date of November 22, 2021, for goods and services in classes 35, 41, and 45, and the Mexican trademark registration number 2270843 for the RESSO (word mark), with registration date of July 6, 2021, for services in class 35 (hereinafter together in singular referred to as the “RESSO Trademark”).

The Domain Name was registered on November 9, 2022, and resolves to a website (the “Website”) that advertises the “Resso Mod Apk”, a modified version of the Complainant’s Resso app while clearly displaying the Complainant’s RESSO Trademark and logo. The Website also advertises other modified versions of third party’s applications.

#### **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 Domain Name.

Notably, the Complainant contends that the Domain Name is confusingly similar to the RESSO Trademark in which the Complainant has rights. More specifically, the Domain Name comprises of the RESSO Trademark in its entirety to which the Respondent has added the terms “mod” and “apk”. The term “mod” is an abbreviation for the word “modification” and the term “apk” is an abbreviation for the term “Android Package Kit”. Both “mod” and “apk”, refer to and/or describe the Complainant’s product and activities.

The Respondent has no prior rights or legitimate interests in respect of the Domain Name, as the Respondent is not commonly known by the Domain Name and its name has no resemblance with the RESSO Trademark. Moreover, the Respondent is not sponsored by or affiliated with the Complainant and the Complainant has not licensed, authorized, or otherwise permitted the Respondent to use its RESSO Trademark or to register domain names incorporating the RESSO Trademark.

In addition to this, the Respondent is making neither a *bona fide* offering of goods or services, nor a legitimate, noncommercial fair use of the Domain Name. The Respondent uses the Domain Name to provide information about the Resso app and how to use it, even offering a modified app for download, without the Complainant’s prior authorization or approval. Moreover, the Respondent has not satisfied all of

the requirements set forth in the so-called “Oki Data test” since the Website does not accurately and prominently disclose the Respondent’s relationship with the Complainant or the lack thereof.

The Domain Name has been registered and used in bad faith. The Respondent has registered the Domain Name with prior knowledge of the RESSO Trademark and the Complainant’s activities. The Respondent has done so with the intent to disrupt the Complainant’s relationship with its customers and/or in order to attempt to attract Internet users for commercial gain to the Website by creating a likelihood of confusing with the RESSO Trademark as to the source, sponsorship, affiliation, or endorsement of the Website by the Complainant.

## **B. Respondent**

The Respondent did not submit a formal response to the Complainant’s contentions. However, the Respondent sent the Complainant an email after the commencement of the administrative proceedings informing them that it has removed all content from the Website and it is not willing to transfer the Domain Name. In addition to this, the Respondent has asked the Complainant whether it has also taken action against other websites using the RESSO Trademark and content.

## **6. Discussion and Findings**

### **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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the RESSO Trademark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here “mod” and “apk”, 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 Domain Name and the RESSO Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

While 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 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 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. 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 record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. 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 Domain Name, such as those enumerated in the Policy or otherwise.

The Panel considers that the record of this case reflects that:

The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The Respondent is not making use of or has shown 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 prior to notice of the dispute.

The Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent.

The Panel also notes that the Domain Name reproduces the entirety of the RESSO Trademark added by the terms "mod" and "apk". In this regard, even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Further to the above, the Respondent uses the Website to offer information and guidance relating to a modified version of the Complainant's Resso app. Said use of the Domain Name further supports the risk of implied affiliation of the Domain Name with the Complainant and thus, cannot be considered to confer rights or legitimate interests of the Respondent. This impression is further strengthened by the fact that the Respondent prominently and frequently displays the Complainant's RESSO Trademark on the Website.

Hence, the Respondent's use cannot be considered a legitimate noncommercial or fair use of the Domain Name.

Based on the available record, 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.

In the present case, the Panel considers that the record of this case reflects that: 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4

In the present case, the Panel notes that the Domain Name comprises of the RESSO Trademark in its entirety including the descriptive terms “mod” and “apk”, which refer to and/or describe the Complainant’s activities. Moreover, the Website to which the Domain Name resolves offers information about a modified version of the Resso app for download, that all clearly relate to and/or imitate the products and services that are being offered by the Complainant under the RESSO Trademark. In light of the aforementioned, as well as the use of the RESSO logo, the Panel finds that the Respondent must have been aware of the existence of the Complainant’s activities and rights at the time that the Respondent registered the Domain Name.

In addition the Respondent chose not to rebut the claims of the Complainant and even sent the Complainant an email once the administrative proceedings had already commenced, asking whether the Complainant also took action against other websites using the RESSO Trademark and content. Therefore, the Panel finds that there is no other plausible explanation than that the Respondent was aware of the existence of the Complainant’s rights and activities at the time the Respondent registered the Domain Name.

As such, the Respondent has registered and is using the Domain Name to intentionally attract Internet users for commercial gain to its Website by creating a likelihood of confusion with the Complainant’s RESSO Trademark as to the source, sponsorship, affiliation or endorsement of the Website. In doing so, the Respondent has targeted the Complainant and its business activities which as a result is disrupting for the business of the Complainant. Consequently, the Respondent has registered and is using the Domain Name in bad faith.

Lastly, the Panel takes into consideration that the Respondent has been hiding behind a privacy shield. In accordance with section 3.6 of the [WIPO Overview 3.0](#) this also supports a finding of bad faith.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the Domain Name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## 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 Domain Name <ressomodapk.com> be transferred to the Complainant.

*/Willem J.H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: November 13, 2023