

ADMINISTRATIVE PANEL DECISION

GitHub, Inc. v. Ahmed Kamel
Case No. D2022-3512

1. The Parties

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

Respondent is / Ahmed Kamel, United States, represented by FisherBroyles LLP, United States.

2. The Domain Names and Registrar

The disputed domain names <github.build> and <github.run> (the “Domain Names”) are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 21, 2022. On September 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On September 23, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details disclosing registrant and contact information for the Domain Names (Privacy Service Provided by Withheld for Privacy ehf), which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on September 27, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 29, 2022.

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 Respondent of the Complaint, and the proceedings commenced on October 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2022. On October 23, 2022, Respondent requested an extension to the due date of the Response. Respondent was granted the automatic four-calendar day extension for response under paragraph 5(b) of the Rules. As such, the due date for Response was extended to October 27, 2022. The Response was filed with the Center on October 27, 2022.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on November 15, 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.

4. Factual Background

Complainant is a company providing a platform for more than 90 million software developers. Complainant's trademark, GITHUB, is an invented, fanciful trademark with no meaning in any language. The trademark is registered for computer software and related services. A partial list of Complainant's registered trademarks is included below:

Trademark	Jurisdiction	App. No.	App. Date	Reg. No.	Reg. Date
GITHUB	US	77783149	July 16, 2009	3805847	June 22, 2010
GITHUB	EU	12454823	December 20, 2013	12454823	May 14, 2014
GITHUB	Japan	2013099823	December 19, 2013	5699414	July 5, 2014
GITHUB	India	2649587	December 26, 2013	2649587	November 3, 2014
GITHUB	Russia	2014712480	April 16, 2014	543663	May 26, 2015
GITHUB	China	16249568	January 28, 2015	16249568	April 7, 2016
GITHUB	Brazil	907613438	April 25, 2014	907613438	November 1, 2016
GITHUB	WIPO	1361082	June 23, 2017	1361082	June 23, 2017

The Domain Names <github.run> and <github.build> were registered on February 14, 2016 and April 8, 2018, respectively. Complainant provided evidence to show the Domain Names redirected to a website at "www.dotrun.xyz", which displayed the GITHUB mark on a rotating banner.

Respondent indicates his sites linked to the Domain Names are used to allow software developers with code stored on Complainant's GitHub code repository (or on other sites, such as GitLab and BitBucket) to "host" and "run" their code on Respondent's site. Respondent has indicated that any redirect to "www.dotrun.xyz" "was a short term bug after Dec 2021 and has been fixed" and "[a]s of now, neither the root sites for <github.run> or <github.build> redirect to <dotrun.xyz>". Further, Respondent indicates that the banner on his website displaying the GITHUB mark, was a rotating banner that also displays the names of other third-party entities, whose code Respondent's site will host and run.

5. Parties' Contentions

A. Complainant

(i) Identical or confusingly similar

Complainant has provided evidence of trademark registrations for its GITHUB mark in various jurisdictions. Complainant contends that the incorporation of its GITHUB mark in its entirety in the Domain Names is sufficient to establish that they are identical or confusingly similar to Complainant's registered mark. The applicable generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and as such is disregarded under the confusingly similar test. Complainant asserts that in creating the Domain Names, Respondent has incorporated Complainant's trademark in its entirety, while the gTLDs ".run" and ".build" are irrelevant to determining similarity. Thus, the Domain Names are identical to Complainant's registered trademarks.

(ii) Rights or legitimate interests

Complainant contends that Respondent does not use the Domain Names in connection with a *bona fide* offering of goods or services. The Domain Names forward to a website at the domain name <dotrun.xyz>.

which then uses Complainant's trademarks to advertise domain name services, stating "We will build and deploy your repository the first time you try to access it through its ".run" url." Complainant contends Respondent is intentionally attempting to drive Complainant's users to Respondent's website by using the GITHUB trademark without authorization. Complainant states that when Complainant contacted Respondent seeking to purchase the Domain Name registrations, Respondent stated that Respondent intended to use the Domain Names for its "start-up company".

