



Asian Domain Name Dispute Resolution Centre  
hong kong

**(Hong Kong Office)**

## **ADMINISTRATIVE PANEL DECISION**

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<b>Case No.:</b>	<b>HK-2401911</b>
<b>Complainant:</b>	<b>TikTok Ltd.</b>
<b>Respondent:</b>	<b>Aman Kumar/funny dog names</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;tiktoc18plus.com&gt; and &lt;tiktoc18.pro&gt;</b>

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### **1. The Parties and Contested Domain Names**

The Complainant is TikTok Ltd. Address: Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1 - 1205, Cayman Islands. Tel No: c/o +1 302-636-5401x 60555. Fax No: c/o +1 302-636-5454. Email: c/o udrp@cscglobal.com

The authorised representative is Paddy Tam, CSC Digital Brand Services Group AB, Sveavägen 9, 10th floor, 111 57 Stockholm, Sweden. Tel No: +852 2345 7555. Fax No: +1 302-636-5454. Email: udrp@cscglobal.com

The Respondent is Aman Kumar / funny dog names. Address: Pathan toli, Sasaram, bihar 821115 India. Tel No: +919304142019. Email: aakashsahu3101@gmail.com

The domain names at issue are <tiktoc18plus.com> and <tiktoc18.pro>, registered by the Respondent with NameCheap, Inc. Address: 4600 East Washington Street, Suite 300, Phoenix, AZ 85034, United States, Tel No: +1 3233752822, Email: udrp@namecheap.com

### **2. Procedural History**

On 21 August, 2024, the Complainant's authorized representative initially submitted the Complaint with Annexures against the Respondent's registration of domain names ie <tiktoc18plus.com>, <tiktoc18.pro> and another domain name to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) (the Hong Kong Office), in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October, 1999, the Rules for UDRP (the Rules) approved by the ICANN Board of Directors on 28 September, 2013, and ADNDRC's Supplemental Rules for UDRP (Supplemental Rules) effective from 21 August, 2023. The Complainant requested a single person panel.

On 21 August, 2024 the Hong Kong Office transmitted via-email to the Registrar requesting the Registrar to verify: (1) that the domain names were registered with the Registrar, (2) whether the Respondent is the current registrant or holder of the domain names, (3) whether ICANN's UDRP

applies to the Complaint of the domain names, (4) what was the language of the Registration Agreement of the domain names, (5) the respective dates of the registration and expiration of the domain names, (6) that the domain names would not be transferred to another holder during the pending administrative proceeding for a period of 15 business days after such proceeding is concluded pursuant to paragraph 8 of UDRP, and (7) the relevant information of the domain names from the Registrar’s Whois database.

From 21-22, August, 2024, the Registrar responded to the Hong Kong Office providing the requested particulars of the disputed domain names <tiktok18plus.com> and <tiktok18.pro> respectively, confirming the applicability of UDRP and the language of the Registration Agreements was English.

On 30 August, 2024, the Complainant filed the subject complaint of the disputed domain names

On 2 September, 2024, the Hong Kong Office, having confirmed with the Complainant that the Compliant was in administrative compliance with the Policy and the Rules, sent the Respondent a written notice of the Complaint, informing the Respondent, among others, that it had to submit a Response within 20 days i.e. on or before 22 September, 2024 in accordance with Article 5 of the Rules; and that the language of the proceedings will be in English.

On 8 September, 2024, the Respondent submitted a Response.


On 9 September, 2024, the Hong Kong Office confirmed the receipt of a Response from the Respondent in respect of the Complaint within the required period of time.

On 11 September, 2024, the Hong Kong Office appointed Mr Peter Cheung as the Sole Panelist in the present dispute, who confirmed that he was available to act impartially and independently between the Parties in this matter. The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

### 3. Factual background

TikTok Ltd. (“Complainant” or “TikTok”), with its affiliate TikTok Information Technologies UK Limited is the owner of trademark registrations for TIK TOK/TIKTOK (hereinafter referred to as “TIKTOK”) across various jurisdictions. Annex 1 are printouts from United States Patent and Trademark Office (“USPTO”), United Kingdom Intellectual Property Office (“UKIPO”), European Union Intellectual Property Office (“EUIPO”), and World Intellectual Property Organization (“WIPO”) for these registrations, which demonstrate that the Complainant has spent a considerable amount of time and money protecting its intellectual property rights. These registrations are referred to hereafter as the “Complainant’s trademarks.”

