



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2001338
<b>Complainant:</b>	Bytedance Ltd.
<b>Respondent:</b>	marry jeny
<b>Disputed Domain Name(s):</b>	<tikitoks.com>

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**1. The Parties and Contested Domain Name**

Complainant is Bytedance Ltd, of 802 West Bay Road, Grand Cayman, KY1 - 1205 Cayman Islands.

Respondent is marry jeny, of 55 jared ct, Roselle, New Jersey 07069, Hong Kong.

The domain name at issue is <tikitoks.com>, registered by Respondent with NameCheap, Inc, of 4600 East Washington Street, Suite 33, Phoenix AZ 85034, United States.

**2. Procedural History**

On 9 April 2020, Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“Centre”). On the same day, the Centre confirmed receipt of the Complaint and requested Complainant to submit the case filing fee. On 9 April 2020, the Centre informed NameCheap, Inc. (“Registrar”) of the Disputed Domain Name of the proceedings by email. On the same day, the Registrar acknowledged the email of Centre confirming that the Disputed Domain Name is registered with the Registrar, that marry jeny is the holder of the Disputed Domain Name, that the Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is English as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 21 April 2020, the Centre sent Complainant a Notification of Deficiencies of the Complaint, referring to that the information of Respondent in the Complaint is different from the Whois information provided by the Registrar and requiring Complainant to rectify the above deficiency within 5 calendar days (on or before 26 April 2020). On 22 April 2020, Complainant filed the amended complaint with the Centre.

On 23 April 2020, the Centre confirmed the Complaints' compliance with the Policy and its Rules. On the same day, the Centre sent Respondent a Written Notice of Complaint, together with the Complaint, requiring Respondent to file a Response within 20 days (on or before 13 May 2020), in accordance with Article 5 of the Rules and the Supplemental Rules. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on 15 May 2020.

The Panel comprising of Dr. George Tian as a single panelist was appointed by the Centre on 19 May 2020. The papers pertaining to the case were delivered to the Panel by email on 20 May 2020.

### **3. Factual background**

#### **A. Complainant**

Complainant, Bytedance Ltd., is a company incorporated in Cayman Islands. Complainant is an internet technology company that enables users to discover a world of creative content platforms powered by leading technology. It owns a series of content platforms that enable people to connect with consuming and creating content through machine learning technology, including Toutiao, Douyin, and TikTok (See Annex 6.1 to the Complaint). Accord to the information provided by Complaint, while Toutiao is Complainant's core product and is one of the most popular content discovery platforms in China, TikTok and Douyin are Complainant's platforms or applications for its video-sharing social networking services. In September 2016, Douyin was launched in China and quickly became a popular short-video sharing platform in China. While, TikTok was launched outside China in May 2017 and became the most downloaded application in the US in October 2018 (See Annex 6.3 to the Complaint).

Complainant has exclusive rights in TIK TOK, and TIK TOK related marks (hereinafter "TIK TOK marks"). Complainant is the exclusive owner of several TIKTOK marks worldwide, including a US trademark registration for TIK TOK registered since January 15, 2019 (the US trademark registration number 5653614); and a Hong Kong trade mark registration for TIK TOK registered since June 20, 2018 (Hong Kong trademark registration number 304569373), and a Japanese trademark registration for TIK TOK registered since July 20, 2018 (the Japanese trademark registration number 6064328) (See Annex 1 to the Complaint). Complainant also owns and operates several domain names which contain the TIK TOK mark in entirety, such as <tiktok.com> (See Annex 7 to the Complaint).

#### **B. Respondent**

Respondent is marry jeny, of 55 jared ct, Roselle, New Jersey 07069, Hong Kong. The disputed domain name <tikitoks.com>, was registered on July 4, 2019, long after the TIK TOK marks were registered. The disputed domain name is resolved to an active website that streams Complainant's TikTok users' videos (See Annex 3 to the Complaint).

### **4. Parties' Contentions**

## A. Complainant

The Complainant's contentions may be summarized as follows:

- i. Complainant contends that the disputed domain name is confusingly similar to the TIK TOK marks.
- ii. Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.
- iii. Complainant contends that the disputed domain name was registered and is being used in bad faith.
- iv. Complainant requests that the disputed domain name <tikitoks.com> be transferred to it.

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy 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

The Panel finds that Complainant has rights in the TIK TOK marks acquired through registration. The TIK TOK marks have been registered internationally, including a US trademark registration for TIK TOK registered since 2019, a Hong Kong trade mark registration for TIK TOK registered since 2018, and a Japanese trademark registration for TIK TOK registered since 2018.

The disputed domain name <tikitoks.com> differs from Complainant's trademark TIK TOK by only two letters – Respondent has changed the spelling of “tik tok” by adding the letter “i” after “tik”, and the letter “s” after “tok”. This does not eliminate the identity or at least the confusing similarity between Complainant's registered trademarks and the disputed domain name (*Walgreen Co. v. Lin yanxiao / Linyanxiao*, WIPO Case No. D2016-1605).

