

DECISION OF THE THIRD-PARTY DECIDER

TikTok Information Technologies UK Limited / Internet Ventures Limited

Case n° 444203 / tiktok.be

1. The Parties

1.1. The Complainant:

TikTok Information Technologies UK Limited, with registered office at Kaleidoscope, Linsey Street 4, London, United Kingdom EC1A 9HP (e-mail: oipp@tiktok.be);

Hereinafter referred to as the “**Complainant**”;

Represented by Ms Marie Keup, attorney at law – Taylor Wessing, Boulevard de Waterloo 16, 1000 Brussels;

1.2. The Domain Name Holder:

Mr Ray Debono, Internet Ventures Limited, with registered office at Palazzo CaBrugnera (level 2), Valley Road, BKR9024 Birkirkara, Malta (e-mail: dns@internet-ventures.com);

Hereinafter referred to as the “**Domain Name Holder**”;

Represented by Mr Jan De Volder, legal and judicial representative, Tas-Sellim Residence (apartment 623, block 6), Dawret IT-Tunnara, Mellieha, Malta.

2. Domain Name

Domain name: “**tiktok.be**”
Registered on: **9 September 2020**

Hereafter referred to as the “**Domain Name**”.

3. Procedural history

1. On 12 September 2023, Complainant filed a complaint (the "**Complaint**") with the Belgian Centre for Arbitration and Mediation ("**CEPANI**") concerning the Domain Name ("**fiktok.be**") pursuant to the "CEPANI Rules for Domain Name Dispute Resolution" (the "**CEPANI Rules**") and the "Dispute Resolution Policy" of the terms and conditions for domain name registration under the ".be" top-level domain operated by DNS.be (the "**DNS Policy**").

2. The Complaint seeks to obtain the transfer of the Domain Name, which was registered by the Domain Name Holder on 9 September 2020. The Domain Name Holder was notified of the Complaint and the latter was invited to reply.

3. On 4 October 2023, CEPANI appointed the Third-Party Decider to settle the dispute concerning the aforementioned Domain Name. The Third-Party Decider accepted the instruction and provided CEPANI with the declaration of independence in accordance with article 7 of the CEPANI Rules. Pursuant to article 10 of the CEPANI Rules, CEPANI provided the Third-Party Decider with an electronic copy of the case file, consisting of the Complaint and five annexes thereto.

4. Pursuant to article 13 of the CEPANI Rules, the deliberations were closed on 11 October 2023. The Domain Name Holder did not file any response to the Complaint.

4. Factual background information

5. The case file shows that Complainant, together with its affiliates, is an internet technology company that enables users to discover a world of creative content platforms powered by leading technology, including the short-form video hosting service "TikTok".

6. Complainant holds numerous trademark registrations on the "TikTok" brand, including:

- the International trademark for the word mark "TikTok" (n° 1572336), registered on 20 August 2020 in classes 9, 35, 36, 38, 41, 42 and 45, designating, amongst others, the territory of the European Union.

- the European Union trademark for the figurative mark  (n° 017913677), registered on 15 December 2018 in classes 9, 25, 35, 38, 41, 42 and 45.

7. The Domain Name was registered on 9 September 2020 by Domain Name Holder and appears to be used in connection to a website operated by a Maltese company, Volo Media Limited. This website is dedicated to the TikTok platform and provides trends and tips on content available on the TikTok platform.

8. The screenshots included in the Complaint show that the figurative EU trademark owned by Complainant was (as recent as August 2023) displayed on the website connected to the Domain Name. However, at the date of this Decision, this no longer seems to be the case.

5. Position of the parties

5.1. Position of the Complainant

9. Complainant requests the Third-Party Decider to order the transfer of the Domain Name to Complainant, claiming that all three cumulative conditions set out in article 10(b)(1) of the DNS Policy are met.

10. Complainant's arguments can be summarised as follows:

- the Domain Name is identical to Complainant's trademark, as listed above;
- the Domain Name Holder has no rights or legitimate interests in the Domain Name, as it has no connection with Complainant's company, nor is it authorised to use Complainant's trademarks; and
- the Domain Name has been registered and is being used in bad faith, particularly in order to take advantage of Complainant's reputation and trademarks. Complainant finds that the Domain Name Holder has intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with Complainant's trademarks.

5.2. Position of the Domain Name Holder

11. No response has been filed by the Domain Name Holder.

6. Discussion and findings

12. Pursuant to Article 16.1 of the CEPANI Rules, the Third-Party Decider shall rule on domain name disputes with due regard for the DNS Policy and the CEPANI Rules.