The trademarks relevant to this instant matter are:

TRADEMARK	JURISDICTION/ TM OFFICE	REGISTRATION NUMBER	REGISTRATION DATE	CLASSES
TIK TOK	US / USPTO	5653614	Jan. 15, 2019	9, 38, 41, 42
TIKTOK (stylized) 	US / USPTO	5974902	Feb. 04, 2020	9, 38, 41, 42

TIKTOK	US / USPTO	5981212	Feb. 11, 2020	9, 38, 41, 42
TIKTOK (stylized) <b>TikTok</b>	US / USPTO	5981213	Feb. 11, 2020	9, 38, 41, 42
TIKTOK (stylized) <b>TikTok</b>	US / USPTO	6847032	Sep. 13, 2022	35
TIKTOK	US / USPTO	6069518	June 2, 2020	45
TIK TOK	UK / UKIPO	00917891401	Nov. 29, 2018	9, 38, 41
TIK TOK	EU / EUIPO	017913208	Oct. 20, 2018	9, 25, 35, 42, 45
TIK TOK	WO / WIPO	1485318	Mar. 19, 2019	9, 25, 35, 38, 41, 42, 45

TikTok is an internet technology company that enables users to discover a world of creative content platforms powered by leading technology. (Annex 6.1) It was launched in September 2016 and became the most downloaded application in the US in October 2018. TikTok reached over a billion users worldwide in September 2021 and currently has over 1 billion active monthly users globally as of March 2024. (Annex 6.2)

TikTok enables users to create and upload short videos. TikTok offers features such as background music and augmented reality effects, and users control which features to pair with the content of their self-directed videos. TikTok serves as a host for the content created by its users. Its services are available in more than 150 different markets, in 75 languages, and has become the leading destination for short-form mobile video. TikTok’s global headquarters are in Los Angeles and Singapore, and its offices include New York, London, Dublin, Paris, Berlin, Dubai, Jakarta, Seoul, and Tokyo. (Annex 6.1 - 6.2).

In 2022, TikTok was the #1 most downloaded application in the US and globally, with 672 million downloads in the US and 3.5 billion downloads globally. (Annex 6.2) Since its launch in the Google Play Store, more than 1 billion users have downloaded the TikTok app. (Annex 7.1) In the Apple App Store, the TikTok app is ranked “#1 in Entertainment” and #1 among all categories of free iPad apps. It is also one of Apple’s featured “Editors’ Choice” apps. (Annex 7.2)

The Complainant also has a large internet presence through its primary website <tiktok.com>. (Annexes 4, 5) According to the third-party web analytics website SimilarWeb.com, <tiktok.com> had a total of 2.3 billion million visitors in July of 2024, making it the 14th most popular website globally. (Annex 8)

The Complainant’s TIKTOK brand is well recognized and famous worldwide and in their industry. The Complainant has made significant investment to advertise and promote the Complainant’s trademark worldwide in media and the internet over the years. As a result of the Complainant’s considerable investment of time, energy and resources in the advertising and promotion of its services under the TIKTOK mark, TIKTOK has become well known to the public and trade as identifying and distinguishing the Complainant exclusively and uniquely as the source of the high services to which the TIKTOK mark is applied.

## 4. Parties' Contentions

### A. Complainant

The Complainant's contentions are as follows:

i/ The disputed domain names are identical or confusingly similar to a trademark or service mark in which the complainant has rights

By virtue of its trademark and service mark registrations as shown in Annex 1, the Complainant is the owner of the TIKTOK trademark. See *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")* at 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case."

In addition, a Complainant is not required to register its marks within the country of the respondent in order to protect its rights in those marks. See *WIPO Jurisprudential Overview 3.0* at 1.1.2 "Noting in particular the global nature of the Internet and Domain Name System, the jurisdiction(s) where the trademark is valid is not considered relevant to panel assessment under the first element".