Complainant argues that when Respondent chooses the Domain Names to capitalize on Complainant's trademark, it cannot be considered a *bona fide* offering of goods and services. Respondent's use of the GITHUB trademark in the Domain Names is to capitalize off the goodwill of Complainant's marks. Thus, Respondent's use cannot be considered a *bona fide* offering of goods and services.

Moreover, Respondent (as an individual, business, or other organization) is not commonly known by the Domain Names. After the Complaint was filed, Respondent was identified as a Mr. Kamel and not "github," "github build" or "github run". The GITHUB trademark was invented by Complainant and, on information and belief, no entity other than Complainant has a business name that includes the GitHub name or trademark rights in the GITHUB mark.

Complainant contends that Respondent is not making a legitimate noncommercial or fair use of the Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Respondent is not using the Domain Name for a legitimate noncommercial use. As noted above, the Domain Name is being used to forward to Respondent's website advertising domain name services and using the GITHUB trademark without authorization.

Registered and used in bad faith

Complainant submits the Domain Names were registered and are being used in bad faith. Respondent registered the Domain Names in February 2016 and April 2018, long after Complainant's first use of its trademark in 2007 and the registration of its mark in 2010. According to paragraph 4(b) of the Policy, using the Domain Names to intentionally attempt to attract, for commercial gain, Internet users to a website by creating a likelihood of confusion with Complainant's mark as to source, sponsorship, affiliation, or endorsement constitutes evidence of bad faith in the registration and use of the Domain Name by Respondent. Additionally, Complainant claims UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a trademark can by itself create a presumption of bad faith.

Complainant contends that Respondent's aim in registering the Domain Names was to exploit the GITHUB trademark in order to attract consumers to Respondent's website. The Domain Names are identical to Complainant's mark because they incorporate Complainant's trademark in its entirety. Respondent's use of the GITHUB mark on its site shows that Respondent has registered the Domain Names to attract users to its site for commercial gain by creating a likelihood of confusion with Complainant's trademark.

Further, Complainant states that in order to avoid the cost of a UDRP proceeding, it had an agent contact Respondent to purchase the Domain Name <github.run>. Respondent rejected an offer of 800 United States dollars and did not respond to an offer of 2,000 United States dollars, but was willing to sell the domain name for some price. Circumstances indicating that a domain name was acquired primarily for the purpose of selling, renting, or otherwise transferring it for valuable consideration in excess of documented out-of-pocket costs is an indication of bad faith.

Complainant concludes that given the way the Domain Names are being used and Respondent's refusal to turn the Domain Name <github.run> over to the trademark owner for an amount well in excess of Respondent's out-of-pocket costs, the only reasonable inference is that Respondent has a malicious intent, and the Domain Names were therefore registered and are being used in bad faith.

B. Respondent

(i) Identical or confusingly similar

Respondent asserts that he uses Complainant's GITHUB trademark as a descriptive identifier of a stored location of code that can be accessed and run by a code developer or others, and that this is fair use.

(ii) Rights or legitimate interests

Respondent states he is a software engineer who has been developing software since he was a teenager. In 2016 he realized that a valuable way to assist developers (whether they are professional developers, software engineering students, teachers, or hobbyists) was to give them a way to run and showcase their software "code" in a simple and cost-effective way. Respondent indicates an essential challenge to developers who write code is to be able to showcase their skills when they cannot afford to host it themselves on the web – either because hosting is technically too hard for them, or because it is too costly.

Respondent states that he purchased the Domain Names with the intent to let anyone with their code stored on Complainant's GitHub website, which is the most popular code repository, to build and run (*i.e.*, showcase) their code. Each code repository stored at GitHub (or with other third-parties) has a unique URL that identifies it. Respondent states that using the two Domain Names, he has made it easy for a developer's code stored at GitHub to be showcased. For example, if code is publicly stored on Complainant's website at <github.com> (*e.g.*, at the location: github.com/user_name/project_name), then it can be hosted and run on Respondent's site at the Domain Name <github.run> (at the location: github.run/user_name/project_name). Respondent's approach replaces the ".com" in the domain name with ".run".

