

ADMINISTRATIVE PANEL DECISION

Lemon Inc. v. Muhammad Mudassir
Case No. D2023-4041

1. The Parties

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

The Respondent is Muhammad Mudassir, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <capcutproapk.com> 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 27, 2023. On September 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 (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 28, 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 2, 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. The Respondent sent informal emails to the Center on September 29 and 30, 2023 and on October 6 and 10, 2023. The Center informed the Parties of the commencement of Panel appointment process on October 25, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on October 27, 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 affiliated with ByteDance Ltd, which is an Internet technology company that provides a series of products that enable people to connect with consuming and creating content, including TikTok, Helo, and Resso. ByteDance Ltd globally launched the CapCut mobile application in April 2020. CapCut is a video editing application that allows users to not add a trove of stickers, filters and effects, has a simple to use green screen function, a zooming feature, etc. The CapCut application was downloaded 140 million times globally in the first half of 2021, making it the world's ninth-most downloaded mobile app, according to app tracking firm Sensor Tower. The Complainant maintains a primary website for the CapCut application at the domain name <capcut.com>, which it registered on March 28, 1997. According to SimilarWeb, this website had more than 18 million visitors in August 2023. The Complainant is also the owner of the domain names <capcutpro.com> registered on December 14, 2020, and <capcutapk.com>, registered on December 24, 2020.

The Complainant is the owner of the following trademark registrations for the sign "CAPCUT" (the "CAPCUT trademark"):

- the Indian trademark CAPCUT with registration No. 4526907, registered on June 10, 2020 for goods in International Classes 9, 41 and 42; (Applicant name: ByteDance Ltd).
- the European Union trademark CAPCUT with registration No. 018255581, registered on May 15, 2021 for goods and services in International Classes 9, 41, 42 and 45, and
- the United States of America trademark CAPCUT with registration No. 6847261, registered on September 13, 2022 for goods in International Class 9.

The Respondent has not provided any information about itself. It appears to be a private individual residing in Pakistan.

The disputed domain name was registered on October 22, 2022. It resolves to a website that offers what is referred to as "Capcut Pro APK" application for free downloading. The website contains the header "CapCut PRO APK V.7.6.0. Download [No Watermark 2023]", and describes the software offered for download in the following terms: "This is the pro version of the Capcut, which provides excellent video editing features in one App. The ByteDance Pte. Ltd is the pioneer developer of this video and photo editing app." The website contains the copyright notice "© 2023 Capcut pro APK".

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its CAPCUT trademark, because it represents a combination of this trademark with the descriptive terms "pro" and "apk", which are closely linked and associated with the Complainant's trademark. The Complainant notes that "pro" is a common abbreviation for "professional", while "apk" is a common abbreviation for "Android Package Kit" - a file format that Android uses to distribute and install mobile applications. The Complainant points out that the composition of the disputed domain name makes it confusingly similar also to the Complainant's own domain names <capcut.com>, <capcutpro.com>, and <capcutapk.com>.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has not been permitted to use the Complainant's CAPCUT trademark in any manner, and is not commonly known by the disputed domain name. The Complainant states that the first use in commerce of its CAPCUT trademark was in April 2020, and that the registration of its <capcut.net> domain name was on June 3, 2020. According to the Complainant, it therefore already had a reputation in its CAPCUT trademark by the time the Respondent registered the disputed domain name, and the Respondent's inclusion of the Complainant's logo on the website at the disputed domain name is an effort to take advantage of the fame and goodwill that the Complainant has built in its brand.

The Complainant adds that the Respondent is using the disputed domain name to resolve to a website that features the Complainant's CAPCUT trademark and logo whilst offering information about the Complainant's CapCut application as well as links to download what is described as the CapCut application itself, though the Complainant is unable to ascertain its authenticity. According to the Complainant, this makes it unclear if the Respondent is actually offering the goods at issue, and creates a risk that Internet users may be tricked into downloading malware. The Complainant adds that there is no disclaimer or explanation about the Respondent's lack of relationship with the Complainant. For these reasons, the Complainant submits, the Respondent's conduct does not comply with the OkiData criteria.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It submits that the CAPCUT trademark is known internationally as a result of its use since April 2020, which is well before the Respondent's registration of the disputed domain name on October 22, 2022. According to the Complainant, the composition and use of the disputed domain name shows that the Respondent has knowledge of the Complainant's brand and business, and there are no reasons to believe that the Respondent coincidentally selected the disputed domain name without any knowledge of the Complainant and its trademark.

The Complainant maintains that the Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, and the Respondent is thus using the fame of the Complainant's trademark to improperly increase traffic to the website listed at the disputed domain name for its own commercial gain. The Complainant points out that the Internet users who visit the website at the disputed domain name are encouraged to download an application, the authenticity of which is in question and which could be malware. The Complainant adds that using a disputed domain name to attempt to infect Internet users' computers with viruses or malware is evidence of bad faith use.

B. Respondent

The Respondent did not submit a formal Response.

With its informal emails to the Center, it made the following statements:

"i dont know what is it this domain belongs to me and i am the owner of this domain , domain gona expire and i renew this asap so what is the problem i dont understand let me know i will solve"

"How can i solve this i am the owner of this domain form years" (emails of September 29, 2023);

"hi there i am the owner of capcutproapk.com i have this domain from years as you check. why i am getting this mail. Kindly solve this issue asap. i have years with this domain its not a fresh or something and i never gona give this domain to anyone. i also have rights to use court regards this" (email of September 30, 2023);

"i am the owner of the website and i remove the issue from my domain now why again dispute i need to renew my domain its my promise its never happen again" (email of October 6, 2023); and

"i remove site from google searchs so now can i am able to hold this site" (email of October 10, 2023).

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 the CAPCUT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the CAPCUT trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the CAPCUT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "pro" 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 disputed domain name and the CAPCUT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel therefore finds that 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 disputed domain name. The Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The disputed domain name is confusingly similar to the Complainant's CAPCUT trademark and to the Complainant's own domain names <capcut.com>, <capcutpro.com>, and <capcutapk.com>, and the Respondent does not provide any plausible explanation why it has chosen and registered it. The website at the disputed domain name offers visitors to download for free a "fully unlocked" "Capcut Pro Apk". The Complainant submits that the Respondent may be attempting to distribute malware through its website, and the Respondent does not claim to be offering for download the safe original product of the Complainant, but

rather states that it would “remove the issue” and makes the “promise [that this will] never happen again”. Considering all the evidence in the case, the Panel accepts that it is more likely that the Complainant’s concerns are grounded and the application offered for free download by the Respondent is not the original product of the Complainant but something else that may be dangerous to its users, and accepts that the use of the disputed domain name for this purpose by the Respondent does not give rise to rights or legitimate interests in it.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

The disputed domain name is confusingly similar to the Complainant’s CAPCUT trademark and to the Complainant’s own domain names <capcut.com>, <capcutpro.com>, and <capcutapk.com>. The Respondent does not deny that it has knowledge of the Complainant’s trademark and mobile application, and the content of the Respondent’s website confirms this knowledge and the fact that the Respondent is targeting the Complainant’s trademark with the registration and use of the disputed domain name.

As discussed in the section on rights and legitimate interests, the Respondent does not dispute the Complainant’s statements that the Respondent may be distributing malware by attracting Internet users to its website and offering them to freely download something that is advertised as the Complainant’s CapCut software and which may expose its potential users to risks. This is sufficient for a conclusion that the Respondent more likely uses the disputed domain name for an illegitimate activity, which constitutes bad faith under the Policy.

Based on the available record, the Panel therefore finds that 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 disputed domain name <capcutproapk.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: October 31, 2023