

## **ADMINISTRATIVE PANEL DECISION**

Bytedance Ltd. v. John Jouni / EL JOUNI, JOHN  
Case No. DAU2022-0013

### **1. The Parties**

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

The Respondent is John Jouni / EL JOUNI, JOHN, Australia.

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

The disputed domain name <bytedance.com.au> is registered with Domain Directors Pty Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 24, 2022. On June 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 27, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the "Policy" or ".auDRP"), the Rules for .au Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 29, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was July 19, 2022. The Center received an email communication from the Respondent on June 30, 2022. The Center notified the commencement of Panel appointment process on July 20, 2022.

The Center appointed Alan L. Limbury as the sole panelist in this matter on July 25, 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 ByteDance Ltd. and its subsidiary Lemon Inc. (collectively “the Complainant”) is an Internet technology company that owns a series of content platforms that enable people to connect by consuming and creating content through machine learning technology, including TikTok, Capcut, Resso and Helo.

The Complainant owns trademark registrations for BYTEDANCE and other trademarks incorporating the term “BYTE” across various jurisdictions, including the word mark BYTEDANCE registered in China (Reg. Nos. 13563456, 13563457, 13563464, 13563465 and 13563466, all registered on February 21, 2015) and the figurative trademark BYTEDANCE, registered in Australia (Reg. No. 2184584, registered on January 17, 2022, with the priority date June 7, 2021; in the European Union (EUTM Reg. No. 017925031 registered on October 30, 2018) and in the United Kingdom, (Reg. No. UK00917925031, also registered on October 30, 2018).

According to the Registrar, the disputed domain name was originally created on October 27, 2018, and was transferred to the Registrar’s services in 2020; no holder changes appear to have occurred since then and the Respondent is the current registrant of the disputed domain name.

At the time of the Complaint, the disputed domain name resolved to a website with pay-per-click links to “Med School”, “Dancing Classes” and “Learn”, also with a link stating that the disputed domain name may be for sale and inviting offers.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant submits that the disputed domain name is identical to the trademark BYTEDANCE in which the Complainant has rights and the Respondent has no rights or legitimate interests in respect of the disputed domain name, which was registered or is subsequently being used in bad faith.

As to lack of legitimacy, the Respondent is not commonly known by the disputed domain name; the Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant’s trademark; and the Respondent is using the disputed domain name to direct Internet users to a website featuring pay-per-click links to third-party websites, some of which refer to the Complainant’s business, such as links for “dancing classes”. The Complainant is known for its online platforms where content creators share dancing videos. Further, the Respondent exhibits a willingness to accept solicitations to purchase the disputed domain name.

As to bad faith, the Complainant and its BYTEDANCE trademark are known internationally, with trademark registrations across numerous countries, including in Australia. By registering a domain name that entirely and solely incorporates the Complainant’s trademark, the Respondent has created a domain name that is identical to the Complainant’s trademark, as well as its <bytedance.com> domain name. As such, the Respondent has demonstrated a knowledge of and familiarity with the Complainant’s brand and business. In light of the facts set forth within this Complaint, it is “not possible to conceive of a plausible situation in which the Respondent would have been unaware of” the Complainant’s brands at the time the disputed domain name was registered. See *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) (February 18, 2000).

The Respondent creates a likelihood of confusion with the Complainant and its trademarks by registering a domain name identical to the Complainant's trademark and domain name, which demonstrates that the Respondent is using the disputed domain name to confuse unsuspecting Internet users looking for the Complainant's services, and to mislead Internet users as to the source of the disputed domain name and website. By creating this likelihood of confusion between the Complainant's trademarks and the domain name, leading to misperceptions as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, the Respondent has demonstrated a nefarious intent to capitalize on the fame and goodwill of the Complainant's trademarks in order to increase traffic to the disputed domain name's website for the Respondent's own pecuniary gain, as evidenced by the presence of multiple pay-per-click links posted to the Respondent's website.

## **B. Respondent**

Although the Respondent did not submit any formal response, the email communication from the Respondent to the Center received on June 30, 2022, read: "Can you please confirm if below transfer is not contested that the transfer will occur automatically and there are no further requirements from our end?".

