

ADMINISTRATIVE PANEL DECISION

Xiotech Consulting Ltd v. Privacy Administrator, Anonymize, Inc.
Case No. D2022-1072

1. The Parties

The Complainant is Xiotech Consulting Ltd, United Kingdom, represented by Mishcon de Reya, United Kingdom.

The Respondent is Privacy Administrator, Anonymize, Inc., United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 31, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details, without providing the name of the underlying registrant.

The Center verified that 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 April 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2022.

On April 19, 2022, the Registrar sent an email communication to the Center in which it requested permission to remove the lock on the DNS records so that it could update the Respondent’s contact details. The Center replied on April 21, 2022 noting that paragraph 4(b) of the Rules provides that the lock shall remain in place

through the remaining pendency of the UDRP proceeding.¹ However, the Center invited the Registrar to provide any additional email address for the Respondent. On April 22, 2022, the Registrar provided a contact email address for the Respondent, that the Center had already used to notify the Respondent. The Response was filed with the Center on April 26, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 4, 2022. 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.

The Complainant made an unsolicited supplemental filing on May 6, 2022.

4. Factual Background

The Complainant provides technology consulting services, including big data solutions. Its contact address is a residential house located in a town in southern Hertfordshire in the United Kingdom. It uses the domain name <xiatech.co.uk> in connection with a website. On March 25, 2022, the Complainant filed United Kingdom trade mark application No. 00003770339 for XIATECH, specifying goods and services in classes 9, 35, and 42. That application is currently pending.

The Respondent is named as a privacy service. The underlying registrant's identity has not been disclosed in this proceeding.

The disputed domain name was registered on July 8, 2015. An archived screenshot provided by the Complainant shows that as at August 2018 the disputed domain name resolved to a website titled "Wireless Internet Card Sore" that offered for sale wireless Internet cards, WLAN adapters, and an MP3 player. At the time of this proceeding, the disputed domain name resolves to a webpage hosted by the Registrar that displays the disputed domain name as its title above the following tagline: "Invest in a premium .com brand today and instantly establish a global brand!" Below this, the page displays the following text: "Start a payment plan for \$1,775/mo".

After the Complainant contacted the Registrar regarding the disputed domain name, the Registrar informed it on February 1, 2022 that the owner had advised that the disputed domain name was only available by rental. On February 5, 2022, the Complainant replied that it was not interested in renting the disputed domain name and preferred to buy it.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical to the "Xiatech" trademark that the Complainant has been using consistently since at least 2013 in connection with its services. The Complainant's business activity is significant, with an annual turnover of approximately GBP 6 million. The Complainant is headquartered in the United Kingdom but has delivered services worldwide, to the European Union and the United States. The Complainant is recognized for its work in the field of big data solutions. The Complainant is the registrant of the domain name <xiatech.co.uk>, which was registered in 2003, at which time the Complainant's current Chief Executive Officer ("CEO") was trading as a freelancer under the trade name "Xiatech". Since its registration, the (website associated with the) domain name <xiatech.co.uk> has had

¹ Paragraph 4(b) provides, relevantly, that: "Any updates to the Respondent's data, such as through the result of a request by a privacy or proxy provider to reveal the underlying customer data, must be made before the two (2) business day period concludes or before the Registrar verifies the information requested and confirms the Lock to the UDRP Provider, whichever occurs first."

more than 45,000 page views from 50 jurisdictions, which led to GBP 4 million in sales initiated from the website. The Complainant incurred approximately

