

## **ADMINISTRATIVE PANEL DECISION**

Lemon Inc. v. Azhar abbas

Case No. D2023-4067

### **1. The Parties**

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

The Respondent is Azhar abbas, Pakistan.

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

The disputed domain name <ressoapk.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 28, 2023. On September 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 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. The Respondent sent email communications to the Center on October 21, 2023. On October 25, 2023, the Center notified the Parties of the Commencement of Panel Appointment Process.

The Center appointed Pablo A. Palazzi 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.

#### 4. Factual Background

The Complainant is affiliated with Bytedance Ltd (“Bytedance”), an Internet technology company that provides mobile applications (“apps”) such as TikTok. Bytedance globally launched a mobile application (“app”) called Resso in May 2019. Resso is a streaming app that lets users produce content and connect with others through songs. The Resso app downloads have reached more than 100 million users on Google Play, and is ranked as “#8 in Music” in the Apple Store.

The Complainant maintains a primary website for Resso at “www.resso.com”.

The Complainant is the owner of trademark registrations for RESSO across various jurisdictions. The trademark registrations relevant to this instant matter are:

Trademark	Jurisdiction	Registration number	Date	Class
RESSO	Mexico	2270843	July 6, 2021	35
RESSO	Costa Rica	305285	May 6, 2022	9, 35, 38, 41, 42, 45
RESSO	Singapore	40202127025T	April 26, 2022	9, 35, 38, 41, 42, 45
RESSO	Malaysia	TM2021032055	November 16, 2021	9, 35, 38, 41, 42, 45
RESSO	Australia	2170358	November 22, 2021	35, 41, 45

The disputed domain name was registered on January 20, 2023.

The disputed domain name resolves to a website in which the Complainant’s trademark and logo are reproduced and a modified mobile application of the Complainant’s Resso app is purportedly offered to download from a dropbox account with the title “Resso Mod Apk Version 3.1.7 (Premium Unlocked)”.

#### 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 disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

##### B. Respondent

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

## 6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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

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 mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is/are 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 term like "apk" may bear on assessment of the second and third elements, the Panel finds the addition of such term do not prevent a finding of confusing similarity between the disputed domain name and the mark 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 disputed 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 disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent is not making a *bona fide* offering of goods or services or legitimate, noncommercial fair use of the disputed domain name. The Respondent's inclusion of the Complainant's RESSO trademark and/or logo on the disputed domain name's website is a direct effort to take advantage of the fame and goodwill that the Complainant has built in its trademark, and the Respondent is not only using the confusingly

similar disputed domain name, but is also imitating the Complainant by displaying the Complainant's logo on the website to which the disputed domain name resolves, which also fails to contain any clarifying statement as to its lack of relationship with the Complainant.

The disputed domain name resolves to a website in which the Complainant's trademark and logo are reproduced and a modified mobile application of the Complainant's Resso app is purportedly offered to download from a dropbox account with the title "Resso Mod Apk Version 3.1.7 (Premium Unlocked)".

The Panel notes that the Android operating system file format is known as APK and a "modded APK" is an Android application package that has been modified in some way. Therefore, the Panel is of the view that presumably the software to be downloaded via the disputed domain name must be a modified version of the Complainant's app. The Complainant has not authorized the use of its trademark in the disputed domain name nor the distribution of modified versions of its software.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark RESSO in the field of online music sharing social networking application is clearly established, and the Panel finds that the Respondent must have known of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because on the website at the disputed domain name the Complainant's trademark and logo are reproduced and a modified mobile application of the Complainant's Resso app is purportedly offered.

The Panel further notes that the disputed domain name is also being used in bad faith since the Respondent is trying to attract Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement, an activity clearly detrimental to the Complainant's business.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed 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 disputed domain name <ressoapk.com> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: November 13, 2023.