It is standard practice when comparing the Disputed Domain Names to the Complainant's trademarks, to not take the extension into account. See *WIPO Jurisprudential Overview 3.0* at 1.11.1: "The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test".

The Disputed Domain Names, <tiktoc18plus.com> and <tiktoc18.pro>, contain a purposeful misspelling of the Complainant's TIKTOK trademark and must be considered confusingly similar to the Complainant's trademark. More specifically: The Disputed Domain Names vary from the Complainant's TIKTOK trademark by one letter – the Respondent has replaced the letter "k" in the Complainant's TIKTOK trademark with the letter "c".

As the Disputed Domain Names differ from the Complainant's trademark by just one letter, the Respondent's domains must be considered a prototypical example of typosquatting – which intentionally takes advantage of internet users that inadvertently type an incorrect address – often a misspelling of the complainant's trademark – when seeking to access the trademark owner's website. This means that a deliberate misspelling of a trademark registered as a domain name, which is intended to confuse internet users, must be confusingly similar by design. Accordingly the *WIPO Jurisprudential Overview 3.0* at 1.9 states that "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

In addition, the *WIPO Jurisprudential Overview 3.0* at 1.9 goes on to specifically cite (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters, as an example of typosquatting. In light of this, the Disputed Domain Names must be considered as confusingly similar to the Complainant's TIKTOK trademark.

Furthermore, the Disputed Domain Names can be considered as capturing, in its entirety, the Complainant's TIKTOK trademark and simply adding the number "18" or generic term "plus" to the end of the trademark. The mere addition of these generic terms to Complainant's trademark does not negate the confusing similarity between the Disputed Domain Names and the Complainant's trademark under Policy ¶ 4(a)(i), and the Disputed Domain Names must be considered confusingly similar to the Complainant's trademark. It is well established that the addition of generic or descriptive terms is not sufficient to overcome a finding of confusing similarity pursuant to Policy ¶ 4(a)(i). See *WIPO Jurisprudential Overview 3.0 at 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.")

Additionally, the Respondent's use of the Disputed Domain Names contributes to the confusion. The Respondent is using the Disputed Domain Names to host a website that claims to be affiliated with the Complainant by brandishing the Complainant's distinctive logo, trademark and color scheme, in connection with the promotion of an unauthorized app called "TikTok 18 Plus". This suggests that Respondent intended the Disputed Domain Names to be confusingly similar to the Complainant's trademark as a means of furthering consumer confusion. Although the content is usually disregarded under the first element of the UDRP, Panels have "taken note of the content of the website associated with a domain name to confirm confusing similarity where it appears prima facie that the respondent seeks to target a trademark through the disputed domain name" See *WIPO Jurisprudential Overview 3.0 at 1.15*. As a result, the Respondent's use of the Disputed Domain Names to resolve to a website that uses the Complainant's official logo in connection with the promotion of an unauthorized app is further evidence that the Disputed Domain Names are confusingly similar to the Complainant's trademark. (Annex 3)

In light of the aforementioned submissions, the Complainant requests that the Panel concurs and classifies the Disputed Domain Names as confusingly similar to the Complainant's mark for the purpose of Paragraph 4(a)(i).

ii/ The Respondent has no rights or legitimate interests in respect of the domain names

The granting of registrations by the USPTO, UKIPO, EUIPO, and WIPO to the Complainant for the TIKTOK trademark is prima facie evidence of the validity of the term "TIKTOK" as a trademark, of the Complainant's ownership of this trademark, and of the Complainant's exclusive right to use the TIKTOK trademark in commerce on or in connection with the goods and/or services specified in the registration certificates. (Annex 1)

The Respondent is not sponsored by or affiliated with the Complainant in any way. Furthermore, the Complainant has not given the Respondent permission, authorization or license to use the Complainant's trademark in any manner, including in domain names. "In the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed." See *Sportswear Company S.P.A. v. Tang Hong*, D2014-1875 (WIPO Dec. 10, 2014).

