



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2001347
Complainant:	Bytedance Ltd.
Respondent:	Johny W
Disputed Domain Name(s):	<tiktok.guru>

1. The Parties and Contested Domain Name

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

The Respondent is Johny W, of 1022 E River Pkwy Industrial Ave, Santa Clara, CA 95050, US.

The domain name at issue is <tiktok.guru>, registered by Respondent with CloudFlare, Inc., 101 Townsend San Francisco CA 94107 United States.

2. Procedural History

Complainant filed the complaint on April 23, 2020.

Respondent did not respond to the complaint and is therefore in default.

Complainant has not initiated other legal proceedings in respect of the Disputed domain name.

3. Factual background

Complainant is Bytedance Ltd, an internet technology company that owns a series of content platforms, such as Toutiao, Douyin and TikTok.

It developed Douyin and TikTok as video-sharing social networks, first in China and then all around the world. TikTok was launched outside of China in May 2017 and became the most downloaded app in the United States in October 2018. TikTok is now available in many countries and in 75 languages. It also has many global offices, including Los Angeles, New York, London, Paris, Berlin, Dubai, Mumbai, Singapore, Jakarta, Seoul and Tokyo.

TikTok is one of the most downloaded app and has a huge presence on the Internet.

Complainant is the owner of many trademarks all around the world, including:

- US “TIK TOK” trademark No. 5653614, of January 15, 2019 and registered in classes 9, 38, 41 and 42 ;
- Honk-Kong “TIK TOK” trademark No. 304569373, of June 20, 2018 and registered in classes 9, 38, 41 and 42 ;
- Japanese “TIK TOK” trademark No. 6064328, of July 20, 2018 and registered in classes 25, 35, 41, 42 and 45 ;
- Australian “TIK TOK” trademark No.1949117, of August 17, 2018 and registered in classes 9, 38 and 41.

Complainant also owns several domain names including the TIKTOK sign, such as its primary website <tiktok.com>, registered on July 20, 1996.

Respondent is Johny W, who is the owner of the disputed domain name <tiktok.guru> registered on January 15, 2019 for a two years-period.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions can be summarized as follows:

i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights :

Complainant argues that it is the owner of the TIK TOK trademark. It also alleges that it is commonly established that the TLD of a domain name has not to be taken into account under the confusing similarity test.

Complainant considers that the disputed domain name consists solely of the TIK TOK trademark and is therefore identical to Complainant’s trademark. It adds that the removal of the space between “tik” and “tok” does not distinguish the disputed domain name from Complainant’s trademarks and should be disregarded.

Furthermore, Complainant alleges that the use of the disputed domain name contributes to the confusion since it offers to sell “likes” and “followers” related to the TikTok app, without Complainant’s authorization. This suggests that Respondent has targeted Complainant and its consumers to create a confusion.

Complainant therefore states that the disputed domain name is confusingly similar to Complainant’s trademark.

ii. The Respondent has no rights or legitimate interests in respect of the domain name :

Complainant alleges that it has some exclusive rights in the TIK TOK trademark. Yet, Complainant also states that it did not give permission, authorization or license to Respondent, which is in no way affiliated to Complainant.

Complainant adds that there is no evidence that Respondent is known under the disputed domain name, which suggests that it has no rights or legitimate interests.

Furthermore, Complainant argues that Respondent is not making a *bona fide* offering of goods and services or noncommercial fair use of the disputed domain name. It considers Respondent wants to take direct advantage from Complainant by using the TIK TOK sign in the disputed domain name and by displaying its logo on the related website. In addition, Respondent is offering “likes” and “followers” to sell, which is directly related to the TIK TOK app. This activity violates Complainant’s Terms of Use policy. Consequently, Complainant considers that Respondent does not have any legitimate rights or interests in the disputed domain name.

Complainant also alleges that Respondent has registered the disputed domain name after Complainant has filed its TIK TOK sign for trademark registration with the HKIPD, JPO, IPAU and USPTO, and after its first use in commerce, in 2017. This registration also took place after Complainant registered the <tiktok.com> domain name.

Complainant concludes that Respondent has no rights or legitimate interests in the disputed domain name.

iii. The disputed domain name has been registered and is being used in bad faith :

Complainant alleges that its TIK TOK trademarks are known globally and that it started to market and sold goods and services since 2017, so well before the registration of the disputed domain name.

Complainant argues that Respondent has registered a domain name that is confusingly similar to its trademarks and its <tiktok.com> domain name. Furthermore, Respondent has featured an article on its website related to Complainant and describing its popularity. Respondent thus demonstrated that he knew about Complainant and about its business. Complainant then concludes that it is impossible to conceive that Respondent was not aware of Complainant so the said registration has been done in bad faith.

Complainant states that Respondent registered the disputed domain name in order to create confusion amongst Internet users. It intentionally wanted to redirect Internet users looking for Complainant to the disputed domain name. This is an evidence that the domain name is used in bad faith.

By displaying the TIK TOK trademark and logo, Complainant alleges that Respondent creates a likelihood of confusion and attempts to benefit from it. Internet users can easily believe that the disputed domain name and the related website are linked to Complainant. Respondent is therefore benefiting from this confusion by obtaining commercial gains.

