

## **ADMINISTRATIVE PANEL DECISION**

Bytedance Ltd. v. Happy Raj  
Case No. D2022-3618

### **1. The Parties**

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

The Respondent is Happy Raj, India.

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

The disputed domain name <capcut.org> 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 29, 2022. On September 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 30, 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 October 3, 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 October 5, 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 October 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 27, 2022.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on November 3, 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 and its subsidiary, Lemon, Inc., are technology companies located in the Cayman Islands, United Kingdom.

The Complainant owns a series of content platforms, including TikTok, and Helo. In May 2017, the Complainant launched TikTok which has become the leading application for short-form mobile video.

Later, in April 2020 the Complainant launched CapCut which is a video editing application that by the first half of 2021 saw 100 million downloads in the Google Play store, making it the ninth-most downloaded mobile application and ranked sixth in the Photo & Video category in the Apple Store.

The Complainant is the owner of several trademark registrations around the world, among others, the following:

Trademark	No. Registration	Jurisdiction	Date of Registration
CAPCUT	4526907	India	June 10, 2020
CAPCUT	40202012059Y	Singapore	June 11, 2020
CAPCUT	UK00003501065	United Kingdom	March 5, 2021
CAPCUT	018255581	European Union	May 15, 2021

The Complainant owns the domain name <capcut.com>, which according to “similarweb.com” has had more than 41,100 visitors between April and June 2022.

The Respondent registered the disputed domain name <capcut.org> on July 19, 2021, and it resolves to a “fan site” that apparently lets Internet users download the application.

#### 5. Parties' Contentions

##### A. Complainant

##### I. Identical or Confusingly Similar

That the Second-Level Domain of the disputed domain name consists solely of the Complainant's trademark, resulting in the disputed domain name being identical to the Complainant's trademark.

That the Respondent's use of the disputed domain name contributes to the risk of confusion since the website to which the disputed domain name resolves offers a downloadable version of the application that bears the CAPCUT trademark, among other third-party software products.

##### II. Rights or Legitimate Interests

That the Respondent is not sponsored or affiliated with the Complainant in any way, nor has the Complainant given any license, authorization, or permission to the Respondent.

That the Respondent is not commonly known by the disputed domain name, which evidences a lack of rights or legitimate interests.

That in this case the Whois database identifies the Registrant as “Happy Raj”, and that there is no evidence suggesting that the Respondent is commonly known by the disputed domain name.

That at the time when the Complaint was filed, the Respondent was using a privacy service, which previous UDRP panels have found to equate to a lack of legitimate interests.

That the Respondent registered the disputed domain name on July 19, 2021, *i.e.*, after the filing date of the Complainant’s application for the CAPCUT trademark registration, and the date of registration of the <capcut.net> domain name by the Complainant.

That the absence of the Respondent’s legitimate rights to and interests in the disputed domain name is further evidenced by the identical use of the Complainant’s trademark, which indubitably constitutes a direct effort to take advantage of the fame and goodwill of the Complainant.

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

That the Complainant and its trademark are known internationally, including in India, where the Respondent appears to be located.

That the Complainant has marketed and sold goods and services using its trademark since April 2020, which is before the date of registration of the disputed domain name.

That, by registering the disputed domain name that fully incorporates the Complainant’s trademark, the Respondent has created a disputed domain name that is identical to the Complainant’s trademark and domain name. That, therefore, the Respondent has demonstrated a knowledge of and familiarity with the Complainant’s brand and business.

That, considering that the disputed domain name contains unauthorized links to download the Complainant’s applications, there is no possible way to conceive a plausible situation in which the Respondent would have been unaware of the Complainant’s trademark.

That the Respondent has created a likelihood of confusion with the Complainant and its trademark by causing the disputed domain name to resolve to a website that displays the Complainant’s trademark and purports to be an “educational fan website” that allows users to download without authorization the Complainant’s application. That, therefore, the Respondent is attempting to profit from such confusion by also including download links for third-party software products.

That the Respondent, at the time of the initial filing of the Complaint, was employing a privacy service to hide his identity, which previous panels appointed under the Policy have considered as further evidence of bad faith registration and use.