13. Pursuant to Article 10(b)(1) of the DNS Policy, a complainant must provide evidence of the following (in a cumulative manner):

- i. *"the Domain name holder is identical or confusingly similar to a trademark, a tradename, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the complainant has rights; and*
- ii. *the Domain name holder has no rights or legitimate interests in the domain name; and*

- iii. *the Domain name holder's domain name has been registered or is being used in bad faith."*

14. In this regard, the Third-Party Decider wishes to emphasize that, in accordance with Article 10(b)(1) of the DNS Policy, a complainant must not only state or allege that the three cumulative conditions mentioned above are satisfied, but must also prove this. Only where this proof is provided, the compulsory transfer of a domain name can be ordered. As the decision to transfer a domain name is a restriction of the domain name holder's right to the domain name and its freedom of enterprise, such an order must remain an exceptional measure, which must be applied with caution.¹

6.1. The Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights

15. Complainant has established its ownership of the "TikTok" word mark, registered since 20 August 2020 and covering, among others, the territory of the European Union.

16. The Domain Name ("tiktok.be"), registered on 9 September 2020, is identical to this trademark, since it incorporates the entire word constituting the "TikTok" trademark.

17. According to established CEPANI case-law, country code top-level domains (ccTLDs) such as the suffix ".be" are not relevant to establish the identity or similarity between a domain name and a trademark. The ".be" extension indeed has no distinctive character within the domain name as it refers only to the geographical extension of the domain name.²

18. In this light, the Third-Party Decider rules that the Domain Name is identical to the "TikTok" word mark in which Complainant has rights. Therefore, the first condition of Article 10(b)(1)(i) of the DNS Policy is fulfilled.

6.2. The Domain Name Holder has no right or legitimate interests in the Domain Name

19. According to Article 10(b)(1)(ii) of the DNS Policy, Complainant has to prove that the Domain Name Holder has no rights or legitimate interests in the Domain Name.

20. According to CEPANI case-law, considering the difficulty of proving a negative fact, it is accepted that a complainant must only establish a *prima facie* case that the Domain Name Holder has no legitimate rights or interests. This burden of proof will for example be satisfied when the complainant can credibly state that it is unaware of any reason or circumstance which could be indicative of such right or legitimate interest.³

¹ Cf., for example, CEPANI cases n° 44393, 444108, and 444172.

² Cf., for example, CEPANI, cases n° 44082, 44076, 44025, 44290, 44309, 44409, 44427, 444130, 444143 and 444172.

³ Cf., for example, CEPANI cases n° 4064, 4030, 4013, 44013, 44030, 44082, 44275, 44409, 44427, 44462, 44491, 444115 and 444172. See also B. DOCQUIR & O. DE PRELLE, « L'enregistrement abusif des noms de domaine: aperçu de la jurisprudence des Tiers-décideurs du CEPANI » in Les noms de domaine .be /.be domeinnamen, Bruxelles, Bruylant, 2012, 39-58 ; as well as Article 8.6 of the Belgian Civil Code.

21. Generally, a right or legitimate interest can be established in three types of circumstances (according to Article 10(b)(3) of the DNS Policy):

- prior to any notice of the dispute, the Domain Name Holder used the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services or made demonstrable preparations for such use; or
- the Domain Name Holder (as an individual, a business or other organisation) has been commonly known by the Domain Name, even if he has no corresponding trademark; or
- the Domain Name Holder is making a legitimate and non-commercial or fair use of the Domain Name, without intent to misleadingly divert consumers for commercial gain or to tarnish the trademark of another party.

22. In the present case, there are no indications that the Domain Name is used in connection with a *bona fide* offering of certain goods or services to visitors of the website available under the Domain Name. This website does not appear to present any such offering. By not submitting a response, the Domain Name Holder moreover failed to show any such circumstances justifying its use of the Domain Name.

23. Neither are there any indications that the Domain Name Holder ever was, or is, commonly known under a trade name corresponding to the Domain Name, nor in any way affiliated with Complainant or licensed to use its trademarks.