Previous UDRP panels have consistently held that a domain name may be identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trade mark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662).

Moreover, as to “typosquatting”, section 1.9 of WIPO Overview 3.0 states:

“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.”

As the disputed domain name is a two-letter typographical error of Complainant’s TIK TOK marks, the Panel finds the disputed domain name must be considered a prototypical example of typosquatting.

Thus, the Panel finds that the two-letter typographical error of Complainant’s TIK TOK marks is not sufficient to negate the confusing similarity between the disputed domain name and the TIK TOK marks.

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant’s trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to respondent to rebut complainant’s contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. D2008-0441; WIPO Overview 3.0, section 2.1 and cases cited therein).

According to the Complaint, Complainant is a leading American online recruitment company, attracting over 7 million active job seekers, over 40 million job alert email subscribers and over 10,000 new companies every month. Complainant has rights in the TIK TOK worldwide, including in the US (since January 15, 2019), in Hong Kong (since June 20, 2018), and in Japan (since July 20, 2018), which precede Respondent’s registration of the disputed domain name (in July 18, 2019).

Moreover, Respondent is not an authorized dealer of TIK TOK-branded products or services. The Panel finds that Complainant has established a *prima facie* case that

Respondent has no rights or legitimate interests in the disputed domain name and thereby shifts the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. D2009-0610; *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

(i) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term “tikitoks” in its business operation. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the TIK TOK marks or to apply for or use any domain name incorporating the TIK TOK marks.

(ii) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name <tikitoks.com> in July 18, 2019, after the TIK TOK marks became internationally known (See Annex 6.3 to the Complaint). The disputed domain name is identical or confusingly similar to Complainant’s TIK TOK marks.

(iii) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the website, currently resolved by the disputed domain name, is a website imitating the feel and layout of Complainant’s website at <tiktok.com> of streaming videos of TikTok users (see Annex 3 and Annex 5 to the Complaint). In addition, the resolved website contains external third-party links which sell artificial “likes” and “followers” (Annex 3 to the Complaint), which directly compete with Complainant’s own offerings and violates Complainant’s Terms of Use policy (Annex 9 to the Complaint). It seems that Respondent is making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. D2017-1041; *BASF SE v. Hong Fu Chen*, Chen Hong Fu, WIPO Case No. D2017-2203)

The Panel finds that Respondent has failed to produce any evidence to rebut Complainant’s *prima facie* showing on Respondent lack of rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

### **C) Bad Faith**

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the

trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed 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 Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on the website or location.

Upon the evidence of the circumstances in this case, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

### **Registered in Bad Faith**

The Panel finds that Complainant has a widespread reputation in the TIK TOK marks with regard to its products and services. Complainant is a leading internet technology company that provides a series of content platforms that enable people to connect with consuming and creating content through machine learning technology, including Toutiao, Douyin, and TikTok (See Annex 6.1 to the Complaint). In September 2016, Douyin was launched in China and quickly became a popular short-video sharing platform in China. While, TikTok was launched outside China in May 2017 and became the most downloaded application in the US in October 2018 (See Annex 6.3 to the Complaint).

Complainant has registered its TIK TOK marks internationally, including trademark registrations in the US (since January 15, 2019), in Hong Kong (since June 20, 2018), and in Japan (since July 20, 2018). It is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name (July 18, 2019). The Panel therefore finds that the TIK TOK mark is not one that traders could legitimately adopt other than for the purpose of creating an impression of an association with Complainant. *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*.

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. D2002-0787.

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

### **Used in Bad Faith**

Complainant also has adduced evidence to show that by using the disputed domain

name, Respondent has “intentionally attempted to attract, for commercial gain, Internet users to Respondent’s websites or other online location”.

To establish an “intention for commercial gain” for the purpose of this Policy, evidence is required to indicate that it is “more likely than not” that intention existed (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra.*).

Given the widespread reputation of the TIK TOK marks and the confusing similar domain name, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to fact. As mentioned above, the website resolved by the disputed domain name is imitating the feel and layout of Complainant’s website at <tiktok.com> of streaming videos of TikTok users, and the website contains external third-party links which sell artificial “likes” and “followers”. Therefore, Respondent is likely to have made commercial gain by “freeriding” on the reputation of Complainant and its trademarks, which is indicative of Respondent’s bad faith use of the disputed domain name. Moreover, Respondent has not responded to the Complaint. The Panel therefore concludes that the disputed domain name was registered and is being used by Respondent in bad faith.

In summary, Respondent, by choosing to register and use domain name which is confusingly similar to Complainant’s trademark, intended to ride on the goodwill of Complainant’s trademark in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name resolves is indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

## 6. 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 disputed domain name <tikitoks.com> be transferred to Complainant.



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Yijun Tian  
Panelist

Dated: June 2, 2020