

ADMINISTRATIVE PANEL DECISION

GitHub, Inc. v. 刘凯凯 (liukaikai)

Case No. D2024-3854

1. The Parties

The Complainant is GitHub, Inc., United States of America, represented by Chestek Legal, United States of America.

The Respondent is 刘凯凯 (liukaikai), China.

2. The Domain Name and Registrar

The disputed domain name <githubclone.com> is registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2024. On September 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 26, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 2, 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 amendment in English to the Complaint on October 8, 2024.

On October 2, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On the same day, 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 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 in Chinese and English, and the proceedings commenced on October 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 29, 2024. The Respondent sent several email communications to the Center on October 9, expressing a willingness to settle. On the same day, the Center sent a possible settlement email to the Parties. However, the Complainant did not request a suspension for settlement talks. The Respondent sent two additional emails on October 10 and October 16, 2024, containing brief questions about the proceeding. The Center proceeded to panel appointment on November 1, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on November 6, 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 company providing a platform for more than 90 million software developers. The Complainant claims that its trademark, GITHUB, is an invented, fanciful trademark with no meaning in any language. The Complainant's mark is registered for goods and services including computer software and related services.

The Complainant owns an international trademark portfolio protecting the GITHUB trademarks, a non-exhaustive list of which is included here:

- GITHUB European Union Trademark Registration 12454823, registered on May 14, 2014;
- GITHUB Japan Trademark Registration 5699414, registered on September 5, 2014; and
- GITHUB Chinese Trademark Registration number 16249568, registered on April 7, 2016.

The disputed domain name was registered on October 3, 2023 and is therefore of a later date than the Complainant's abovementioned trademark registrations. The disputed domain name directs to an active website which is an exact copy of the Complainant's official website, except that the only links that do not redirect users to the official GitHub website are the "Sign In" and "Sign Up" links at the top right corner of the disputed domain name's home page.

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 confusingly similar to its well-known registered trademarks, as it incorporates the GITHUB mark entirely. The Complainant also states that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not a licensee of the Complainant, and the Complainant has not given the Respondent any permission to register the trademark as a domain name, nor is there any evidence that the Respondent has been commonly known by the disputed domain name, the Respondent has not used, or prepared to use, the disputed domain name in connection with a bona fide offering of goods and/or services or for any legitimate noncommercial or fair purpose. Furthermore, the Complainant argues that the Respondent uses the disputed domain name to host an imposter website, looking exactly like the Complainant's official website, and containing links to the official GitHub website, except for the links "Sign In" and "Sign Up", which do not redirect users to the Complainant's official website. The Complainant argues that the "Sign in" and "Sign up" links direct users to a webpage on the disputed domain name that prompts users to enter their official GitHub

login information or provide their email to allegedly sign up for GitHub's services, and that this login and sign-up page looks exactly the same as the official GitHub login and sign-up page. The Complainant argues that this is a clear phishing scam that is attempting to lure unsuspecting users into providing their GitHub credentials or information into the unauthorized website. The Complainant adds that the Respondent's aim in registering the disputed domain name was to exploit the GITHUB trademark in order to carry out phishing and malware attacks on unsuspecting users. The Complainant essentially argues that such use of the disputed domain name does not confer rights or legitimate interests on the Respondent and constitutes registration and use in bad faith of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions, its only communications in this case being limited to its purported willingness to settle and further brief questions about the proceeding.

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. 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 fact that the disputed domain name is comprised of Latin characters and contains the English word "clone"; the fact that the disputed domain name resolves to a webpage entirely in English and all the owner-provided content on the website is in English; and the allegation that the Complainant would be unduly disadvantaged if the proceeding is conducted in Chinese because they would incur substantial expenses for translation.

The Respondent's communications were in Chinese, but it did not make any submissions with respect to the language of the proceeding. The Center notified the Respondent of the Complaint in both Chinese and English languages.

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.

6.2 Substantive Issues

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.

Based on the available record, the Panel finds 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 Panel finds the entirety of the Complainant's 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, "clone" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

Based on the available record, 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.

Moreover, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Instead, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name directs to an active website which is an exact copy of the Complainant's official website, except that the only link that does not redirect users to the official GitHub website are the "Sign In" and "Sign Up" links at the top right corner of the disputed domain name's home page. This suggests that the Respondent may have been using the disputed domain name to mislead Internet users and creates a grave risk that the Respondent may have been using Internet users' login or sign up information for potential phishing activities. Such activities do not confer rights or legitimate interests on the Respondent, see in this regard also previous UDRP decisions such as *Accenture Global Services Limited v. Leed Johnny (蒋黎)*, WIPO Case No. [D2020-0578](#). Given the abovementioned elements, the Panel concludes that the Respondent's use of the disputed domain name does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

Finally, the Panel finds that the nature of the disputed domain name, being confusingly similar to the Complainant's well-known trademarks and containing the term "clone", carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

Based on the available record, 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 has registered a domain name which is confusingly similar to the Complainant's well-known, intensely used, and distinctive trademarks for GITHUB. The Panel refers to a number of prior decisions under the Policy which have recognized the well-established nature of these trademarks, see for instance *GitHub, Inc. v. Ahmed Kamel*, WIPO Case No. [D2022-3512](#). The Panel deducts from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant's prior well-known trademarks for GITHUB. The Panel finds that this creates a presumption of bad faith. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states "[p]anelists have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." Furthermore, the Panel also notes that the Complainant's trademarks were registered many years before the registration date of the disputed domain name. The Panel deducts from these elements that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. This is further confirmed by the actual content of the website linked to the disputed domain name as this is an imposter website and the Respondent was therefore well aware of the Complainant, its trademarks and its business. In the Panel's view, these elements indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use in bad faith, the Panel notes that the disputed domain name directs to an active website which is an exact copy of the Complainant's official website, except that the only links that do not redirect users to the official GitHub website are the "Sign In" and "Sign Up" links at the top right corner of the disputed domain name's home page. This suggests that the Respondent may have been using the disputed domain name to mislead Internet users and creates a grave risk that the Respondent may have been using it for potential phishing activities. The Panel accepts that this means that the Respondent was using the disputed domain name in bad faith, see in this regard also previous UDRP decisions such as *Accenture Global Services Limited v. Leed Johnny (蒋黎)*, WIPO Case No. [D2020-0578](#).

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

Based on the available record, 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 <githubclone.com> be transferred to the Complainant.

/Deanna Wong Wai Man/
Deanna Wong Wai Man
Sole Panelist
Date: November 15, 2024