

ADMINISTRATIVE PANEL DECISION

GitLab Inc. v. ZhangShengXiang
Case No. D2022-4850

1. The Parties

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

The Respondent is ZhangShengXiang, China.

2. The Domain Name and Registrar

The disputed domain name <gitlab.new> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2022. On December 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc., Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 2022, 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 amendment to the Complaint on December 22, 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 the Respondent of the Complaint, and the proceedings commenced on January 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 25, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on January 30, 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

The Complainant is a publicly traded software development company with some 30 million estimated registered users and an active community of over 2,500 contributors.

The Complainant and its predecessors have used the GITLAB mark in connection with a software development platform since 2011.

The Complainant's subsidiary, GitLab B.V., owns many registered trade marks for GITLAB including United States trade mark No. 6073595, filed on October 14, 2019, registered on June 9, 2020, in classes 9 and 42.

The Complainant operates a website at "www.gitlab.com".

The disputed domain name was registered on April 9, 2021.

The disputed domain name has been used to resolve a login page for Gitee.com, a competitor of the Complainant.

The Respondent did not reply to the Complainant's cease and desist letter dated October 28, 2022.

5. Parties' Contentions

A. Complainant

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

Through its subsidiary, the Complainant owns common law rights in, as well as registered trade marks for, GITLAB.

The disputed domain name is identical to the Complainant's trade mark.

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

The Complainant has not authorised the Respondent to use its trade mark.

There is no evidence that the Respondent has been commonly known by the disputed domain name.

The Respondent's use of the disputed domain name to divert Internet users to a competitor website does not constitute a *bona fide* offering of goods or services. Nor does such activity amount to a legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith.

The Complainant's mark is an arbitrary term with no meaning independent of the Complainant, and it long predates the disputed domain name.

The Respondent has set out to create a likelihood of confusion with the Complainant's mark by diverting Internet users to a competing website for profit.

The fact that the disputed domain name exactly reproduces the Complainant's unique mark evidences bad faith, as does the Respondent's failure to respond to the Complainant's cease and desist letter.

There is no plausible legitimate use of the disputed domain name.

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 name is 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 name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced evidence of a United States trade mark for GITLAB owned by the Complainant's subsidiary, GitLab B.V. Given that this company is part of the same corporate group as the Complainant, and in the absence of any objection from the Respondent, which has not appeared in the proceeding, the Panel thinks it reasonable to infer that the Complainant has rights in the trade mark for the purpose of standing to file the Complaint – see section 1.4.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Disregarding the Top-Level Domain ("TLD") suffix, which is excluded from the comparison, the disputed domain name is identical to the Complainant's trade mark. Accordingly, the Panel finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. 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 6C below, the Panel considers that the Respondent has used the disputed domain name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's goods and/or services. Such use of the disputed domain name 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 and there is no rebuttal by the Respondent.

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

C. Registered and Used in Bad Faith

The Panel considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

First, the disputed domain name carries a high risk of implied affiliation as it is identical to the Complainant's long-standing and distinctive trade mark - see section 2.5.1 of the [WIPO Overview 3.0](#).

Second, the Respondent has used the disputed domain name to redirect Internet users to a website offering services similar or related to those of the Complainant.

It is reasonable to infer that, in diverting users to a website competing with the Complainant, the Respondent was intent on commercial gain.

The likelihood of confusion is not diminished by the possibility that at some point users arriving at the Respondent's site may realise that the site is not connected with the Complainant. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users. Here, the disputed domain name creates an implied risk of affiliation with the Complainant, and the Respondent profits from at least some of the traffic intended for the Complainant.

Furthermore, the Respondent has not come forward to deny the Complainant's assertions of bad faith. It is difficult to conceive of any legitimate reason why the Respondent would wish to register the disputed domain name and the Respondent has offered no explanation.

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 name <gitlab.new> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: February 13, 2023