In the instant case, the pertinent Notice of Registrant information identifies the Registrant as "Aman Kumar / funny dog names", which does not resemble the Disputed Domain Names in any manner. Thus, where no evidence, including the Notice of Registrant information for the Disputed Domain Names, suggests that the Respondent is commonly known by the Disputed Domain Names, then the Respondent cannot be regarded as having acquired rights to or

legitimate interests in the Disputed Domain Names within the meaning of ¶ 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, D2004-1049 (WIPO, Feb. 8, 2005) (in which the panel noted “that the Respondent’s name is “Bestinfo” and that it can therefore not be “commonly known by the Domain Name” [moncler.com]”).

Furthermore, at the time of filing the complaint, the Respondent was using a privacy WHOIS service, which past panels have also found to equate to a lack of legitimate interest.

The Respondent is not making a bona fide offering of goods or services or legitimate, noncommercial fair use of the Disputed Domain Names. The Respondent’s inclusion of the Complainant’s logo on the Disputed Domain Names’ website is a direct effort to take advantage of the fame and goodwill that the Complainant has built in its brand, and the Respondent is not only using the confusingly similar Disputed Domain Names but is also imitating the Complainant by displaying the Complainant’s logo (Annex 3). This imitation is referred to as “passing off,” and the “Respondent, in [also] using [a] confusingly similar domain name to mislead the Complainant’s customers, is not making a bona fide offering of goods and services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii).” See *Houghton Mifflin Co. v. Weatherman, Inc.*, D2001-0211 (WIPO Apr. 25, 2001) (no *bona fide* offering where website’s use of Complainant’s logo...suggested that website was the official Curious George website).

The composition of the Disputed Domain Names invites visitors to download an application; such use has the characteristics of malware. As such, the Respondent likely uses the Disputed Domain Names to spread malware or viruses to internet users visiting the website by inviting them to download software under the pretense that this is provided by the Complainant themselves. Such evinces the Respondent’s lack of rights or legitimate interests in the Disputed Domain Names. It has been well established by past Panels that use of a disputed domain name to spread malware or viruses to internet users is not a legitimate use of a domain name. Thus, this use of the Disputed Domain Names, with devious, nefarious motives, clearly fails to constitute a bona fide offering of goods or services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). See *WIPO Jurisprudential Overview 3.0 at 2.13*.

Further, the Disputed Domain Names are directing internet users to a mobile application which is promoted as featuring adult content. Numerous past Panels have held that use of a disputed domain name that is confusingly similar to a complainant’s trademarks to link to a website featuring pornographic or adult content evinces a lack of legitimate rights or interests. See *MatchNet plc v. MAC Trading*, D2000-0205 (WIPO May 11, 2000) (finding that it is not a bona fide offering of goods or services to use a domain name for commercial gain by attracting Internet users to third party sites offering sexually explicit and pornographic material, where such use is calculated to mislead consumers and tarnish the Complainant’s mark). Moreover, such use also contravenes TikTok’s Terms of Service, para. 5, which specifically prohibits “any material which is defamatory of any person, obscene, offensive, pornographic, hateful or inflammatory”. (Annexes 3 and 9).

The inclusion of a disclaimer at the bottom of the website available at the Disputed Domain Names does not prevent a finding of bad faith. See *AltaVista Co. v. AltaVisa*, FA 95480 (Forum Oct. 31, 2000) (finding that since a disclaimer does not, and could not, accompany the domain name, then the “domain name attracts the consumer’s initial interest and the consumer is misdirected long before he/she has the opportunity to see the disclaimer”). (Annex 3)

The Respondent registered the Disputed Domain Names on September 22, 2023, and June 17, 2024 respectively, which is significantly after Complainant filed for registration of its TIKTOK trademark with USPTO, UKIPO, EUIPO, and WIPO, and significantly after Complainant's first use in commerce of its trademark in 2016. The Disputed Domain Names' registration dates are also after the Complainant obtained its <tiktok.com> domain name in May 2018. (Annexes 1, 2, and 4) Therefore, it is evident that the Disputed Domain Names carry a high risk of implied affiliation with the Complainant which cannot be considered a fair use of the Disputed Domain Names (see WIPO Overview 3.0, section 2.5.1).