GBP180,000 in marketing expenses in the last financial year. The Complainant is widely recognized in its field and has won a number of accolades. In addition to its common law rights to the trademark "Xiatech", the Complainant has also applied to register XIATECH as a trademark in the United Kingdom. The disputed domain name contains the identical word "Xiatech" in which the Complainant alone (as between the Parties) holds common law rights or goodwill. A recent Google search returns only results connected with the Complainant on the first page of results. "Xiatech" is not a dictionary word, common family name, or generic term, but rather a distinctive name chosen by the Complainant to designate its services.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been authorized or licensed to use the Complainant's trademark. When the disputed domain name resolved to an active website, "Xiatech" did not appear in the webpage content. This is not sufficient for the Respondent to have acquired independent rights or a legitimate interest in "Xiatech" as a trading name. There is no current evidence that the Respondent makes any use, or has any demonstrable intention to use, the disputed domain name in connection with the *bona fide* offering of goods or services. There is no evidence that the Respondent is commonly known by "Xiatech" or the disputed domain name, nor that the Respondent is making any legitimate commercial or noncommercial or fair uses of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Complainant was trading internationally at the time that the disputed domain name was registered. It is therefore inferred that the Respondent was aware, or should have been aware, of the Complainant's businesses, if the Respondent had conducted a basic search for the word "Xiatech". "Xiatech" is a coined word and the Respondent would not plausibly stumble upon it independently. The disputed domain name appears to have been acquired primarily for the purpose of extracting value from the owner in excess of the Respondent's out-of-pocket costs directly related to it. The monthly rental rate requested is very high and almost four times the average lease cost for domain names offered by the same Registrar and with no explanation for the high value and no option to even negotiate with a view to purchasing the disputed domain name outright. Further, the disputed domain name appears to have been registered to prevent the Complainant from reflecting the mark in a corresponding domain. The Respondent (Privacy Administrator, Anonymize, Inc.) appears to have engaged in a pattern of such conduct. The sheer number of prior proceedings brought against the Respondent under the Policy resulting in a transfer decision means the Respondent is, or should be, well aware of the risks that their registered domain names will infringe third parties' rights.

In its supplementary filing, the Complainant submits that it is evident (from the Whois record) that the name "Xiatech" and the domain name <xiatech.co.uk> have been used to supply technology consulting services since 2003 to the present day. This usage pre-dates the earliest example of alleged third party use cited in the Response". Xiatech is a coined word. There are affirmative obligations (of due diligence) on sophisticated domain aggregators which the Respondent does not appear to have satisfied in this case. The Respondent has failed to take any legitimate steps to develop a business under the disputed domain name. Where the Respondent is unwilling to identify itself, conceals its identity with a privacy service, and offers no documentary evidence in support of its contention that it is a different party, the only reasonable inference is that the Respondent is one and the same party as the respondent "Privacy Administrator, Anonymize, Inc." in a prior case.

The Complainant acknowledges that the Complaint followed an unsuccessful attempt to acquire the disputed domain name but submits that (i) the Complainant brought this very fact to the Panel's attention, which is not consistent with any alleged bad faith; (ii) the uncommercial domain name rental rates offered by the Respondent are consistent with the Respondent's bad faith; and (iii) the Respondent claims to be in the business of buying, developing and selling websites and high value domain names (without reference to rentals or leases) but refused to enter into negotiation in relation to selling the disputed domain name when approached in good faith by the Complainant.

B. Respondent

The Complainant has not demonstrated trademark or service mark rights. The term “xiatech” is a combination of the common words “Xia”, the name of the first Chinese dynasty, and “tech”, which has numerous dictionary definitions related to technology. “Xiatech” is not distinctive and can be found in commercial use by numerous third parties around the world, as shown in a simple web search. “Xiatech Technology” is a Chinese thermal measurement company that operates a website associated with the domain name <xiatech.com.cn>. “Xia Tech” is a brand of women’s clothing sold by Poshmark. “Xiatech Brasil” is a smartphone and accessories provider that operates a website associated with the domain name <xiatechbr.com>. Xian Xiayi Electronic Technology Co., Ltd operates a website titled “Xiatech” and associated with the domain name <xiatech.cn>. The Complainant offers no clear and convincing evidence of common law rights. Instead, it submits proof that it owns just one of the 159 currently registered domain names that contain the term “xiatech” and a hand-picked search engine results page on which its website is listed. The Complainant falsely claims that it alone holds common law rights in its far-overreaching attempt to claim worldwide exclusive access to the term.

