

## **ADMINISTRATIVE PANEL DECISION**

**GAMELOFT S.E. v. Wu Yu**

**Case No. D2023-0091**

### **1. The Parties**

The Complainant is GAMELOFT S.E., France, represented internally.

The Respondent is Wu Yu, China.

### **2. The Domain Name and Registrar**

The disputed domain name <gameoftheshift.com> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 9, 2023. On January 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 2023, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 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 January 12, 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 January 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 10, 2023.

The Center appointed Douglas Clark as the sole panelist in this matter on February 17, 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 publisher and developer of video games and founded in 1999. The Complainant is also the registrant of various domain names containing the term GAMELOFT.

The Complainant is the owner of various trade mark registrations for GAMELOFT, including the following:

Trademark	Registration Number	Registration Date	Class	Jurisdiction
GAMELOFT	2474984	August 7, 2001	38	United States of America ("United States")
GAMELOFT	2635895	October 15, 2002	9	United States
GAMELOFT	2609489	August 20, 2002	35	United States
GAMELOFT	2473767	March 13, 2006	9, 16, 28, 35, 38, 41, 42	European Union
GAMELOFT	907208	October 31, 2006	9, 28, 38, 41	International (not including China)
GAMELOFT	3364698	January 8, 2008	38	United States
GAMELOFT	4564254	July 8, 2014	9	United States

The Respondent is an individual based in China. The Respondent has also been the registrant of a number of domain names that incorporate the trade marks of third parties, which have been part of UDRP proceedings and where the outcomes have been to transfer the domain name, such as;

- *Confédération Nationale du Crédit Mutuel v. Super Privacy Service LTDc/o Dynadot / Wu Yu*, WIPO Case No. [D2021-4013](#);
- *SFIL v. Super Privacy Service LTD c/o Dynadot / Wu Yu*, WIPO Case No. [D2021-2400](#);
- *Compagnie Générale des Etablissements Michelin v. Wu Yu*, WIPO Case No. [D2022-2271](#); and
- *Indeed Inc. v. Wu Y*, WIPO Case No. [DQA2019-0002](#).

The disputed domain name was registered on December 5, 2022. At the date of filing this Complaint, the disputed domain name resolved to a possible phishing website offering pay-per-click ("PPC") links to third party websites.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that:

(a) The disputed domain name is confusingly similar to its trade mark. The disputed domain name wholly incorporates the Complainant's well-known GAMELOFT trade mark and accompanied by the words "help" and "shift". The generic Top-Level Domain ("gTLD") ".com" in the disputed domain name does not eliminate the overall notion that the designations are connected to the trade mark and the likelihood of confusion that the disputed domain name and the trade mark are associated;

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorisation or license to use the Complainant's trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or

fair use of the disputed domain name. The Respondent appears to be using the PPC website, which the disputed domain name resolves to, and contends that it is possibly used for a phishing scheme; and

(c) The disputed domain name was registered and is being used in bad faith. The mere fact that the Respondent has registered a domain name incorporating a mark with a distinctive name gives rise to an inference of bad faith. Based on the use of the disputed domain name, the Respondent registered and is using the disputed domain name to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant's trade mark.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and are being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark. The disputed domain name incorporates the GAMELOFT trade mark entirely with the addition of the words "help" and "shift" together with the gTLD ".com". The addition of these words does not preclude a finding of confusing similarity. The gTLD is generally disregarded when considering the first element (see section 11.1 of the WIPO Overview on WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The Panel notes that the Complainant did not rely on any registered trade marks in China where the Respondent is located. The ownership of a trade mark is generally considered to be a threshold standing issue. The location of the trade mark, its date of registration (or first use) and the goods and/or services for which it is registered, are not considered relevant for the purpose of finding rights in a trade mark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. See section 1.1.2 of [WIPO Overview 3.0](#).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

### **B. Rights or Legitimate Interests**

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element

shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that based on the facts set out above the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent.

Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The second element of paragraph 4(a) of the Policy is therefore satisfied.

### **C. Registered and Used in Bad Faith**

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant has registered the GAMELOFT trade mark and the use of the Complainant’s GAMELOFT trade mark cannot be a coincidence. The GAMELOFT trade mark is used by the Complainant to conduct its business and the Complainant has used the trade mark for over 20 years. In addition, the disputed domain name is accompanied by the words “help” and “shift”, which is a reference to a third-level domain name the Complainant uses, “gameloft.helpshift.com”, as a web support panel. The Panel is satisfied that the Respondent was aware of the Complainant and its GAMELOFT trade mark when he or she registered the disputed domain name.

The Respondent has registered the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name directs Internet users to a parked webpage showing PPC links to third party websites. As mentioned above, the Respondent is also a serial cybersquatter engaged in a series of trade mark infringing domain name registrations.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under 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, <gamelofthelpshift.com> be transferred to the Complainant.

*/Douglas Clark/*

**Douglas Clark**

Sole Panelist

Date: March 3, 2023