For the reasons set out above, it is clear from the Respondent's use of the Disputed Domain Names that the sole intention is to mislead internet users as to its affiliation with the Complainant and to trade off the Complainant's rights and reputation by appearing to offer services in connection to the Complainant. Nothing on the websites hosted on the Domain Names clearly indicates to online users that the Disputed Domain Names are not affiliated with the Complainant. Therefore, the Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Names.

For the reasons set out above, the Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Names.

iii/ The disputed domain names have been registered and are being used in bad faith

The Complainant and its TIKTOK trademark are known internationally, with trademark registrations across numerous countries. The Complainant has marketed and sold its goods and services using this trademark since 2017, which is well before the Respondent's registration of the Disputed Domain Names on September 22, 2023, and June 17, 2024, respectively. By registering domain names that incorporate a misspelling of the Complainant's TIKTOK trademark in its entirety, and simply add the number "18" or generic term "plus" to the end of the trademark, the Respondent has created domain names that are confusingly similar to the Complainant's trademark, as well as its <tiktok.com> domain name. As such, the Respondent has demonstrated a knowledge of and familiarity with Complainant's brand and business.

In light of the facts set forth within the 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 Names was registered. See *Telstra Corp. Ltd. v. Nuclear Marshmallows*, D2000-0003 (WIPO Feb. 18, 2000). Stated differently, TIKTOK is so closely linked and associated with the Complainant that the Respondent's use of this mark, or any minor variation of it, strongly implies bad faith – where a domain name is "so obviously connected with such a well-known name and products, [...] its very use by someone with no connection with the products suggests opportunistic bad faith."

ICANN policy dictates that bad faith can be established by evidence that demonstrates that "by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site..., by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on [the Respondent's] web site or location." See *Policy ¶ 4(b)(iv)*. Here, the Respondent creates a likelihood of confusion with the Complainant and its trademarks by claiming to offer services in connection with the the Complainant's own service. The content on the Disputed Domain Names refers directly to the Complainant's TIKTOK brand throughout, and displays the Complainant's logo, clearly intending to mimic the look and feel of

the Complainant's brand. Through this created affiliation with the Complainant, the Respondent seeks unsuspecting internet users to engage with the content on the websites. Such use falls squarely under Paragraph 4(b)(iv). The above-mentioned use "*would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights*" and amounts to bad faith use for the purposes of the Policy; see *E. Remy Martin & C v. Christopher MacNaughton*, D2018-2106 (WIPO Oct. 31, 2018). As such, the Respondent is attempting to cause consumer confusion in a nefarious attempt to profit from such confusion. The impression given by the Disputed Domain Names and their website would cause consumers to believe the Respondent is somehow associated with the Complainant when, in fact, it is not. The Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Names, and the Respondent is thus using the fame of the Complainant's trademarks to improperly increase traffic to the website listed at the Disputed Domain Names for the Respondent's own commercial gain. It is well established that such conduct constitutes bad faith. (Annex 3)

Further, the Respondent's use of the Disputed Domain Names constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under Policy ¶4(b)(iii) because the Respondent's domain names are confusingly similar to the Complainant's trademarks and the website at the Disputed Domain Names is being used to offer services in connection to the Complainant without the Complainant's authorization or approval. Past Panels have confirmed that using a confusingly similar domain to mislead consumers and then offering a complainant's goods or services is evidence of bad faith registration and use. (Annex 3)

As mentioned above, the website of the Disputed Domain Names offer an application for download that promotes sexually-explicit, pornographic content, which provides evidence of the Respondent's bad faith registration and use of this domain. Past Panels have consistently held that a respondent's use of a confusingly similar domain name to direct unsuspecting internet users to adult content, as here, is evidence of bad faith registration and use of that domain name. (Annex 3)

