.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION

Complainant: ByteDance Ltd.
Respondents: DOMAIN NETWORK LIMITED / Chen Xiao Peng (陈晓朋)
Case Number: DHK-2000178
Contested Domain Name: <douyin.com.hk>
Panel Member: Mr. Joseph Simone

1. Parties and Contested Domain Name

The Complainant is ByteDance Ltd. ("Complainant") whose address is P.O. Box 31119 Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, Ky1-1205 Cayman Islands. Its authorized representative for this matter is Wei Chixue Law Firm whose address is at F19 Tower C, Beijing Global Trade Center 36 North Third Ring East Road, Dongcheng District Beijing 100013 P. R. China.

The Respondent is Chen Xiao Peng (陈晓朋) of DOMAIN TRUSTEE SERVICES DEPARTMENT, DOMAIN NETWORK LIMITED, 12/F, NATHAN COMMERCIAL BUILDING, 430-436 NATHAN ROAD, KLN, whose email address is trustee-service@domain.net.hk / 406840773@qq.com.

The domain name in dispute is <douyin.com.hk> (the "Disputed Domain Name") registered with SPEEDY GROUP CORP. LIMITED whose email address is enquiry@domain.net.hk.

2. Procedural History

On 30 December 2020, the Hong Kong International Arbitration Centre ("HKIAC") received a complaint (which was subsequently amended on 13 January 2021) (the "Complaint") filed by the Complainant pursuant to the Domain Name Dispute Resolution Policy for .hk and .香港 domain names (the "Policy"), adopted by the Hong Kong Domain Name Internet Registration Corporation Limited ("HKIRC") on 22 February 2011, the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure (the "Rules"), approved by HKIRC effective from 15 July 2020, and the HKIAC Domain Name Dispute Supplemental Rules ("Supplemental Rules"), effective from 15 July 2020.

On 30 December 2020, the HKIAC transmitted by email to the Registrar SPEEDY GROUP CORP. LIMITED ("Registrar"), a request for registrar verification in connection with the WHOIS of the registrant of the Disputed Domain Name.

By email of 12 January 2021, the Registrar confirmed that DOMAIN NETWORK LIMITED ("First Respondent") is the registrant or holder of the Disputed Domain
Name; and that the Policy is applicable to the current dispute; and provided HKIAC with the WHOIS information regarding the Disputed Domain Name, including the administrative and technical contacts of the Respondent.

On 22 January 2021, HKIAC served on the Respondent by email a Notification of Commencement of Proceedings ("NCP") which indicated that the Respondent had 15 business days, on or before 11 February 2021, to submit a Response to the Complaint in accordance with the Policy, the Rules and the Supplemental Rules. The Complaint and its annexures were attached to the NCP issued by HKIAC.

The Respondent responded to the HKIAC that DOMAIN NETWORK LIMITED is not the registrant of the Disputed Domain Name, and that the real registrant is Chen Xiao Peng (陈晓朋) ("Second Respondent"), who is using its Domain Trustee Service. HKIAC invited the Complainant to comment on this matter and argued that the Respondent DOMAIN NETWORK LIMITED is the domain name holder according to the information provided by the Registrar and thus the Respondent should bear relevant responsibility and is bound by the HKDRP Policy and its Rules.

The Respondent did not respond to the Complaint by the due date and HKIAC issued a notification of the Respondent in Default.

On 2 March 2021, the HKIAC appointed Mr. Joseph SIMONE as the sole Panelist of the Arbitration Panel in this matter. The sole Panelist has, prior to the appointment, submitted his Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the Rules, and the case file was transferred by HKIAC to the said sole Panelist on the same date.

In accordance with Rule 15(a) of the HKIRC Rules, the Panel is of the view that it shall decide the Complaint on the basis of statements and documents submitted to it.

According to Rule 15(d) of the HKIRC Rules and Section 67 of the Hong Kong Arbitration Ordinance (Cap. 609) of the laws of the Hong Kong Special Administrative Region of the People’s Republic of China, this Panel shall issue a reasoned decision.

