Asian Domain Name Dispute Resolution Centre

ADNDRC hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2001348
Complainant:	Bytedance Ltd
Respondent:	Carlos Randin
Disputed Domain Name(s):	**<tiktokup.xyz>**

1. The Parties and Contested Domain Name

1. The Complainant is Bytedance Ltd, of P.O. Box 31119 Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1 - 1205 Cayman Islands.

2. The Respondent is Carlos Randin of Waremberg 4, Vienna, Vienna, 1011, Austria.

3. The domain name at issue is <**tiktokup.xyz**>, registered by NameCheap, Inc. of 4600 East Washington Street, Suite 33, Phoenix AZ 85034.

2. Procedural History

4. The Complainant filed this complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 24 April, 2020.

5. A copy of the Complaint was sent to the Respondent on 11 May 2020.

6. The Respondent failed to respond within 20 calendar days as required under paragraph 5 of the UDRP Rules and on 01 June 2020 was held as being in default.

7. On 9 June 2020, after confirming that he was able to act independently and impartially between the parties, the ADNDRC appointed David Allison as the sole Panelist in this matter.

3. Factual background

8. The Complainant is a well-known internet technology company and owns a series of content platforms including Toutiao, Douyin, and relevant to this dispute, TikTok.

9. The Complainant's TikTok platform allows users to create vertical videos that typically runs for 15 seconds before looping to restart, and connect clips together to create videos up to 60 seconds long. The videos incorporate music samples, filters, quick cuts, stickers and other creative add-ons that allow users to make the most of the short length. TikTok is available in more than 150 different markets and has become extremely well known and popular.

10. The Complainant has filed and registered an extensive range of trademarks worldwide. A sample of the Complainant's registered marks includes:

Mark	Jurisdiction	Class	Reg Date	Reg No
TIK TOK	EU	9, 25, 35, 42, 45	06 June 2018	017913208
TIK TOK	EU	8, 38, 41	23 Apr 2018	017891401
TIK TOK	Hong Kong	9, 38, 41, 42	20 June 2018	304569373
TIK TOK	Japan	25, 35, 41, 42, 45	29 Nov 2017	6064328
TIK TOK	Australia	9, 38, 41	17 Aug 2018	1949117
TIK TOK	United States	9, 38, 41, 42	23 Apr 2018	5653614
TIK TOK	United States	9, 38, 41, 42	31 Aug 2018	5974902

11. The Complainant also owns the top level domain name <tiktok.com> which was first registered on 20 July 1996.

12. The Respondent failed to file a Response within the deadline. Accordingly, nothing is known about the Respondent besides the fact that the disputed domain name was registered on 22 September 2019.

4. Parties' Contentions

13. Complainant:

The Complainant's contentions may be summarized as follows:

i. The disputed domain name is confusingly similar to the trademarks TIK TOK owned by the Complainant.
ii. The Respondent has not be authorized, sponsored or affiliated with the Complainant in any way.
iii. The Respondent has registered and used the disputed domain name in bad faith, most clearly illustrated by the website to which the disputed domain name resolves which is either a vehicle for fraudulently obtaining personal information from users and/ or takes advantage of the fame and goodwill of the Complainant in order to divert traffic and business from the Complainant to the Respondent.

14. Respondent:

The Respondent did not file a submission within the deadline.

5. Findings

15. The ICANN Uniform Domain Name Dispute Resolution Policy (UDRP) provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

    i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
    ii. Respondent has no rights or legitimate interests in respect of the domain name; and
    iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

16. The Complainant has adduced sufficient evidence to demonstrate that it has clear trademark rights to the mark TIK TOK in a number of jurisdictions, the earliest of which date back to November 2017. The Complainant has also provided abundant relevant evidence to demonstrate that it is relatively well-known to the public. As such, the Panel finds that the Complainant has sufficient rights and interests in the TIK TOK mark.

17. When comparing the Complainant's marks and the disputed domain name, it is clear that they are confusingly similar. The disputed domain name comprises of the elements 'TIKTOK' and 'UP'. Consumers seeing this domain name will immediately recognize that the dominant element is 'TIKTOK' and will largely ignore the 'UP' element as being either non-distinctive or generic. At its highest, consumers may conclude that the 'UP' element indicates that this is a sub-domain or a related domain of the main TIKTOK domain name owned by the Complainant. In any event, when the distinctive element of the disputed domain name (ie TIKTOK) is compared with the Complainant's trademarks, it is obvious that they are identical.

18. Accordingly, the Panel finds that the Complainant's mark and the disputed domain name are confusingly similar. Thus, the first element is satisfied.

B) Rights and Legitimate Interests

19. The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant confirms that it has never authorized or licensed use of the TIKTOK marks to the Respondent and has never had any relationship whatsoever with the Respondent.

20. Nevertheless, the disputed domain name resolves to a website which suggests some form of relationship or authorization from the Complainant. The website claims that it is 'Verified by Tik Tok'. Further, a prominent banner claims that users of the site can "*Receive hundrets of free TikTok Followers Instantly*" provided relevant personal information is provided and an application submitted. Such use is clearly misleading and appears to suggest a relationship between the parties when in fact, none exists. In addition, the prominent use of the Complainant's marks demonstrates that the Respondent was well aware of the Complainant and its marks before registering the disputed domain name and using the website.

21. Further, there is no discernable connection or association between the Respondent's name and the disputed domain name which may have suggested some form of legitimate right or interest in the disputed domain name.

22. It is well accepted that use of a disputed domain name for illegal or fraudulent activities, including phishing attempts, can never be held to be a legitimate use of the disputed domain name. In light of the clear evidence presented by the Complainant, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and therefore, the second element is satisfied.

C) Bad Faith

23. To establish the third element, the Complainant must establish that the Respondent both registered and used the disputed domain name in bad faith. In this case, the Complainant has adduced evidence to show that the Respondent has established a website which makes active use of the Complainant's trademarks without authorization and actively attempts to mislead consumers and obtain their personal information through misuse of the disputed domain name.

24. Bad faith may be established if UDRP paragraph 4(b)(iv) is satisfied, namely that: "... *by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website ... by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site ... or a product or service on your website*".

25. In this case, the Respondent's use of the disputed domain name and the website clearly meet the definition under UDRP paragraph 4(b)(iv). Accordingly, the Panel concludes that the third element is made out.

6. Decision

26. The Panel finds that the Complainant has satisfied all three elements of UDRP paragraph 4(a).

27. Accordingly, the Panel orders that the disputed domain name <**tiktokup.xyz**> be transferred to the Complainant.

David Allison
Panelist
Dated: 19 June 2020