That on a balance of the facts, it is more likely than not that the Respondent knew of and targeted the Complainant’s trademark.

### **B. Respondent**

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

## 6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is satisfied:

(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 was registered and is being used in bad faith.

Given the Respondent's failure to submit a formal Response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations, in accordance with paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

### A. Identical or Confusingly Similar

The disputed domain name is identical to the Complainant's trademark CAPCUT, as said disputed domain name includes it entirely (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The addition of the generic Top-Level Domain ("gTLD") ".org" to the disputed domain name constitutes a technical requirement of the Domain Name System and therefore has no legal significance in the present case (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

In light of the above, the first element of the Policy has been met.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights or legitimate interests in the disputed domain name:

(i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the disputed 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 disputed domain name, even if it did not acquire 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.

The Complainant has asserted that there is no relationship or affiliation between the Complainant and the Respondent, that it has not granted any permission or license to the Respondent to use its trademark CAPCUT, and that the Respondent has not been commonly known by the disputed domain name (see *Beyoncé Knowles v. Sonny Ahuja*, WIPO Case No. [D2010-1431](#), and *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#)). The Respondent did not contest these allegations.

According to the evidence filed by the Complainant, the disputed domain name resolves to a website that appears to offer a downloadable version of the Complainant's mobile application that bears the CAPCUT trademark, among other third-party software products. Taking this into consideration, as well as the fact that,

as stated before, the disputed domain name consists entirely and solely of the Complainant's trademark CAPCUT, it can be inferred that the disputed domain name carries a high risk of implied affiliation, since Internet users may think that the website to which this disputed domain name resolves is the Complainant's official website or is otherwise affiliated to or sponsored by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#), see also *Euro Sko Norge AS v. Whoisguard Inc. / Shier Dede, Shier Dede*, WIPO Case No. [D2020-0194](#), *Bechtel Group, Inc. v. Raman Shuk* WIPO Case No. [D2020-1469](#), *Biofarma v. Dawn Mason*, WIPO Case No. [D2019-1952](#)).

Furthermore, according to the evidence submitted by the Complainant, the website to which the disputed domain name resolves predominantly displays the Complainant's CAPCUT trademark. As well, this Panel noticed that the website to which the disputed domain name resolves comprises a text claiming that said site is a "Capcut Fan Website (Unofficial)". Moreover, it includes the following disclaimer "Unofficial Fan Website- We are not associated with the original developers, all rights are reserved to the official developers". However, as mentioned in the previous element, the disputed domain name is identical to the Complainant's trademark. Thus, previous panels appointed under the Policy have found that even when a disputed domain name "is being used in relation to a genuine noncommercial fan site, panels have tended to find that a general right to operate a fan site (even one that is supportive of the mark owner) does not necessarily extend to registering or using a domain name that is identical to the complainant's trademark, particularly as the domain name may be misunderstood by Internet users as being somehow sponsored or endorsed by the trademark owner". (See section 2.7.2 of the [WIPO Overview 3.0](#), see also *David Gilmour, David Gilmour Music Limited and David Gilmour Music Overseas Limited v. Ermanno Cenicolla*, WIPO Case No. [D2000-1459](#) ("The panel finds that the disputed domain name was selected by the Respondent with intent to attract Internet users to his website by trading on the goodwill of the Complainant's trademark and that the Respondent intended using the site for commercial gain by selling any exclusive merchandise associated with the first Complainant, if he could obtain a licence (sic.) to do so. 'Use which intentionally trades on the fame of another cannot constitute a *bona fide* offering of goods or services': *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"* ([D2000-0847](#))).

The abovementioned precedents are relevant to this case since, as proven by the Complainant, the website to which the disputed domain name resolves comprises unauthorized links to download the Complainant's software, as well as third-party software products.

The Complainant has made a *prima facie* case asserting that there is no evidence of the Respondent's use of the disputed domain names in connection with a *bona fide* offering of goods or services. The Respondent has not submitted evidence to prove otherwise.

Therefore, the second element of the Policy has been fulfilled.

