

ADMINISTRATIVE PANEL DECISION

Cisco Technology, Inc. v. Maksim Gorbacevich Case No. D2023-5414

1. The Parties

The Complainant is Cisco Technology, Inc., United States of America (“United States”), represented by Fenwick & West LLP, United States.

The Respondent is Maksim Gorbacevich, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <gplcisco.com> is registered with RU-CENTER-MSK (Regional Network Information Center, JSC dba RU-CENTER) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 2024, 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 (Privacy protection service - whoisproxy.ru) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 2024, 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, 2024.

On January 10, 2024, the Center informed the parties in Russian and English, that the language of the registration agreement for the disputed domain name is Russian. On the same date, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in English and Russian, and the proceedings commenced on January 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 12, 2024.

The Center appointed Willem J. H. Leppink, Brian J. Winterfeldt and Olga Zalomiy as panelists in this matter on March 5, 2024. The Panel finds that it was properly constituted. Each member of 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 following facts are undisputed.

The Complainant is a worldwide technology conglomerate, providing a wide array of products and services ranging from networking and communications equipment and software, including telephone communications systems, video conferencing systems, and collaboration products and services, to financing services, retail store services, training and certification programs and blogs.

The Complainant provides its varied products and services to a diverse customer base that spans all industries and includes individual consumers, small to medium-sized businesses, enterprises, service providers and governmental entities. The Complainant's affiliate, Cisco Systems, Inc., a public company traded on NASDAQ and listed in the Dow Jones Industrial Average, has more than 75,000 employees in countries throughout the world.

The Complainant owns worldwide trademark registrations for its well-known CISCO trademark, such as the Russian Federation trademark registrations 212378 and 174686, registered on May 17, 2002 and May 6, 1999 respectively.

The Complainant has used its famous CISCO trademark to market and sell its products since 1984.

The Complainant has expended considerable resources in promoting and advertising its CISCO products and services, and in building valuable goodwill in its CISCO brand. As a consequence of such longstanding use and extensive promotional efforts, the CISCO trademark can be considered an internationally famous trademark, and has been found to be "well known" and famous in prior WIPO UDRP decisions.

In addition, the Complainant is the registrant of various domain names and country-code domain names comprised of its CISCO trademark, including, but not limited to, the following: <cisco.com>, <cisco.co.uk>, <cisco.us>, <cisco.net>, <cisco.biz>, <cisco.info>, <cisco.mobi>.

This disputed domain name was registered on July 18, 2016. At the time of filing of the Complaint and at the time of rendering this decision, the disputed domain name resolves to a page with a header in English "CISCO GPL 2024" and "the Best Cisco Price List Checking Tool" and in Russian "Cisco Equipment from a warehouse in Moscow" and "Delivery to any region of Russia!". The Russian text appearing at the bottom of the page reads "© gplcisco.com - official price Cisco GPL 2024. Buy Cisco Equipment in Moscow with delivery to anywhere around Russia"

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends the following.

The disputed domain name is effectively identical to the Complainant's CISCO trademark and domain names. The disputed domain name wholly incorporates the well-known CISCO trademark and name and CISCO is the dominant and distinctive element of the disputed domain name. The Respondent's inclusion of "gpl" as a prefix is not sufficient to distinguish the disputed domain name from the Complainant's CISCO trademark. "GPL" is a well-recognized acronym for "global price list".

Given the Complainant's well-established rights in the CISCO trademark, it is clear that the Respondent cannot have rights or legitimate interests to the disputed domain name.

The Respondent has sought to take unfair advantage of the Complainant's well-known name and brand, by using CISCO in the disputed domain name in order to attract Internet users to its website.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the proceedings

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the facts that (i) the Registration Agreement has been provided by the Registrar in both English and Russian, (ii) disputed domain name resolves to a website that contains both English and Russian evidencing the Respondent's familiarity with English, and (iii) the lack of any objection by the Respondent.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English, in particular as the Respondent has used English on the website to which the disputed domain name resolves and the Respondent, despite of the communications sent in both English and Russian by the Center, has failed to respond in whatever way.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, “gpl” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Even if the Respondent would have argued that its use would have to be considered as nominative (fair) use for showing prices of the Complainant’s products and offering to resell these, which the Respondent has not argued, such argument would fail based on the “Oki Data test”, as the website to which the disputed domain name resolves does not accurately and prominently disclose the Respondent’s (lack of) relationship with the Complainant. [WIPO Overview 3.0](#), section 2.8.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent must have clearly had the Complainant and its products in mind when registering the disputed domain name, given the reference to CISCO trademark and products.

The Panel refers to its considerations under section 6.B in relation to the “Oki Data test”: The website to which the disputed domain name resolves does not accurately and prominently disclose the Respondent’s (lack of) relationship with the Complainant. So even if the Respondent would intend to resell genuine Cisco products, which the Panel doubts, such use is still in bad faith as the impression is created of a non-existing relationship with the Complainant.

The Panel has taken into account the totality of the circumstances of available record before it, including (i) the notoriety of the CISCO trademark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use.

The Panel finds that the Complainant has established the third element 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 <gplcisco.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Presiding Panelist

/Brian J. Winterfeldt/

Brian J. Winterfeldt

Panelist

/Olga Zalomiy/

Olga Zalomiy

Panelist

Date: March 7, 2024