The Respondent has rights or legitimate interests in respect of the disputed domain name. The Respondent is in the business of buying, developing, and selling websites and high value domain names comprised of generic and descriptive terms of which the disputed domain name is among the many in its inventory. There is a wide scope of possible uses for these domains including email, website development, and resale. The Respondent’s business activities have long been established as a *bona fide* offering of goods or services with regards to the Policy. The Complainant has not made a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The lone piece of evidence that it submitted pertaining to this requirement only further demonstrates a legitimate use by the Respondent. It shows that the disputed domain name was previously developed by the Respondent and offered goods that were not competitive with the Complainant’s line of business.

The disputed domain name was not registered and is not being used in bad faith. The Respondent acquired the disputed domain name in a public auction in July 2015. The Respondent bid on the disputed domain name because it is a creative combination of two popular and generic words. Domain names of this type have great value and are highly desirable throughout the world. The Complainant wildly asserts that because it was trading internationally in 2015 (for which it provides no evidence) it is “therefore inferred” the Respondent was aware of its presence. The Respondent categorically denies this assertion and was unaware of the Complainant’s fledgling home-based business operating some 5,000 miles away on another continent. The <xiatech.co.uk> corporate office is a residential address. Prior to bidding on the disputed domain name, the Respondent performed a trademark search in its home country (the United States) and found no records. The same search yields no results today. The Complainant provides no evidence to support a claim that the Respondent had knowledge of the Complainant’s rights, only speculation. It presents a customized search engine result page simulating the results 5 months after the acquisition of the disputed domain name and wrongly assumes the Respondent conducted a similar search and could somehow ascertain among the various third party listings that the Complainant’s alone bestowed upon it indefinite sole global commercial use of the term. One of the search results (<xiatech.com.cn>) relates to Xiatech Technology, a Chinese business established in 2007, six years before the Complainant’s claimed use. A trademark search in the Complainant’s home country (the United Kingdom) shows only the Complainant’s trademark application, filed seven years after the registration of the disputed domain name and one month after the Complainant’s failed purchase attempt. The Respondent never contacted the Complainant to sell the disputed domain name and was unaware of its identity prior to the filing of the Complaint. The Respondent has never made use of the disputed domain name in a way that targets the Complainant. The Complainant cites previous UDRP cases involving Anonymize, Inc., a Whois privacy service used by hundreds of thousands of domains, as well as the Registrar’s CEO but the Respondent was not involved in any of those cases and has never lost a UDRP case.

The Complainant brought this case in bad faith. It does not like the terms offered to use the disputed domain name so is employing the UDRP as a low-cost alternative to paying fair market value for a premium. The Complainant is now trying retroactively to claim rights on a mark it does not yet have and usurp a high value

domain having failed to obtain it at public auction or through negotiations with the owner. Because the Complainant has failed so spectacularly to prove any of the three Policy requirements and is represented by counsel, who clearly ought to have known it could not succeed under any fair interpretation of the facts, the Respondent encourages the Panel to make a finding of reverse domain name hijacking.

6. Discussion and Findings

6.1. Unsolicited Supplemental Filing

The Complainant made an unsolicited supplemental filing on May 6, 2022, after the appointment of the Panel.

Paragraph 12 of the Rules provides that “[i]n addition to the complaint and the response, the Panel may request or permit, in its sole discretion, further statements or documents from either of the Parties”. At the same time, paragraph 10(b) and (c) of the Rules require the Panel to ensure that “each Party is given a fair opportunity to present its case” and that “the administrative proceeding takes place with due expedition”. The purpose of the Policy is to provide a simple, inexpensive and quick administrative procedure for dealing with domain name entitlement disputes. Accordingly, the Panel will only permit the supplemental filing in exceptional circumstances. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.6.

The Complainant submits that the supplemental filing is necessary due to the “exceptional circumstances” of new allegations of bad faith and reverse domain name hijacking in the Response. The Respondent does not comment on the supplemental filing.

The Panel notes that much of the supplemental filing reiterates facts and arguments already presented in the Complaint but it also provided the only opportunity for the Complainant to defend itself against a claim of bad faith. Accepting the supplemental filing will not create any unfairness to the Respondent or delay the proceeding. Therefore, the Panel exercises its discretion to accept the Complainant’s supplemental filing as part of the record of this proceeding.