3. Factual Background

The Complainant, Beijing ByteDance Co., Ltd. (hereafter “Beijing ByteDance”) and Beijing Microbroadcast Horizon Technology Co., Ltd. (hereafter “Microbroadcast Horizon”), are affiliated companies and stakeholders that are committed to “inspire creativity, enrich life.”, and the Complainant’s Douyin video sharing service has become China’s leading platform for dissemination of short mobile videos.

The Complainant has registered many trademarks consisting of “douyin” and “抖音” in Hong Kong, including “Douyin” No. 304569391 and the trade mark “抖音” No. 304569409 covering Classes 9, 38, 41 and 42.

Following extensive and long-standing use of the “douyin” and “抖音” trade marks by the Complainant (and its affiliates), the “douyin” and “抖音” trade marks have
acquired distinctiveness and strong reputation and goodwill worldwide, including in Hong Kong, such that the marks are immediately recognizable to consumers as being associated with the Complainant, its affiliates and its businesses.

The Disputed Domain Name was registered on April 3, 2020.

4. Parties’ Contentions

The Complainant’s contentions are reproduced below.

**The Registrant’s Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights:**

The Complainant asserts that the Disputed Domain Name douyin.com.hk is confusingly similar to its “douyin” trade marks, as there is no doubt that the main part of the Disputed Domain Name “douyin.com.hk” is identical with the Complainant’s registered trademark “douyin”.

**The Registrant has no rights or legitimate interests in respect of the Domain Name:**

The Complainant also asserts that it created the “douyin” trade mark, and that there is no relationship between the Complainant and the Respondent.

**The Registrant’s Domain Name has been registered and is being used in bad faith:**

The Complainant further asserts that the Respondent registered the Disputed Domain Name on April 3, 2020, which is later than the time of use and registration of the Complainant’s trade marks, and that the aforesaid trade marks already enjoyed a high degree of popularity prior to the Disputed Domain Name’s registration.

In light of the wide-spread popularity of the Complainant’s “douyin” and “抖音” trade marks, the Respondent obviously should have been aware of the existence of the prior rights of the Complainant.

In addition, the Disputed Domain Name was set to redirect users to the official website of Kuaishou, a competing short-form video sharing platform.

As such, the Complainant’s use of the Disputed Domain Name to re-direct Internet users to the website of Kuaishou is an obvious act of bad faith.

Based on the foregoing contentions, the Complainant seeks an order that the Disputed Domain Name be transferred from the Respondent to the Complainant.

**The Respondent**

The Respondent did not respond to the Complaint.
5. **Findings**

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, the Complainant has the burden of proving that:

(i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and

(iii) the Disputed Domain has been registered and is being used in bad faith; and

(iv) if the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

(1). **Identical/confusing similarity**

Based on the documentary evidence in the Complaint, the Panel finds that the Complainant is the registered trademark holder of the Hong Kong registered trademarks “Douyin” No. 304569391 and the trademark “抖音” No. 304569409 covering Classes 9, 38, 41 and 42.

The Disputed Domain Name <douyin.com.hk> obviously contains the Complainant’s “douyin” trademarks in its entirety.

It is customary that the suffix “.com.hk” be ignored in making a determination in the comparison of the Disputed Domain Name with the trade mark in which the Complainant has rights.

As such, the Panel concludes that the Disputed Domain Name is confusingly similar to the “douyin” trade marks in Hong Kong bearing the above registration numbers, in which the Complainant has rights.

Based on the above findings, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

(2). **Rights or Legitimate Interests of Respondent**

As stated in paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), once a complainant establishes a prima facie case in respect of the lack of rights or legitimate interests of a respondent, the respondent then bears the burden of demonstrating that it has rights or legitimate interests in the Disputed Domain Name. Where the respondent fails to do so, a complainant is deemed to have satisfied Paragraph 4(a)(ii) of the Policy.
The Complainant has not authorized the Respondent to use its trade mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the Disputed Domain Name in connection with a bona fide offering of goods or services.