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

Bad faith under the Policy is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 your 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 its website or location.

The Complainant has proven to be the owner of registrations for the trademark CAPCUT throughout different jurisdictions, including India, where the Respondent apparently resides.

Given the fact that the mobile application that bears the CAPCUT trademark has been downloaded over 100 million times in the Google Play store, making it the ninth-most downloaded mobile application and ranked sixth in the Photo & Video category in the Apple Store by the first half of 2021, this Panel finds that the CAPCUT trademark is well known.

The fact that the Respondent chose to register the disputed domain name that entirely includes the well-known trademark CAPCUT, which has been used to make available unauthorized downloads of the Complainant's software, shows that the Respondents knew the Complainant, its trademarks, and its business when registering the disputed domain name and that the Respondent targeted the Complainant (see section 3.2.1, and 3.2.2 of the [WIPO Overview 3.0](#); see also *Self-Portrait IP Limited v. Franklin Kelly*, *supra*, WIPO Case No. [D2019-0283](#) ("According to Complainant, this reproduction of Complainant's copyright material was unauthorized, and therefore, illegitimate. It is clear that this use of the Disputed Domain Name is an attempt to impersonate Complainant."), *Jupiter Investment Management Group Limited v. N/A, Robert Johnson*, WIPO Case No. [D2010-0260](#) ("The Complainant claims that the Respondent has infringed its copyright. That seems probable. However, the Panel is unconvinced that copyright infringement *per se* necessarily leads to a finding of bad faith. In cases where there is full scale reproduction of another's site there may well be both copyright infringement and bad faith but it is the unauthorized (sic.), unjustified and wholesale impersonation that justifies the bad faith finding."), and *Valentino S.p.A. v. Qiu Yufeng, Li Lianye*, WIPO Case No. [D2016-1747](#)). The Panel accepts the balance of probabilities, that it is more likely than not that the Respondent knew of and targeted the Complainant's trademark.

These facts also show that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to his website by creating the impression among Internet users that the website to which the disputed domain name resolves is related to, associated with, or endorsed by the Complainant, which conduct constitutes bad faith under paragraph 4(b)(iv) of the Policy. According to the evidence submitted by the Complainant, the Respondent has used the disputed domain name to make available unauthorized links to download the Complainant's mobile application, as well as third-party software products, which cannot constitute legitimate interests (see section 3.1.4 of the [WIPO Overview 3.0](#) ("the use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith."), see also *Autodesk, Inc. v. Xiaodong Wang*, WIPO Case No. [D2014-1690](#), and *Nintendo of America Inc. v. Fernando Sascha Gutierrez*, WIPO Case No. [D2009-0434](#) ("Moreover it is established that the Respondent registered and used the disputed domain name, including the Complainant's well-known trademark, for the purpose of intentionally attracting users to the Respondent's website by suggesting that the Respondent's website is affiliated with or endorsed by the Complainant. The Respondent obtains commercial benefit through sign-up fees and through sales of pirated, illegal and unauthorized products."))

Finally, as mentioned above, the website to which the disputed domain name resolves displays a disclaimer that states: "Unofficial Fan Website- We are not associated with the original developers, all rights are reserved to the official developers". As mentioned in the second element, this Panel considers the inclusion of this disclaimer could be a mere pretext for cybersquatting for commercial gain, since "the overall circumstances of a case point to the respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. In such cases, panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused." (see section 3.7 of the WIPO Overview, see also *Philip Morris Products S.A. v. Michal Kovrzek*, WIPO Case No. [D2017-2481](#) ("The disclaimer displayed at the bottom of the Respondent's webpage is not only artificial in the Panel's opinion, but seems to have been specifically

tailored to avoid a bad faith finding, in an effort to take advantage of a mere formalistic, decontextualized interpretation of the Policy. Where the overall circumstances of a case point to the Respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith").

Therefore, the third element of the Policy has been met.

## **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 <capcut.org> be transferred to the Complainant.

*/Kiyoshi Tsuru/*

**Kiyoshi Tsuru**

Sole Panelist

Date: November 17, 2022