6.2. Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements:

- (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.

A. Identical or Confusingly Similar to a Trademark or Service Mark in which the Complainant has Rights; Bad Faith

The first element of paragraph 4(a) of the Policy functions as a standing requirement. In order to fulfil this requirement, the Complainant must demonstrate that it holds rights in a trademark or service mark at the time when it filed the Complaint. Although the Complainant filed a trademark application for XIATECH shortly before it filed the Complaint, that application has not proceeded to grant and, without more, does not substantiate rights in a mark for the purposes of the Policy.

The Complainant claims to hold unregistered or common law rights in a mark consisting of “Xiatech”. The Panel recalls that, to establish common law trademark rights for the purposes of the Policy, the Complainant must show that its mark has become a distinctive identifier that consumers associate with the Complainant’s

goods or services, or both. The Panel also recalls that specific evidence supporting assertions of acquired distinctiveness should be included in the Complaint. See [WIPO Overview 3.0](#), section 1.3.

The Complainant company asserts that it has been using the trademark “Xiatech” consistently since at least 2013 in connection with its services. It provides no evidence that its company or business actually existed in 2013. Instead, it provides a Whois record showing that the domain name <xiatech.co.uk> was registered ten years earlier, in 2003, and asserts that its CEO, whom it does not identify, was operating at that time as a freelancer under the trade name “Xiatech”. The Whois record does not name the registrant, does not indicate whether the domain name resolved to an active website, and does not show whether “Xiatech” was used on any such website. This evidence merely shows that an unnamed person, whom the Panel is willing to accept for present purposes was someone now connected to the Complainant’s business), held a domain name registration in 2003 and that that registration has been subsequently renewed.

The Panel finds that the earliest evidence anywhere on the record showing the Complainant’s use of the alleged mark is found in Google search results (restricted to 2015 or earlier) showing that the Complainant identified itself on a website associated with the domain name <xiatech.co.uk> as both “Xiatech” and “Xiatech Consulting” on May 5, 2015. Another result of this search shows that a specialist magazine referred to “Xiatech” and what is now one of the Complainant’s products (Single Data View) in 2009.

The Complainant asserts that, since its registration, its website has had over 45,000 views from 50 jurisdictions, which led to GBP 4 million in sales initiated via the website. The Complainant provides no evidence to substantiate any part of this assertion.

The Complainant asserts that its business has an annual turnover of approximately GBP 6 million and that its marketing expenses in the last financial year were approximately GBP 180,000. However, it provides no evidence to substantiate either assertion. It asserts that it has delivered services worldwide, to the European Union, and the United States. It does not substantiate that assertion; it merely names three clients, one of which is a British retailer, one of which was formerly a Dutch retailer, and a third that the Panel is unable to identify. Nothing indicates whether these clients associate or associated the alleged mark with the Complainant or its services.

The Complainant asserts that it is widely recognized in its field and has won a number of accolades. In particular, it asserts that a specialist publication named CIO Review reported on the Complainant’s “Single Data View” offering in 2016 and included the Complainant in its list of 100 Most Promising Big Data Solution Providers 2016. The Complainant also asserts that it was a finalist for the Start Up of the Year award presented by Retail Week magazine in 2017; that it was included in Analytics Insight’s Ten Most Innovative Big Data Analytics Companies 2019; and that it won an unidentified corporate excellence award in 2021. It does not include evidence to substantiate any of these assertions. The Complainant’s Google search results show that Analytics Insight refers to the Complainant as “Xiatech Consulting” and later as “Xiatech”. It is not clear whether the other awards refer to the Complainant by either of these names or its company name.

The Complainant submits the first page of results of a recent Google search for “xiatech” conducted on a server in Seattle, United States. Almost all relate to the Complainant. The top result is the Complainant’s website, which refers to the Complainant variously as “Xiatech”, “Xiatech Consulting” and its company name. Two other results relate to content uploaded by the Complainant, *i.e.*, its LinkedIn account named “Xiatech” and its page on a recruitment website titled “Xiatech Consulting”. The other top results refer to the Complainant variously by its company name, “Xiatech Consulting”, and “Xiatech”. One result relates to an apparently related company named “Xiatech Holdings Ltd”. The Google search results page displays images appearing to indicate that the Complainant’s current website is titled “xiatech consulting” (although it does not provide a clear view) and that its business operates from a residential house.

