

ADMINISTRATIVE PANEL DECISION

Replit, Inc. v. Brian Johnson
Case No. D2022-3533

1. The Parties

Complainant is Replit, Inc., United States of America (“United States”), represented internally.

Respondent is Brian Johnson, United States.

2. The Domain Name and Registrar

The disputed domain name <replit.gay> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 23, 2022. On September 26, 2022, the Center 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 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.¹ The Center sent an email to Complainant on September 27, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 27, 2022.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on October 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 25, 2022.

¹ At the time of the filing of the Complaint, the Respondent’s identity was masked by a privacy service.

The Center appointed Robert A. Badgley as the sole panelist in this matter on October 31, 2022. 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

Complainant alleges as follows:

“Replit owns and operates Replit.com, a free, collaborative, in-browser development environment for computer programming in over fifty languages. Replit has built a global community of over ten million users where programmers can talk, learn, and collaborate on coding projects. Open to all ages, Replit’s Teams for Education product is used at schools worldwide to teach programming in the classroom. Clearly, Replit has built a strong reputation on being a safe and inclusive place for programmers to collaborate and create.”

Complainant holds a registered trademark for REPLIT with the United States Patent and Trademark Office, Reg. No. 6,817,659, registered on August 2, 2022, with an October 2011 first use in commerce date. The subject services are as follows:

“Downloadable software that enables users to share and collaboratively develop software and computer code; downloadable computer software development platforms for collaboratively brainstorming, developing, managing, planning, coordinating, modifying, tracking, testing, reviewing, publishing and archiving digital computer programs, software documentation, software technical documents and software performance issues; downloadable computer software for developing interactive computer programs [Class 9].”

“Training services in the fields of software development and software editing; conducting workshops, classes, tutorial sessions and seminars in the fields of software development and software editing [Class 41].”

“Computer services, namely, hosting and maintaining computer software applications of others; providing an online website for others featuring technology allowing users to collaboratively develop software; computer programming services; hosting an on-line community web site featuring a distributed control system for the collaborative development of software; computer programming; design and development of computer software; electronic data storage; hosting on-line web facilities for others for a distributed control system for the collaborative development of software; hosting of digital content on the Internet; platform as a service (PAAS) featuring computer software platforms for the collaborative development of software; services for updating computer software; software as a service (SAAS) services, namely, hosting software for use by others for use in the collaborative development of software; technical support services, namely, troubleshooting of computer software problems; computer services, namely, hosting and maintaining an on-line web site for others featuring technology allowing users to collaboratively develop software by brainstorming, developing, managing, planning, coordinating, modifying, tracking, testing, reviewing, publishing and archiving digital computer programs, software documentation, software technical document and software performance issues; IT consulting services; [...] [Class 42].”

The Domain Name was registered on September 3, 2022. The Domain Name resolves to another website at the domain name <imgur.com> where the text “gay pride???” appears, and where pornographic content is featured.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the 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) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark REPLIT through registration demonstrated in the record. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward in this proceeding to articulate or prove any possible legitimate interest in the Domain Name. None of the above-quoted "safe harbors" applies here, based on the record presented.

All we know about Respondent, whose identity was previously shielded and who did not respond to any of the allegations in the Complaint, is that he evidently caused the Domain Name to be redirected to a pornographic website. Such a use of this Domain Name, which is identical to Complainant's registered trademark and domain name <replit.com>, does not give rise to a right or legitimate interest in the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the “Rights or Legitimate Interests” section. Based on the undisputed record, the Panel concludes, on a balance of probabilities, that Respondent more likely than not had Complainant’s registered REPLIT trademark in mind when registering the Domain Name. The mark appears to be fanciful, *i.e.*, not reflective of a dictionary term, and Complainant asserts that its REPLIT services have garnered more than ten million users.

Based, again, on the undisputed record here, the Panel concludes that Respondent has used the Domain Name in bad faith for ultimate commercial gain, either by earning revenue due to its connection to the website offering pornographic content, or by offering it for sale to Complainant at a markup. There is no evidence of record of any attempt to approach Complainant with a sale offer, but the Panel cannot conceive of any legitimate reason why Respondent would have registered this Domain Name which, again, entirely incorporates a fanciful trademark.

The Panel finds bad faith use under the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <replit.gay> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: November 4, 2022