Those elements cause a disruption of Complainant’s business and are constitutive of bad faith registration and use, since Respondent knew about Complainant and targeted its business. Complainant therefore finds that the disputed domain name was registered and is used in bad faith.

B. Respondent

Respondent did not respond to Complainant's contentions.

5. Findings

Paragraph 15(a) of the Rules provides that the "Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraphs 10(b) and 10(d) of the Rules provides that: "In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case" and that "The Panel shall determine the admissibility, relevance, materiality and weight of the evidence".

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

Panel finds that Complainant has duly shown that it owns rights in the TIK TOK trademark.

Firstly, the disputed domain name is reproducing the TIK TOK trademark, but omitting the space between the two terms. This omission has to be disregarded since it is only due to the setting of the domain names that cannot include a space. It does not dismiss the likelihood of confusion.

Second, the use of this sign in the disputed domain name clearly targets the TIK TOK trademark since the website reproduces both the trademark and its logo. Those uses increase the likelihood of confusion.

Also, the ".guru" TLD has to be disregarded. The most consistent previous Panels consider that all domain name TLD, whatever they may be, should be ignored, since they are just a technical element that does not challenge the risk of confusion. See for example WIPO case No. D2017-1243, *Nu Mark LLC v. Registration Private, Domains By Proxy, LLC, DomainsByProxy.com / Kevin McMunn* : "It is also well established that the generic Top-Level Domain ("gTLD"), in this case ".ninja" and ".guru", does not generally affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar – see for example *Rollerblade, Inc. v. Chris McCrady, WIPO Case No. D2000-0429*".

In accordance with Paragraph 4(a)(i) of the Policy, the Panel finds that the Disputed Domain Name is confusingly similar to Complainant's trademark.

B) Rights and Legitimate Interests

Complainant must first make a *prima facie* case that Respondent lacks the rights and legitimate interests in the disputed domain name under Paragraph 4(a)(ii).

Complainant has shown that Respondent had no rights or legitimate interests in the disputed domain name and in the TIK TOK sign. Complainant has duly demonstrated that it did not give any authorization or license to Respondent neither to use the sign nor to register the disputed domain name.

Complainant has also shown that Respondent is not commonly known under this name and a basic search on the sign refers directly to Complainant while it does not mention Respondent.

Furthermore, it is well established that the lack of response of Respondent can be considered as an evidence of lack of rights or legitimate interests. Indeed, Panel finds that if Respondent had any rights or interests in the TIK TOK sign, it would have responded to Complainant's contentions. Since it has not, it seems legitimate to consider that it has no point to defend. See for example WIPO case No. D2020-0111, *AJ Produkter AB v. Milan Mauzer* : *"However, the Respondent did not reply to the Complainant's contentions. Thus, the Respondent did not come forward with such relevant allegation or evidence before the Panel"*.

Therefore, Panel finds that Complainant has established a *prima facie* case that Respondent lacks the rights and legitimate interests in the Disputed Domain Names pursuant to Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Paragraph 4(a)(iii) of the Policy requires Complainant to demonstrate that the Disputed Domain Names were registered and are being used in bad faith.

Firstly, Complainant has duly shown its worldwide reputation.. Secondly, regardless of the country the Respondent comes from, it appears difficult to believe it did not know about Complainant. The domain name was registered after Complainant owned trademark rights in the TIK TOK sign. Finally, it seems that Respondent was not the registrant but has acquired the domain name later, namely on December 2, 2019. Complainant was already well known at this time, even more than at the time the disputed domain name was registered. It leads us to believe that Respondent had knowledge of Complainant. It has previously been established that such a company benefiting from a widespread reputation could not be ignored : See for example WIPO Case D2020-0172, *Facebook, Inc. v. Registration Private, Domains By Proxy, LLC / Serhii Pronin* : *"The FACEBOOK trademark has been registered and used for several years all over the world, it enjoys a widespread reputation and high degree of recognition as a result of its fame and renown and thus the FACEBOOK mark is not one that traders could legitimately adopt other than for the purpose of creating the impression of an association with the Complainant"*.

A basic search on Internet directly refers to Complainant. Furthermore, the disputed domain name is linked to a website that is related to Complainant's activity and that reproduces the TIK TOK trademark and logo. Therefore, Panel finds that the domain name has been registered in bad faith. Respondent has obviously targeted Complainant when it registered it.

Secondly, Complainant has duly provided evidence of a use in bad faith of the disputed domain name. Indeed, Respondent is offering likes and followers to sell, related to Complainant's Tik Tok app. However, as mentioned before, Complainant did not give its consent to Respondent to make such use of its TIK TOK sign.

It appears undisputed that Respondent wishes to target Complainant's business and attract Internet users (and exclusively Tik Tok app users, since it offers likes and followers to sell for Tik Tok accounts). This could not be considered to be a coincidence.

There is no doubt that Respondent registered and is using the disputed domain name in bad faith, in order to tarnish Complainant's business and reputation.

Complainant has therefore satisfied the requirements of Paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons, in accordance with Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders that the Disputed Domain Names must be transferred to the Complainant.

Nathalie Dreyfus
Panelist

Dated: June 9, 2020

A handwritten signature in black ink, consisting of a horizontal line with a vertical stroke intersecting it near the center, and a small horizontal tick mark on the left side of the horizontal line.