

ADMINISTRATIVE PANEL DECISION

GitHub, Inc. v. DeepSea Team
Case No. D2024-1075

1. The Parties

The Complainant is GitHub, Inc., United States of America (“US”), represented by Chestek Legal, US.

The Respondent is DeepSea Team, China.

2. The Domain Name and Registrar

The disputed domain name <github.ink> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2024. On March 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 13, 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 (Super Privacy Service LTD c/o) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 13, 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 March 14, 2024.

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 March 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2024.

The Center appointed Anna Carabelli as the sole panelist in this matter on April 17, 2024. 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 US company operating a platform for software developers under the name and trade mark GITHUB from a website at “www.github.com”.

The Complainant owns multiple registrations for the trademark GITHUB in various jurisdictions, including China where the Respondent is purportedly based. The trademark is registered for computer software and related services. A partial list of the Complainant’s registered trademarks is included below:

| Trademark | Jurisdiction | App. No. | App. Date | Reg. No. | Reg. Date |
|-----------|--------------|------------|-------------------|----------|-------------------|
| GITHUB | EU | 12454823 | December 20, 2013 | 12454823 | May 14, 2014 |
| GITHUB | Japan | 2013099823 | December 19, 2013 | 5699414 | September 5, 2014 |
| GITHUB | India | 2649587 | December 26, 2013 | 2649587 | December 26, 2013 |
| GITHUB | China | 16249568 | January 28, 2015 | 16249568 | April 7, 2016 |

The disputed domain name was registered on June 6, 2023. The evidence in the Complaint shows that the disputed domain name resolves to a website that advertises a “GitHub Mirror” service displaying the GITHUB trademark and copying the Complainant’s website available at <github.com>. The Respondent’s website also features a login page that is identical to the Complainant’s website.

According to a Google Transparency Report which examines URLs for unsafe website, the status of the disputed domain name is flagged as unsafe because the site contains “harmful content, including pages that contain unwanted or malicious software”.

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 that:

- The disputed domain name is identical to a trademark in which the Complainant has rights, since it consists of the Complainant’s GITHUB mark and of the Top Level Domain (TLD) “.ink”;
- The Respondent has no rights or legitimate interests in the disputed domain name since: (i) the Complainant has not authorized or somehow given consent to the Respondent to register and use the disputed domain name, (ii) the Respondent is not commonly known by the disputed domain name, and (iii) the Respondent’s use of the disputed domain name is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use. In this connection the Complainant points out that the Respondent uses the disputed domain name to host a mirror site that duplicates the Complainant’s website and login page. Unsuspecting users are then likely to provide login information and become victims of phishing attacks and misled into downloading malicious software under the mistaken belief they are downloading GitHub software or logging into an authentic GitHub website. Such use cannot confer rights or legitimate interests on the Respondent;
- The disputed domain name was registered and is being used in bad faith in an attempt to mislead users and carry out cyber-attacks and stealing login credentials from unsuspecting visitors.

Based on the above, the Complainant requests the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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 is being used in bad faith.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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.

The addition of the generic TLD such as ".ink" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Furthermore, the Respondent has established a website to which the disputed domain name resolves, that mirrors the Complainant's website, and replicates its GITHUB mark. All these actions are not suggestive of any activity that could be said to be legitimate or constitutive of rights. On the contrary, they are indicative of an attempt to free-ride on the Complainant's reputation by deceiving consumers into thinking the Respondent's website at the disputed domain name is that of the Complainant.

The Panel further notes that according to the evidence submitted by the Complainant - which has not been challenged by the Respondent - the disputed domain name is actually or could potentially be, used for phishing activity.

Previous Panels have unanimously and consistently held that the use of a domain name for illegal activity, such as phishing, impersonation/passing off or other types of fraud can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#), section 2.13.1).

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.

As indicated above, the disputed domain name resolves to a website that mirrors the Complainant's website, replicates its GITHUB mark and features a login page that is identical to that of the Complainant's website. The Panel finds thus that the Respondent was aware of the Complainant's commercial activities, its trademark, and the layout and content of its legitimate website.

The above conduct constitutes opportunistic bad faith registration (see section 3.2.1 of the [WIPO Overview 3.0](#)), as well as bad faith use of the disputed domain name under the Policy. Indeed, the Respondent has used the disputed domain name to capitalize on the goodwill of the Complainant's GITHUB mark, and has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (section 3.1.4 of the [WIPO Overview 3.0](#)).

In addition, the uncontested evidence submitted by the Complainant shows that the website at the disputed domain name could be used for phishing activity and/or contain harmful content, including unwanted or malicious software that unsuspecting Internet users could be tricked into downloading under the mistaken belief they are downloading GitHub software or logging into an authentic GitHub website.

Panels have held that the use of a domain name for illegal activity such as phishing, distributing malware, impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Accordingly, 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 <github.ink> be transferred to the Complainant.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: April 30, 2024