

## **ADMINISTRATIVE PANEL DECISION**

TikTok Ltd. v. Gustavo Gino

Case No. D2023-1285

### **1. The Parties**

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

The Respondent is Gustavo Gino, Brazil.

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

The disputed domain name <tiktokincrivel.site> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 24, 2023. On March 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 27, 2023, 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 (Registration Private, Domains By Proxy, LLC), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 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 March 29, 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 April 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2023. The Respondent did not submit any formal Response. In fact, the Respondent sent two informal emails. In the first email, of April 19, 2023, following the Center’s notification of the commencement of the proceeding, the Respondent stated that he had no intention of keeping the disputed domain name (which can thus be kept by the Complainant), and that he had disabled the website. On the same day, the Center informed the Parties that the proceeding might be suspended to

implement a settlement agreement between the Parties. After receiving this communication, the Respondent sent a second email, saying that he was sorry for the inconvenience caused, that he accepted the conciliation agreement and that he no longer had access to the website. On May 11, 2023, the Complainant sent an email saying that they did not want to explore settlement options, and asked the Center to reinstate the proceeding. Accordingly, the Center notified the Parties with the Commencement of Panel Appointment Process on May 11, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on May 24, 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 that enables users to share content. TikTok was launched in May 2017, and became one of the most downloaded applications in the United States of America ("United States") in October 2018. TikTok enables users to create and upload short videos. TikTok offers features such as background music and augmented reality effects, but users control which features to pair with the content of their self-directed videos, and TikTok serves as a host for the content created by its users. TikTok is available in more than 150 different markets, in 75 languages, and has become a leading destination for short-form mobile video. TikTok has global offices including Los Angeles, New York, London, Paris, Berlin, Dubai, Mumbai, Singapore, Jakarta, Seoul, and Tokyo. On Google Play, more than 500 million users have downloaded the TikTok app. The app is ranked as "No.1 in Entertainment" in the Apple Store. The Complainant also has a large Internet presence through its primary website "www.tiktok.com". According to "www.SimilarWeb.com", <tiktok.com> had a total of 1.9 billion visitors in January 2023 alone, making it the 14th most popular website globally and the 24th in the United States.

The Complainant, with its affiliate TikTok Information Technologies UK Limited, is the owner of trademark registrations for TIK TOK and TIKTOK across various jurisdictions.

The Complainant is, *inter alia*, the owner of:

- European Union Trade mark TIKTOK registration No. 017913208, registered on October 20, 2018.
- United States Trademark TIK TOK registration No. 5653614, registered on January 15, 2019.
- United States Trademark TIK TOK (device) registration No. 5974902, registered on February 4, 2020.
- United Kingdom Trade mark TIK TOK registration No. UK00917891401, registered on November 29, 2018.
- International Trademark TIK TOK registration No. 1485318 registered on March 19, 2019.

The disputed domain name was registered on December 22, 2022.

The disputed domain name currently resolves to an empty page. However, previously (at least on April 13, 2023), the website in Portuguese, resolved to a site at which the Internet users can purchase and recharge virtual coins. This website reproduced the Complainant's trademark, and in particular a purported "Tik Tok pay" app was available for download.

## 5. Parties' Contentions

### A. Complainant

The Complainant claims that:

- (a) the disputed domain name is confusingly similar to the Complainant's trademark;
- (b) the Respondent lacks any rights or legitimate interests in the disputed domain name; and
- (c) the Respondent has registered and is using the disputed domain name in bad faith.

### B. Respondent

The Respondent did not formally reply to the Complainant's contentions. In fact, the Respondent sent two informal emails, basically renouncing the disputed domain name in favour of the Complainant. These emails made no mention of any rights to the disputed domain name and/or why it was chosen.

## 6. Discussion and Findings

- (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 has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

The Complainant has established rights in the TIK TOK and TIKTOK trademarks (hereinafter, collectively referred to as the "TIKTOK trademark" unless otherwise indicated).

The disputed domain name contains the Complainant's TIKTOK trademark in its entirety, with the addition of the term "incrivel" (in Portuguese for "incredible") at the end of the trademark. The addition of the term "incrivel" in the disputed domain name does not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services.

Indeed, it appears that the Respondent has attempted to usurp the Complainant's goodwill in the trademark, in an attempt to confuse and deceive Internet users into doing business with the Respondent. In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name.

Moreover, the Respondent in his informal emails has not claimed any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The Panel, on the basis of the evidence presented, accepts and agrees with the Complainant's contentions that the disputed domain name was registered and has been used in bad faith.

The TIKTOK trademark has been registered and used for several years all over the world.

It enjoys a widespread reputation and high degree of recognition as a result of its fame and renown and thus the TIKTOK mark is one that traders could only legitimately adopt by carefully navigating fair use principles to avoid creating the impression of an association with the Complainant.

In addition, by displaying the Complainant's registered trademark on the Respondent's website, the Respondent mislead consumers into believing that the Complainant or an affiliated dealer were the source of the website. The Respondent created the website in Portuguese to attract the Internet users for commercial gain, at which site Internet users can purchase and recharge the virtual coins, in particular a purported "Tik Tok pay" app was available for download. See [WIPO Overview 3.0](#), section 3.1.4.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the TIKTOK trademark.

Consequently, this Panel finds that the Respondent's use of the inherently misleading disputed domain name, *i.e.*, to resolve to a website that reproduced the Complainant's trademark, and a purported TIK TOK app available for download, is further evidence of bad faith registration and use of the disputed domain name.

Inference of bad faith can also be found in the failure to deny the Complainant's contentions, the willingness to give up the disputed domain name, and the Respondent's lack of any rights or legitimate interests in the same.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith.

Therefore, the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

## **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, <tiktokincrivel.site>, be transferred to the Complainant.

*/Fabrizio Bedarida/*

**Fabrizio Bedarida**

Sole Panelist

Date: June 7, 2023