24. As regards the third example of rights or legitimate interests a domain name holder may have, the Third-Party Decider notes:

- that the Domain Name was registered after the registration of Complainant's relevant trademarks, precisely at a moment in time (September 2020) at which the TikTok platform was booming in popularity in Belgium/Europe.
- that the Domain Name is connected to a website that shares trends and tips regarding the TikTok platform that is operated by Complainant;
- that the Domain Name Holder, by registering the Domain Name in order to create a website dedicated to describing trends and tips when using the TikTok platform, was obviously aware of Complainant's trademarks.
- that, while such use may generally constitute a legitimate, non-commercial or fair use of a domain name, in the present case there are strong indications that the Domain Name Holder is aiming to take unfair advantage of the reputation of the TikTok brand for commercial purposes. For example, the use of Complainant's figurative trademark (even if such use was suddenly ceased after the filing of the Complaint) created the false impression that the Domain Name was indeed operated (or endorsed) by Complainant or an affiliate of Complainant, while this is not the case. Additionally, the presentation of an offer on the website for third parties to advertise, creates a strong suspicion that the main goal of the use made of the Domain Name is to take unfair advantage of the

reputation of Complainant's (well known) trademarks for commercial purposes.

25. On this basis, and in the absence of any reaction from the Domain Name Holder explaining the rights or legitimate interests the Domain Name Holder may have in relation to the Domain Name,⁴ also the second condition of Article 10(b)(1)(i) of the DNS Policy is fulfilled.

6.3. The Domain Name has been registered or is being used in bad faith

26. Under Belgian law, bad faith cannot simply be presumed. The existence of bad faith is on the other hand a fact that may be proven by any lawful means. Proof that a domain name has been registered or is used in bad faith (only one of which must be demonstrated), can thus be derived from a set of circumstances on the basis of which one may reasonably conclude that the domain name holder knew (or should have known) that by registering or using the domain name, it would infringe upon the rights of the complainant. The existence of bad faith must therefore be demonstrated with a reasonable degree of certainty.⁵

27. According to Article 10(b)(2) of the DNS Policy, evidence of such bad faith registration or use of a domain name can *inter alia* be demonstrated by the following (non-exhaustive) list of circumstances:

- circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant, who is the owner of the trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity, or to a competitor of the complainant, for a price that exceeds the costs that the registrant can show are directly related to the acquisition of the domain name;
- the domain name was registered in order to prevent the owner of a trademark, a trade name, a registered name or a company name, a geographical designation, a name of origin, a designation of source, a personal name or a name of a geographical entity to use the domain name and that the registrant has engaged in a pattern of such conduct;
- the domain name was registered primarily for the purpose of disrupting the business of a competitor;
- the domain name was intentionally used to attract, for commercial gain, Internet users to the registrant's web site or other online location, by creating confusion with the complainant's trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of a geographical

⁴ In the present case, by not responding to the Complaint, the Domain Name Holder has failed to allege any fact that would rebut the *prima facie* presumption and show that it would still have any right or legitimate interest in the Domain Name, so that Complainant's contentions in this respect are in fact not contradicted. Cf., for example, CEPANI cases n°444130, 444143 and 444172.

⁵ Cf., for example, CEPANI cases n° 44080, 44199, 44233, 44484, 444115 and 444172.

entity as to the source, sponsorship, affiliation, or endorsement of the registrant's web site or location or of a product or service on his web site or location; or

- the registrant has registered one or more personal names without the existence of a demonstrable link between the registrant and the registered domain names.

28. Taking into account the worldwide reputation of Complainant's trademarks, as well as the high level of notoriety of the TikTok services (especially their growing popularity around the time the Domain Name was Registered), it can be reasonably established that the Domain Name Holder was well aware of the existence of Complainant and its trademarks at the time of registration of the Domain Name.

29. While this fact alone, as such, does not necessarily imply that the domain name registration was done in bad faith,⁶ by using the Domain Name to intentionally attract, for commercial gain, Internet users to a website with sponsored advertisements, actively creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website (cf. the use of Complainant's logo), the Third-Party Decider finds that there is in the present case a reasonable degree of certainty that the Domain Name has been registered and is used in bad faith.

30. On this basis, and in the absence of any reaction from the Domain Name Holder,⁷ also the third condition of Article 10(b)(1)(i) of the DNS Policy is fulfilled.

7. Decision

31. Consequently, pursuant to Article 10(e) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, the Third-Party Decider hereby rules that the domain name registration for the "**tiktok.be**" domain name **is to be transferred to Complainant.**

BRUSSELS, 25 October 2023.

DocuSigned by:
Stéphanie De Smedt
CFA37DA31172421...

Stéphanie DE SMEDT
The Third-party Decider

⁶ Cf., for example, CEPANI cases n° 44010 and 44409.

⁷ While one may not deduce bad faith from the mere fact that a domain name holder does not file a response, the absence of a response, in combination with other elements, may nevertheless serve as circumstantial evidence of a domain name holder's bad faith. Cf., for example, CEPANI cases n° 4045, 4053, 44309, 44387, 44419 and 444110.