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles it is to use in determining this dispute:

"A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the auDRP requires the Complainant to prove each of the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a name (Note 1)<sup>1</sup>, 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 (Note 2)<sup>2</sup>; and
- (iii) the disputed domain name has been registered or subsequently used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has shown that it has rights in the BYTEDANCE word and figurative trademarks through registrations in many countries, including Australia.

Disregarding the inconsequential ".com.au" suffix, the Panel finds the disputed domain name to be identical to the Complainant's BYTEDANCE word mark, since the disputed domain name incorporates the mark in its entirety. The Panel also finds the disputed domain name to be confusingly similar to the Complainant's BYTEDANCE figurative mark because BYTEDANCE is the dominant feature of that mark.

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<sup>1</sup> Note 1

"For the purposes of this policy, auDA has determined that a "name ... in which the complainant has rights" refers to:

- (a) the complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority; or
- (b) the complainant's personal name."

<sup>2</sup> Note 2

"For the purposes of this policy, auDA has determined that "rights or legitimate interests in respect of the domain name" are not established merely by a registrar's determination that the respondent satisfied the relevant eligibility criteria for the domain name at the time of registration".

The Complainant has established this element.

## **B. Rights or Legitimate Interests**

Paragraph 4c of the auDRP provides:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, is to be taken to demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the subject matter of the dispute, your *bona fide* use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name, trademark or service mark at issue.”

Under the auDA Overview of Panel Views on Selected auDRP Questions First Edition (“auDA auDRP Overview 1.0”), section 2.1:

“A complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. The complainant will usually make out a *prima facie* case by establishing that none of the paragraph 4(c) circumstances are present. Once such a *prima facie* case is made, the burden of production shifts to the respondent, requiring it to provide evidence or plausible assertions demonstrating rights or legitimate interests in the domain name. If the respondent fails to provide such evidence or assertions, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy [...] If the respondent does provide some evidence or plausible assertions of rights or legitimate interests in the domain name, the panel then weighs all the evidence – with the burden of proof always remaining on the complainant.”

As noted above, the disputed domain name was created on October 27, 2018, and was transferred to the Registrar’s services in 2020, at which time it appears the Respondent was and has since remained the registrant. The disputed domain name currently resolves to a website with pay-per-click links to “Med School”, “Dancing Classes” and “Learn” and a link stating that the disputed domain name may be for sale and inviting offers.

The above circumstances, together with the Complainant’s assertions, are sufficient to constitute a *prima facie* showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent at the time of the filing of the Complaint. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant has established this element.

### C. Registered or Subsequently Used in Bad Faith

Paragraph 4(b) of the auDRP provides that, for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location; or
- (v) if any of your representations or warranties as to eligibility or third party rights given on application or renewal are, or subsequently become, false or misleading in any manner.

As previously mentioned, the disputed domain name was created on October 27, 2018, and was transferred to the Registrar's services in 2020, at which time it appears the Respondent was and has since remained the registrant. The change of Registrar does not necessarily mean that there was a change of Registrant at that time and it is therefore possible that the Respondent was the registrant when the disputed domain name was created. If so the disputed domain name would have been registered before the Complainant's Australian, EUTM and United Kingdom figurative marks were registered and some three and a half years after the Complainant's Chinese word marks were registered.

As to paragraph 4(b)(iv), section 3.5 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")<sup>3</sup> provides:

"Particularly with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith".

The circumstances set out above in relation to the second element satisfy the Panel that the Respondent is currently using the disputed domain name intentionally in an attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's marks as to the source of the Respondent's website and of the services promoted on that website.

Accordingly, the Panel is satisfied, on the balance of probability, that the Respondent is using the disputed domain name in bad faith to attract users for commercial gain under paragraph 4(b)(iv) of the auDRP.

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<sup>3</sup> In view of the substantive similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel refers to [WIPO Overview 3.0](#), where appropriate.

The Complainant has established this element.

## **7. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <bytedance.com.au> be transferred to the Complainant.

*/Alan L. Limbury/*

**Alan L. Limbury**

Sole Panelist

Date: August 5, 2022