Thus, the Complainant has established its prima facie case with sufficient evidence.

The Respondent did not file a formal response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the Disputed Domain Name. As such, the Panel concludes that the Respondent failed to rebut the Complainant’s prima facie showing of the Respondent’s lack of rights or legitimate interests in the Disputed Domain Name, and that none of the circumstances of paragraph 4(d) of the Policy is evident in this case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

(3) **Bad faith**

To establish bad faith for the purposes of the Policy, the Complainant must show that the Disputed Domain Name was registered in bad faith and has been used in bad faith.

Paragraph 4(b) of the Policy provides:

“For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

(i) circumstances indicating that the Registrant has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trade mark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant’s documented out-of-pocket costs directly related to the Domain Name; or

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

(iii) the Registrant has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s web site or location or of a product or service on the Registrant’s web site or location.”
However, these criteria are not exclusive and the Complainant may also rely on conduct that is bad faith within the generally accepted meaning of that expression.

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent’s conduct in this case constitutes bad faith registration and use of the Disputed Domain Name within the meaning of paragraph 4(a)(iii) of the Policy. In the Panel’s assessment, the Respondent should have been aware of the Complainant’s marks when registering the Disputed Domain Name, given the extensive prior use and fame of these marks.

At the time the Respondent registered the Disputed Domain Name on April 3, 2020, the “douyin” trade marks had already become widely known and directly associated with the Complainant’s activities.

The Respondent has provided no evidence to justify his registration of the Disputed Domain Name. Given the foregoing, it would be unreasonable to conclude that the Respondent – at the time of the registration of the Disputed Domain Name – was unaware of the Complainant’s trade mark, or that the Respondent’s adoption of the uncommon and distinctive name “douyin” was a mere coincidence.

The Panel is therefore of the view that the Respondent registered the Disputed Domain Name with full knowledge of the Complainant’s trade mark rights and with the intention of taking advantage of the fame and reputation of the Complainant’s trade mark. In doing so, the Respondent has created a likelihood of confusion with the Complainant’s trade mark and potentially deprived the Complainant of the opportunity to offer its services to prospective customers through the Disputed Domain Name.

The Panel therefore finds that the Disputed Domain Name was registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

(4). **If the Disputed Domain Names registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name**

As the Disputed Domain Name is not a 個人.hk domain name as referred to in Paragraph 4(c) of the Policy, Paragraph 4(a)(iv) of the Policy is therefore not applicable.

For all the aforementioned reasons, the Arbitration Panel concludes that the Complainant has satisfied all the requirements under Paragraph 4(a) of the Policy.

(5). **Eligibility Requirements under the Registration Policies**

In addition to Paragraph 4(a) of the Policy, the Arbitration Panel has also considered the eligibility requirements under paragraph 3 of the Registration Policies.
The Disputed Domain Name <douyin.com.hk> is a third level domain name; and under paragraph 3.4 of the Registration Policies, it is registrable by "all interested ... entities" irrespective of the place of incorporation or registration of such entity.

On this basis, the Panel considers that prima facie, the Complainant meets the eligibility requirements under the Registration Policies as a registrant of the Disputed Domain Name.

6. Conclusion

For all the foregoing reasons, in accordance with paragraphs 4(a) of the Policy and Paragraph 15(a) of the Rules, the Panel AWARDS, ORDERS AND DIRECTS that the Disputed Domain Name <douyin.com.hk> be transferred as requested by the Complainant.

The Complainant has requested that the disputed domain name be transferred to Bytedance (HK) Limited (Company Number: 1741639) and this is so ordered.

Date of Issue: 23 March 2021
Place of arbitration: Hong Kong

[Signature]
Joseph SIMONE
Panel Member