The Respondent submits the top results of a Bing search for “xiatech”, which include not only the disputed domain name and the Complainant, but also Xiatech Technology, a Chinese thermal measurement company that operates a website associated with the domain name <xiatech.com.cn>. The restricted Google search

results submitted by the Complainant show that Xiotech Technology has operated that site since at least 2008.

The Panel notes that “xiotech” is not a descriptive term despite the fact that it contains the suffix “tech”, which describes the Complainant’s technology consulting services. Nevertheless, while the connection between “xia” and “tech” is not a semantic one, the above evidence shows that the Complainant is not the only business to use the combination “xiotech” in relation to technological goods or services.

In summary, the Panel finds that the Complainant’s claim of common law rights relies on an anonymous Whois record from 2003, a series of detailed but unsubstantiated assertions, and very brief extracts in Google search results. The evidence, though meagre, shows that the Complainant does not consistently use the alleged mark to refer to itself but also trades as “Xiotech Consulting”. There is little evidence that third parties use the alleged mark to refer to the Complainant. The instances where the term “Xiotech” is used to refer to the Complainant are too few to demonstrate acquired distinctiveness.

The Panel finds the Complainant’s evidentiary showing to be poor. Nevertheless, the Panel is willing to accept *arguendo* that the Complainant has made continuous use of the disputed domain name in connection with its website since 2013, that the website has received significant traffic, and that the Complainant’s business has generated considerable sales and industry recognition under the name “Xiotech”, all as claimed and sufficient for it to have rights in that mark for the purposes of the Policy. Even in this scenario, the Panel cannot find on the basis of the Complainant’s bare evidence and assertions that the Respondent targeted it in registering the disputed domain name. While the Panel does not discount this possibility, it is incumbent on the Complainant – especially when relying on common law rights – to support such a claim with sufficient evidence. This it has not done. Even its unsubstantiated assertions (regarding its annual turnover, its sales volume, its marketing budget and its industry accolades) relate to the period after the registration of the disputed domain name. This does not show the Respondent’s purpose in registering the disputed domain name in 2015. The Complainant’s submission of Google search results restricted to 2015 or earlier shows that it was aware of its burden to articulate appropriate arguments and provide evidence in this regard. On the basis of the record of this case, the Panel cannot find that the Complainant has satisfied the requirements of paragraph 4(a) of the Policy.

B. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”. “Reverse Domain Name Hijacking” is defined in paragraph 1 of the Rules as “using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

The Respondent submits that the Complainant brought this case in bad faith. The Complainant denies the allegation of bad faith.

The Panel notes that the Complainant has legal representation. The Complaint repeatedly makes assertions that it fails to make any attempt to substantiate. The paucity of evidence as to how the alleged mark has been used, particularly prior to the registration of the disputed domain name, is conspicuous considering that such evidence is essential to a claim of common law rights, on which the Complaint is based. In view of all the circumstances, the Panel infers that the Complainant knew, or should have known, that the Complaint as it was presented, could not succeed under any fair interpretation of the facts that it placed on the record.

Further, the Panel notes that the Complaint was filed a little under two months after the Complainant sought and failed to acquire the disputed domain name from the Respondent. The Complainant confirms on the record that it was dissatisfied with the Respondent’s offer of a rental and wanted to negotiate a sale. The candor of that disclosure does not alter the purpose for which the Complaint was filed. In the circumstances, the Panel infers that the Complainant resorted to the Policy as “Plan B” after failing to acquire the disputed

domain name from the Respondent, or to increase its bargaining leverage. Either is a highly improper purpose for a complaint under the Policy and constitutes a further basis to find Reverse Domain Name Hijacking. See *BERNINA International AG v. Domain Administrator, Name Administration Inc. (BVI)*, WIPO Case No. [D2016-1811](#).

Therefore, the Panel declares that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: May 23, 2022