



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

| | |
|---------------------------------|-----------------|
| Case No. | HK-2001335 |
| Complainant: | Bytedance Ltd. |
| Respondent: | Ilya Pustovit |
| Disputed Domain Name(s): | <ssstiktok.com> |

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 Ilya Pustovit, of 176 Kharkiv highway, Kiev, 02090, Ukraine.

The domain name at issue is <ssstiktok.com> (the “Domain Name”), registered by Respondent with Hosting Ukraine LLC, of 35-A Mashynobudivna, Kyiv, 03067, Ukraine.

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the “Center”) on April 9, 2020. On April 9, 2020, the Center transmitted by email to Hosting Ukraine LLC a request for registrar verification for the Domain Name. On April 10, 2020, Hosting Ukraine LLC transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint and disclosing that the language of the Registration Agreement is Russian. The Center sent an email communication to the Complainant on April 15, 2020 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On April 20, 2020, the Complainant requested that English be the language of the proceeding. On April 24, 2020, the Center sent an email to the Respondent in English and Russian regarding the language of the proceeding noting also the complainant had already submitted its language request in the Complaint, requesting English to be the language of the proceedings. The Respondent has not replied on the language of the proceedings.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the ADNDRC Supplemental Rules for

Uniform Domain Name Dispute Resolution Policy effective from July 31, 2015 (the “Supplemental Rules”).

Under Paragraphs 2 and 4 of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 24, 2020. Under Paragraph 5 of the Rules, the due date for filing a Response by the Respondent was May 14, 2020. The Respondent submitted no response by this deadline date.

The Center appointed Olga Zalomiy as the sole panelist in this matter on May 22, 2020. The Panel finds it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7. The Panel is proficient in both the English and the Russian languages.

3. Factual background

The Complainant is an internet technology company that owns a series of content platforms that enable people to connect with consuming and creating content through machine learning technology, including TikTok. The Complainant's TikTok platform and app is a video-sharing social networking service. The Complainant owns the following trademark registrations:

| TRADEMARK | JURISDICTION/ TM OFFICE | REGISTRATION NUMBER | REGISTRATION DATE | IC CLASS |
|-----------|----------------------------|------------------------|----------------------|---------------------------|
| TIK TOK | HK / HKIPD | 304569373 | Jun. 20, 2018 | 9, 38, 41, 42 |
| TIK TOK | JP / JPO | 6064328 | Jul. 20, 2018 | 25, 35, 41, 42, 45 |
| TIK TOK | AU / IPAU | 1949117 | Aug 17, 2018 | 9, 38, 41 |
| TIKTOK | IN / IPIN | 3960172 | Sep. 29, 2018 | 16, 18, 20, 26, 41, 45 |

The Respondent is a natural person named Ilya Pustovit, who resides in Ukraine. The Respondent registered the Domain Name on December 7, 2018. The Domain Name resolves to a website in English, which offers users to download TIKTOK videos without a watermark.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant asserts that the Domain Name is identical and/or confusingly similar to the Complainant's TIK TOK/TIKTOK trademark because the Domain Name incorporates the Complainant's TIK TOK/TIKTOK trademark in its entirety. The Complainant claims that the addition of the descriptive term “sss” to Complainant's TIKTOK/TIK TOK trademark, does not diminish confusing similarity. The Complainant contends that because the term “sss” is a common hashtag (#SSS) used to tag videos, images and text posts across various forms of social media, including Complainant's TikTok video sharing platform, its

addition increases the confusing similarity between the Domain Name and the Complainant's trademark. The Complainant contends that the addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and, as such, is disregarded under the confusing similarity test.

- ii. The Complainant alleges that the Respondent has no rights or legitimate interests in the Domain Name because the Complainant did not authorize or permitted the Respondent to use the TIK TOK/TIKTOK trademark or to register the Domain Name incorporating it. The Complainant contends that the Respondent is not commonly known by the Domain Name. The Complainant asserts that the Respondent is not making a *bona fide* offering of goods or services or legitimate, noncommercial fair use of the Domain Name because the Respondent is using the Domain Name, which is confusingly similar to its trademark to direct to a website that displays both Complainant's TIKTOK/TIK TOK trademark and a variation of Complainant's music note logo to take advantage of the fame and goodwill of the Complainant's brand and logo. The Complainant contends that the website available at the Domain Name enables users to download TikTok videos without watermark contrary to TikTok's Terms of Service
- iii. The Complainant alleges that the Respondent registered the Domain Name in bad faith because it registered the Domain Name with the knowledge of the Complainant's well-known trademark and the Complainant's business. The Complainant argues that the Respondent is using the Domain Name in bad faith because the Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Domain Name. The Complainant contends that the Respondent is using the fame of the Complainant's trademark and logo to improperly increase traffic to the website listed at the Domain Name for Respondent's own commercial gain. The Complainant alleges that the Respondent's use of the Domain Name constitutes a disruption of Complainant's business.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5.1. Language of the proceeding

Under Paragraph 11 of the Rules, "Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

Though the default language of the administrative proceeding shall be Russian, the Complainant requested that the language of the proceeding be English because the Complainant was not able to communicate in Russian. The Complainant argues that making it translate the Complaint into Russian would unfairly disadvantage and burden the Complainant as well as delay the proceeding and adjudication of the case. Further, the Complainant argues that the Respondent is a resident of Ukraine, where the official language is Ukrainian and not Russian. The Complainant alleges that the term TIKTOK/TIK Tok has no meaning in Russian.

