

ADMINISTRATIVE PANEL DECISION

GoTo Technologies USA, Inc. v. Polyakov Andrey
Case No. D2023-0448

1. The Parties

The Complainant is GoTo Technologies USA, Inc., United States of America (“United States”), represented by Day Pitney LLP, United States.

The Respondent is Polyakov Andrey, Ukraine.

2. The Domain Names and Registrar

The disputed domain names <gototrainingapp.com> and <gototraining-win.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 1, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 13, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 15, 2023.

The Center verified that the Complaint, together with the amended Complaint, satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 21, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on March 27, 2023. The Panel finds that 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.

4. Factual Background

Since 2010, the Complainant has provided an online training software solution under the mark GOTOTRAINING.

The Complainant owns United States trade mark No. 3807572 for GOTOTRAINING, filed on March 10, 2008, registered on June 22, 2010, in classes 9, 38, and 42.

The disputed domain names were both registered on September 12, 2022.

Both disputed domain names have been used for websites branded with the Complainant's logo and purporting to offer the Complainant's app for download along with information about the Complainant's products.

The website at the disputed domain name <gototraining-win.com> states in the footer that it is "(...) not an official representative or the developer of this application. Copyrighted materials belong to their respective owners". The footer of the website at the disputed domain name <gototrainingapp.com> states: "GoToTraining is an application that makes online training easy and effective. On our website you can get tips and tutorials about GoToTraining to make your training more effective. We are not responsible for any direct, indirect, special or other damage caused by use of any information on this website."

As of January 24, 2023, MX records had been configured enabling use of both of the disputed domain names for email.

The Respondent was previously found to have registered and used in bad faith another domain name reflecting a Complainant trade mark - see *GoTO Technologies USA, Inc. v. Privacy service provided by Withheld for privacy ehf/Polyakov Andrey*, WIPO Case No. [D2022-0983](#).

5. Parties' Contentions

A. Complainant

The following is a summary of the Complainant's contentions.

The Complainant has acquired valuable goodwill and a reputation for excellence in connection with its GOTRAINING trade mark.

The disputed domain names are confusingly similar to the Complainant's trade mark, which they incorporate in their entirety, adding only the terms "app" and "win".

The Respondent lacks rights or legitimate interests in the disputed domain names.

The Complainant has not authorised the Respondent to register the disputed domain names or use its trade marks.

The Respondent had not used, or made demonstrable preparations to use, the disputed domain names for a *bona fide* offering of goods or services. Nor has the Respondent been commonly known by the disputed domain names, nor acquired any relevant trade marks. Nor has the Respondent made a legitimate non-commercial or fair use of the disputed domain names.

The disputed domain names were registered and are being used in bad faith.

The Respondent's only plausible purpose was to impersonate the Complainant and/or confuse consumers. The Respondent was clearly aware of the Complainant and its marks.

In a previous case, the Respondent has been found to have registered and used in bad faith a domain name that reflected another trade mark of the Complainant.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain names are identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- the disputed domain names have been registered and are being used in bad faith.

A. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

While the Respondent's mailing address is stated to be in Ukraine (though this is impossible to verify), which is subject to an international conflict at the date of this decision, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel is of the view that it should. While the courier was not able to deliver the written notice to the Respondent, the Panel notes that the Complaint and Amended Complaint were delivered properly to the Respondent's email address.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain names shall be referred to the jurisdiction of the courts at the location of the principal office of the concerned registrar, being in the United States.

The Panel further notes that, for reasons set out below, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain names in bad faith.

The Panel also notes that the Respondent has been found to have registered and used domain names in bad faith in at least five previous UDRP cases and that, in four of those, the panellists specifically decided that it was appropriate for the case to proceed against Respondent, notwithstanding his Ukraine address, for reasons similar to those given above. See: *Ryzac, Inc. v. Privacy service provided by Withheld for Privacy ehf / Polyakov Andrey*, WIPO Case No. [D2022-0658](#), *GoTO Technologies USA, Inc. v. Privacy service provided by Withheld for privacy ehf/Polyakov Andrey*, WIPO Case No. [D2022-0983](#), *PowerSchool Group LLC, and Schoology, LLC v. Privacy service provided by Withheld for Privacy ehf / Polyakov Andrey*, WIPO Case No. [D2022-2168](#), *Bytedance Ltd. v. Polyakov Andrey*, WIPO Case No. [D2022-3399](#), and *Bytedance Ltd. v. Polyakov Andrey*, WIPO Case No. [D2022-3693](#)

The Panel concludes that the Parties have been given a fair opportunity to present their case. In order that the administrative proceeding takes place with due expedition, the Panel will proceed to a decision accordingly.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the mark GOTOTRAINING, as well as unregistered trade mark rights deriving from the Complainant's extensive and longstanding use of that mark.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive, meaningless, or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain names consist of the Complainant's trade mark, which remains readily recognisable within the disputed domain names, plus the additional terms "app" and "win", which do not prevent a finding of confusing similarity as explained above.

For the above reasons, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, for reasons explained in section 6D below, the Panel considers that the Respondent has used the disputed domain names to impersonate the Complainant. Such use of the disputed domain names could not be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

D. Registered and Used in Bad Faith

The Panel notes both disputed domain names include Complainant's trade mark in its entirety and, in the case of <gototrainingapp.com>, with the added term "app", which is clearly connected with the Complainant's products.

Furthermore, both disputed domain names have been used for websites branded with the Complainant's logo and purporting to offer the Complainant's app for download along with information about the

Complainant's products. The disclaimers offered at the bottom of the respective websites (see section 4 above) are not presented in a sufficiently prominent manner, and are not capable of curing the Respondent's bad faith conduct nor of preventing the likelihood of confusion arising from the reproduction of the Complainant's logo at the websites to which the disputed domain names resolve.

Given the evidence of use of the disputed domain names for websites impersonating the Complainant including by use of its logo and by purporting to offer the Complainant's app for download - no doubt for nefarious purposes - the Panel readily concludes that the Respondent has intentionally created a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

The Panel also notes that the Respondent has been found to have registered and used in bad faith a domain name reflecting another Complainant trade mark. See section 3 above.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <gototrainingapp.com> and <gototraining-win.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: April 14, 2023