The Complainant submits that although pornographic content is not prohibited, condemnation is directed at respondents that divert Internet users to such websites by fostering a belief that the domain name belongs to, is associated with or connected to the Complainant. The same view was accepted in *Sound Unseen, Ltd.; Apple Bottoms, LLC; and Cornell Haynes p/k/a "Nelly" v. Patrick Vanderhorst*, D2005-0636 (WIPO Aug. 18, 2005), with the Panel noting "*bad faith under the Policy may very well arise where a domain name, which infringes on the mark of another by virtue of being identical or confusingly similar to that mark, is used by a respondent as an instrumentality to intentionally link and direct unsuspecting users, who seek information on a good or service associated with that mark, to a pornographic site instead. In such instances, those users would not be exposed to a respondent's pornographic content but for that linkage*". The Complainant, therefore, submits that the Respondent's use of the Disputed Domain Names in this manner amounts to "porno-squatting". This is a practice where confusion with a well-known trademark is used to divert unsuspecting internet users to a pornographic website for commercial purposes.

The Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity, which past Panels have held serves as further evidence of bad faith registration and use. See *Dr. Ing. H.C. F. Porsche AG v. Domains by Proxy, Inc.*, D2003-0230 (WIPO May 16, 2003). (Annex 2.1)



Finally, on balance of the facts set forth above, it is more likely than not that the Respondent knew of and targeted the Complainant's trademark, and the Respondent should be found to have registered and used the Disputed Domain Names in bad faith. See *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, D2014-1754 (WIPO Jan 12, 2014) ("the Panel makes its finding regarding bad faith registration by asking whether it is more likely than not from the record of the evidence in the proceeding that the Respondent had the ELECTRIC FOOTBALL trademark in mind when registering the Domain Name.").

## REMEDIES SOUGHT:

The Complainant requests that the Disputed Domain Names should be transferred to the Complainant.

### B. Respondent

In reply to the Complainant's contentions, the Respondent submitted the following:

i/ The disputed domain names are not identical or confusingly similar to a trademark or service mark in which the complainant has rights

The domain names <tikto18plus.com> and <tikto18.pro> are not identical or confusingly similar to the "TikTok" trademark. There are clear and notable differences: The domain uses "Tiktoc" and not "TikTok." The word "Tiktoc" is phonetically and visually different from "TikTok." Additionally, the addition of "18plus" and "18" in the domain names further distinguishes them from TikTok's trademark. This number clearly refers to adult content and does not suggest any affiliation with TikTok

ii/ The Respondent has legitimate interests in respect of the domain names

The Respondent claims he has a legitimate interest in the domain names, as the purpose of <tikto18plus.com> and <tikto18.pro> is to provide an adult version of a short video app that is not developed or related to TikTok Ltd. The Respondent has taken care to ensure that there is no association or implication of connection to TikTok's services. The domains are used for completely unrelated purposes and serve a distinct market. Additionally, the Respondent has never used the domain names to confuse or mislead users into thinking that they are associated with TikTok Ltd as the Respondent has clearly stated on the Respondent's website in the disclaimer section that "Tiktoc18plus.com is not the official TikTok app or website".

iii/ No bad faith in registration or use

The domain names were registered and used without any intention of bad faith or to benefit from the reputation of the "TikTok" brand. The use of the domains is for a legitimate purpose: providing a platform for adult content. There has been no attempt to mislead, divert traffic, or tarnish TikTok's brand, as the Respondent's platform is fundamentally different in nature from TikTok Ltd.'s services. Furthermore, the term "tikto18" can be interpreted as a common word combination not inherently associated with TikTok Ltd., and "18plus" is clearly indicative of adult content, signaling to users that it is not affiliated with TikTok, a mainstream social media platform.

For the reasons mentioned above, the Respondent respectfully requests that the UDRP panel denies the complaint filed by TikTok Ltd. There is no confusing similarity between the domain names and the TikTok trademark, The Respondent has legitimate interests in these domains, and there has been no bad faith in the registration or use of these domains.

## **5. Findings**

As to the main substantive issue of this matter, the UDRP provides, at Paragraph 4(a) (Applicable Disputes), that each of three findings must be made in order for a Complainant to prevail:

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

### **A) Identical / Confusingly Similar**

The Disputed Domain Names <tiktoc18plus.com> and <tiktoc18.pro> contain possibly two elements: "tiktoc", and "18plus", or "18", and the generic top-level domain ".com" or ".pro". It is trite rule that the generic top-level domain name suffixes "com" or "pro" are technical in nature, do not have any proprietary significance, cannot confer any distinctiveness and are incapable of differentiating the disputed domain names from others' proprietary rights, and as such, are disregarded under confusing similarity test. See para.1.11 of WIPO Jurisprudential Overview 3.0.