Previous UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. "Such scenarios include ... (i)

evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, ... (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint..."¹

It is likely that the Respondent can understand the language of the Complaint, which is English. The evidence on file shows that the Respondent registered the Domain Name in Latin script instead of the Cyrillic one. The Domain Name, which includes the Complainant's distinctive TIKTOK trademark, directs to a website in English. Further, the Respondent did not object to the Complainant's request for English to be the language of this administrative proceeding. Therefore, the Panel finds that it will not be unfair to the Respondent if the proceeding is conducted in English. Instead, forcing the Complainant to translate the Complaint and supporting documents into Russian will impose undue financial burden on the Complainant and delay resolution of the dispute.

5.2. Findings

It is a consensus view among UDRP panelists that "[a] respondent's default does not automatically result in a decision in favor of the complainant... [T]he complainant must establish each of the three elements required by paragraph 4(a) of the UDRP."² A panel may draw inferences from a respondent's default.³

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

To satisfy the first UDRP element, a domain name must be "identical or confusingly similar" to a trademark, in which a complainant has rights.

The Complainant has established its rights in the TIKTOK trademark by submitting copies of TIKTOK trademark registrations. Pursuant to section 1.2.1 of the WIPO Overview 3.0, "[w]here 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". Therefore, the Complainant satisfied the UDRP standing requirement.

"Where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP

¹ Section 4.5.1, Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0").

² Paragraph 4.2., WIPO Overview 3.0".

³ Paragraph 4.3., WIPO Overview 3.0.

standing.”⁴ Here, the Domain Name incorporates the entirety of the Complainant’s TIKTOK trademark, which makes it confusingly similar to the Complainant’s trademark. The addition of the prefix “sss” does not diminish the confusing similarity. Because the addition of the gTLD “.com” is disregarded under the confusing similarity test,⁵ the Domain Name is confusingly similar to the Complainant’s TIKTOK trademark.

Thus, the first element of the UDRP has been satisfied.

B) Rights and Legitimate Interests

Under the second UDRP element, a complainant must make a *prima facie* case in respect of the lack of rights or legitimate interests of the respondent⁶. Once the complainant has made out the *prima facie* case, the respondent carries the burden of producing evidence demonstrating it has rights or legitimate interests in the domain name⁷. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.⁸

Pursuant to paragraph 4(c) of the UDRP, the following may demonstrate rights or legitimate interests in the Domain Name:

- (i) before any notice 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that the Complainant has made out *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent. First, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name because the Complainant has not authorized or licensed the Respondent to use the Complainant’s TIKTOK/TIK TOK trademarks in any manner.

Second, the Complainant claims that the Respondent is not commonly known by the Domain Name, which shows a lack of rights or legitimate interests. The Respondent’s name, Пустовит Илья / Pustovit Ilya, does not resemble the Domain Name in any manner. Furthermore, the Respondent was using a privacy WHOIS service to register the Domain Name, which past panels have also found to equate to a lack of legitimate interest, because it makes it impossible for the Respondent to be commonly known by the Domain Name.

Third, the evidence on file shows that the Respondent is not using the Domain Name in connection with *bona fide* offering of goods or services or legitimate, noncommercial fair

⁴ Section 1.7, WIPO Overview 3.0.

⁵ Section 1.11.1, WIPO Overview 3.0.

⁶ Section 2.1, WIPO Overview 3.0.

⁷ *Id.*

⁸ *Id.*

use of the Domain Name. The Domain Name resolves to a website that enables Internet users to download and save content from the Complainant's website without a watermark in violation of the Complainant's Terms of Service. It is likely that the Respondent receives financial gain from such use.

Since the Respondent has failed to rebut the Complainant's case, the Panel holds that the second element of the UDRP has been satisfied.

C) Bad Faith

Under the third UDRP element, the Complainant is required to prove that the Domain Name was registered and is being used in bad faith.

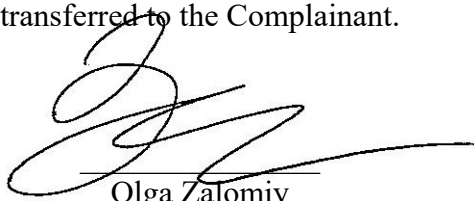
The Panel finds that the Respondent was aware of the Complainant and its rights in the TIK TOK/TIKTOK trademarks and, thus, registered the Domain Name in bad faith with an intent to profit from the use of the Complainant's mark.

The Panel also finds that the Respondent is using the Domain Name in bad faith. The evidence on file shows that the Domain Name, which is confusingly similar to the Complainant's trademark, directs to the website, which displays the Complainant's TIK TOK trademark, and a variation of Complainant's logo in a brand-like manner, and purports to enable internet users to download TikTok videos without watermark. Such activities may not only disrupt Complainant's business in relation to its video-sharing business, but also, financially benefit the Respondent. Furthermore, the Respondent is facilitating violations of Complainant's Terms of Service causing deactivation of accounts, termination of licenses and other negative consequences to the users of its website. Such activities amounts to bad faith use of the Domain Name.

The Panel finds that the Complainant has satisfied the third element of the UDRP.

6. Decision

Under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <ssstiktok.com> be transferred to the Complainant.



Olga Zalomiy
Sole Panelist

Dated: June 4, 2020