



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2001349
Complainant:	Bytedance Ltd
Respondent:	Ryan G
Disputed Domain Name(s):	<tiktokfamous.club>

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 Ryan G of 9 hinkler drive, Gold Coast, Queensland, 4221, Australia .

The domain name at issue is <tiktokfamous.club> (the “Domain Name”) registered by the Respondent with NameCheap, Inc. of 4600 East Washington Street, Suite 33 Phoenix, Arizona 85034 United States (the “Registrar”).

2. Procedural History

The Complainant filed the Complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 24 April 2020 and chose to have a sole panelist to handle the dispute. On 24 April 2020, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On 7 May 2020, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On the same day, the Complainant filed a rectified Complaint. The ADNDRC formally notified the Respondent of the Complaint and the proceedings commenced on 11 May 2020. On the same day, the Respondent submit an informal response via two emails. The ADNDRC did not receive any formal response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules for Domain Name Dispute Resolution Policy (the “Rules”). Accordingly, on 1 June 2020, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist. On 9 June 2020, the ADNDRC appointed Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

3. Factual background

The Complainant is an internet technology company. It owns a series of content platforms that enable people to connect with consuming and creating content through machine learning technology. One of its core products is a platform or application for its video-sharing social networking services under the name TIK TOK which was launched in 2017 and became the most downloaded application in the United States in October 2018. TIK TOK allows users to create vertical videos that typically last 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. TIK TOK is available in more than 150 different markets, in 75 languages, and has become the leading destination for short-form mobile video.

In Google Play, more than 500 million users have downloaded TikTok app. The app is ranked as “#1 in Entertainment” in the Apple Store and “#3 in Social” on Amazon. The Complainant’s Internet presence is through its website connected to the domain name <tiktok.com>. According to SimilarWeb.com, the website had a monthly average of 157.08 million visitors between September 2019 and February 2020. www.alexa.com ranks www.tiktok.com as 409th most popular site in the world and 140th in India.

Many celebrities and famous individuals with large social media followings use TIK TOK. Some users of TIK TOK have also become famous on the TIK TOK platform because of the numbers of followers they have acquired on it.

The Complainant has trade mark registrations around the world for TIK TOK including the following:

Trade Mark	Jurisdiction	Registration No	Filing Date	Registration Date
TIK TOK	USA	5653614	23 April 2018	15 January 2019
TIKTOK	USA	5974902	31 August 2018	4 February 2020
TIK TOK	Hong Kong	304569373	20 June 2018	20 June 2018
TIK TOK	Japan	6064328	29 November 2017	20 July 2018
TIK TOK	Australia	1949117	17 Aug 2018	24 April 2019

(individually and collectively, the “Trade Mark”).

The Respondent who is based in Australia registered the Domain Name on 4 November 2018. The Domain Name was connected to a website which bears the Trade Mark and the Complainant’s logo and the title “Free Followers” (the “Website”). It appears that the purpose of the Website is to help boost a user’s popularity so that they can become “a local celebrity” to “impress” their friends by gaining up to 30,000 followers. There is a text box requesting for the TIK TOK username of the user so that followers can be added to the account. At the bottom of the Website, there is a statement which says “In Association with Tik Tok”. The Website is currently inactive.

4. Parties’ Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Domain Name is identical or confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered or is being used in bad faith. The Complainant requests transfer of the Domain Name.

B. Respondent

The Respondent's informal response via two emails was to request that the Domain Name be deleted as he doesn't want it and also that he has taken the Website off-line and contacted the Registrar to remove it.

5. Findings

A. General

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.

B. Identical / Confusingly Similar

The Panel is satisfied that the Complainant has established that it has registered and unregistered rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case the Domain Name consist of the Trade Mark in its entirety and the descriptive term "famous". The addition of this term does not negate the confusing similarity encouraged by the Respondent's complete integration of the Trade Mark in the Domain Name. *E.g., N.V. Organon Corp. v. Vitalline Trading Ltd., Dragic Veselin / PrivacyProtect.org*, WIPO Case No. D2011-0260; *Oakley, Inc. v. wu bingjie aka bingjie wu/Whois Privacy Protection Service*, WIPO Case No. D2010-0093; *X-ONE B.V. v. Robert Modic*, WIPO Case No. D2010-0207. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".club". It is viewed as a standard registration requirement.

The Panel finds that the Domain Name is confusingly similar to trade marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is 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 trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that it has not authorised, licensed, sponsored or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose. The Respondent has misrepresented that the Website is "associated" with the Complainant which is not the case. There is no evidence that the Respondent is commonly known by the Domain Name. The misrepresentation and use of the Complainant's Trade Mark on the Website and requesting for user's TIK TOK account information based on such misrepresentation do not constitute a *bona fide* offering of goods or services or legitimate non commercial or fair use of the Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent's response is that he does not want the Domain Name and has taken down the Website. No other explanations have been given. The Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of

the Domain Name.

D. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and used in bad faith.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when it registered the Domain Name given that the Trade Mark is well known and the Complainant is specifically referenced on the Website which bears the Trade Mark and the Complainant's logo.

In the WIPO Overview 3.0, section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the Domain Name is also a significant factor to consider (as stated in section 3.2.1 of the WIPO Overview 3.0). The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.

The Domain Name is also being used in bad faith. The Website asking for user data and offering followers to users of TIK TOK was set up for the commercial benefit to the Respondent. It is highly likely that Internet users when typing the Domain Name into their browser, or finding it through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Name is likely to confuse Internet users trying to find the Complainant's website. Such confusion will inevitably result due to the incorporation of the Trade Mark as the most prominent element of the Domain Name. Such confusion is potentially detrimental to the Complainant given that the Respondent deliberately misleads users that it is associated to the Complainant and is asking for user data for purposes which are likely to be nefarious. The “bait” used is to increase a user's following on TIK TOK thereby becoming famous, a very strong currency in the social media context. The Respondent employs the fame of the Trade Mark to mislead users into visiting the Website instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent's Website is authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Name was registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <tiktokfamous.club> be transferred to the Complainant.

A handwritten signature in black ink, appearing to read "Karen Fong", written over a horizontal line.

Karen Fong
Panelist

Dated: 23 June 2020