Trademarks are not case sensitive. The distinctive and dominant elements of the Disputed Domain Names are "tictoc". They are not identical to the Complainant's "TIKTOK" trademarks. But the change of the end letter "k" to "c" is insufficient to alleviate the likelihood of confusion between the TIKTOK trademark and the Disputed Domain Names, and is a fortiori indicative of the practice known as "typosquatting". The Disputed Domain Names are recognized in some form as the TIKTOK trademark. It is a well-established rule that the addition of a number such as "18", or the descriptive term such as "plus" to the end of a domain name, does not negate confusing similarity but often tends to emphasize it, and is irrelevant to consider in the determination of Paragraph 4(a)(i) of UDRP. See para.1.7 of WIPO Jurisprudential Overview 3.0.

Comparing the Disputed Domain Names in the context of the TIKTOK trade mark, the Panel takes the view that the addition of "18plus" or "18" does not have any new meaning but further increases the likelihood of confusion due to the Complainant's notable presence in the field of social media, as the general public are likely to believe that the Disputed Domain Names relate to Complainant's media products and would further divert Internet users away from Complainant's official website.

The Panel takes notice that the Complainant has demonstrated that it owns the trademark registrations for the "TIKTOK" trademarks in many countries, long before the Respondent applied to register the Disputed Domain Names of "tiktoc18plus.com" on 17 June, 2024 and of "tiktoc18.pro" on 22 September 2023.

Given the established registered rights in the “TIKTOK” trademarks, and the above facts, the Panel finds that the Disputed Domain Names are confusingly similar to a trade mark in which the Complainant has rights, satisfying paragraph 4(a) (i) of UDRP.

## **B) Rights and Legitimate Interests**

The Panel notes that the Respondent is not authorized by the Complainant to use its TIKTOK trademarks. The Respondent’s inclusion of the Complainant’s logo on the Disputed Domain Names’ website as a direct effort to take advantage of the fame and goodwill that the Complainant has built in its brand, and the Respondent is not only using the confusingly similar Disputed Domain Names but is also imitating the Complainant by displaying the Complainant’s logo. Intellectual property infringement including passing off the goodwill and reputation of others are contrary to the object and purpose of UDRP and cannot derive any rights or legitimate interests. The Panel takes that the view that such an unlicensed or unauthorized use of the Complainant’s trademark could never vest any right or legitimate interest in the Respondent.

The Panel rules that there is *prima facie* evidence to support that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. It is up to the Respondent to discharge the evidential burden to prove it has rights or legitimate interests in respect of the Disputed Domain Name. See para.2.1 of WIPO Jurisprudential Overview 3.0.

It is trite rule that the mere registration of the Disputed Domain Names by the Respondent itself is not sufficient to establish that it owns rights and legitimate interests, not to mention the registrations were significantly after Complainant’s first use in commerce of its trademark in 2016. The Respondent has not provided any substantial supporting evidence to demonstrate his “tiktok” domain names have “secondary meaning” in the minds of the consumers.

The Panel takes notice that after widespread worldwide commercial use, the TIKTOK trademarks have acquired the recognition of the relevant sector of the public. The Complainant and the Respondent have no prior connection. The TIKTOK trademarks are not a term commonly used in the English language. Further, the Respondent has submitted no evidence to demonstrate that it has been commonly known by the Disputed Domain Names. The Panel finds that even if TikTok reminiscent the sound of a clock, the TikTok trademarks have already had “secondary meaning” in the minds of consumers.

Nobody has any right to represent his or her goods or services as the goods or services of somebody else. The Complainant has not licensed or otherwise permitted the Respondent to use the Disputed Domain Names or use any domain names incorporating the dominant part of the Complainant’s registered trademarks. The Panel considers that there is no evidence that would tend to establish that the Respondent has rights to or legitimate interests in respect of the Disputed Domain Names.

The Panel draws the irresistible inference that the Respondent is not using the Disputed Domain Names on a non-commercial or fair use basis without intent to misleadingly divert the relevant sector of the public to its operation, tarnishing the goodwill and reputation of the Complainant’s trademarks.

The Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Names, satisfying paragraph 4 (a) (ii) of UDRP.

### C) Bad Faith

Paragraph 4 (b) (Evidence of Registration and Use in Bad Faith) of UDRP 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 the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, 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 the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or*
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor, or*
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.*

The Panel takes notice that the Complainant is a renowned company and its distinctive TIKTOK trademarks have become well-known due to their extensive use. The Disputed Domain Names containing the the dominant part of the TIKTOK trademark.were only registered on 17 June, 2024 and on 22 September 2023, respectively. Given the fame and reputation of the Complainant and the TIKTOK trademarks globally, the Panel considers that it is impossible for the Respondent to have selected the Disputed Domain Names without knowing them. The Respondent should have been well aware of the Complainant and the TIKTOK trademarks prior to registration, and the Panel accepts that the Disputed Domain Names have clearly been registered and are being used in bad faith.

By registering and using the Disputed Domain Names, the Panel takes the view that the Respondent has prevented the Complainant from using its marks in the corresponding domain names, and disrupted the business of the Complainant. Worst still, it has also created confusion among the general public in respect of the relationship between the Respondent's website and the Complainant's, confusing the public into thinking that the Respondent is a licensee or sponsor of the TIKTOK trademarks when in fact this is not the case. See para.3.1 of WIPO Jurisprudential Overview 3.0.

It is trite rule that use of the Disputed Domain Names merely intended to divert the public to the Respondent's website cannot be considered as a bona fide offering of goods and services. Accordingly, the Panel considers the Respondent's continued registration and use of the Disputed Domain Names are clear acts of bad faith. See para.3.1 of WIPO Jurisprudential Overview 3.0.

The Panel notes that the website of the Disputed Domain Names offers an application for download that promotes sexually-explicit, pornographic content, which provides evidence of Respondent's bad faith registration and use of this domain. The Panel finds that the Respondent's use of confusingly similar domain names to direct unsuspecting internet users to adult content, is evidence of bad faith registration and use of the domain names. The Panel finds that this case constitutes another example of "porno-squatting" in which confusion with a reputable trademark is used in bad faith to divert Internet users to pornographic websites for commercial purposes.

It is also trite rule that the use of the domain name which intentionally trades on the fame of another cannot constitute a "bona fide" offering of goods or services. The Disputed Domain Names were registered on 17 June, 2024, and on 22 September 2023, respectively, significantly after Complainant's first use in commerce of its trademark in 2016. The Panel draws the irresistible inference that the Respondent must have prior knowledge of the Complainant's TIKTOK trademarks. The Panel takes the view that the Respondent, by registering the Disputed Domain Names, is a dishonest misappropriation of the Complainant's registered trademarks, making the Respondent's cybersquatting an instrument of fraud. See para.3.2 of WIPO Jurisprudential Overview 3.0.

While a clear and sufficiently prominent disclaimer would lend support to circumstances of good faith eg legitimate resellers, the overall circumstances of this case point to the Respondent's bad faith. Therefore, the mere existence of a disclaimer cannot cure such bad faith. (See para.3.7 of WIPO Jurisprudential Overview 3.0).

The Panel therefore finds that the Respondent's domain names have been registered and are being used in bad faith, satisfying paragraph 4 (a) (iii) of UDRP.

## 6. Decision

For all the foregoing reasons, the Panel concludes that the Complainant has provided sufficient proof of its contentions, has proved each of the three elements of paragraph 4 of UDRP with respect to the Disputed Domain Names and has established a case upon which the relief sought must be granted. The Panel therefore orders that the registration of the Disputed Domain Names <tiktoc18plus.com> and <tiktoc18.pro> be transferred to the Complainant.

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Sole Panelist: Peter Cheung SBS



Date: 25 September 2024