The name of Respondent's project is the descriptive term DOT RUN (see the website at "www.dotrun.xyz"). As stated in the name, DOT RUN is meant to illustrate that by replacing the ".com" with the ".run" gTLD in the full URL of someone's stored code, this will direct to a running version of the particular stored code that can be showcased. Respondent states that this approach was the start of his project – that is, a free, convenient and memorable way to run one's code that is already stored on Complainant's website at <github.com>, for others to see. Respondent indicates he has also established this approach for those who have stored code at repositories other than Complainant's.

Respondent states that students, teachers, hobbyists and other developers sometimes need to showcase (run) their code, and he is using the Domain Names in a descriptive manner, as they link to sites that run and build code stored on Complainant's GitHub site. Respondent claims this is a legitimate and fair use of the Domain Names to service Complainant's GitHub code-storers. Respondent also states he has never charged for this service, nor presented any advertisements or received any income from these services.

Respondent states that from 2016, to December 5, 2021, the websites at both Domain Names were kept completely blank and he spent very little time on this project. Even after December 2021, he did not use it on a regular basis, as it is essentially a hobby. Respondent states the project page is still immature and received less than three visits a day over the last 60 days.

Respondent contends that the use made of the Domain Names is legitimate as a descriptive location to provide an aftermarket type service to software code developers. Long before the recent contact by Complainant's attorneys reaching out to Respondent, he was developing his service for others. Thus, Respondent contends it is apparent that he is making a legitimate noncommercial or fair use of the Domain Names, without intent for commercial gain, and with no intent to mislead or divert consumers, or to tarnish Complainant's trademark. Further, Respondent claims his redirect of the Domain Names to the site at "www.dotrun.xyz" was a short-term bug and he has no intention for the Domain Names to redirect to any of his other sites, and is content with maintaining their root pages as blank pages. Respondent claims this could not possibly damage Complainant and is a service to assist those who store code on Complainant's site to showcase their code, to Complainant's advantage.

Respondent has never reached out to Complainant to try to sell the Domain Names. Rather his registration and use were done as a nominative fair use of the name GitHub to service the running of code on Respondent's site, of code that is stored at Complainant's "www.github.com" site. Respondent claims there is ample precedent under the UDRP and US law supporting such nominative fair use and has cited a number of UDRP and US court cases. Respondent contends he is making necessary use of the name of Complainant, but only so much as is necessary, and has done nothing to suggest sponsorship by Complainant. Again, Respondent uses the Domain Name <github.run> to describe the location of code and to achieve a manner of running the code.

(iii) Registered and used in bad faith

Respondent contends he registered and is using the Domain Names without any bad faith and only as necessary to support services for running Complainant's customers stored code. In particular, the Domain Names were not registered or acquired primarily for the purpose of selling, renting, or otherwise transferring them to Complainant, as the alleged owner of the trademark, or to a competitor of Complainant. Respondent explains the faux negotiations initiated by Complainant's agent (on behalf of an undisclosed principal) ended and were used as a weak set-up of Respondent. Respondent states there are hundreds of domain names with the formative "github" available. Moreover, there is no "pattern" of conduct by Respondent trafficking in domain name resales to brand owners.

In addition, Respondent states that he and Complainant are not competitors and the Domain Names were not registered by Respondent primarily to disrupt Complainant's business, but rather to amplify the ease of code access and running to Complainant's depositors. Respondent does not re-direct traffic away from Complainant's <github.com> site to any of his pages and has no intent to do so. Further, Respondent does not provide domain name services. Finally, Respondent contends there is no likelihood of confusion by code developers, all of whom are expert in the software industry, and the Domain Names were not registered by Respondent in an intentional attempt to attract for commercial gain.

6. Discussion and Findings

In order to succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. Those elements are as follows:

- (i) the Domain Names registered by Respondent are identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) Respondent has registered and is using the Domain Names in bad faith.

A. Identical or Confusingly Similar

Complainant has demonstrated that it has well-established rights in its distinctive GITHUB trademark, both through registration and use.

The Panel finds that both Domain Names incorporates the GITHUB mark in its entirety, with no variation other than the addition of the gTLD extensions ".run" and ".build".

Accordingly, the Panel finds that the Domain Names are identical to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Regarding the second element of the Policy, Complainant contends that Respondent has no rights or legitimate interests in the Domain Names. Complainant has demonstrated that Respondent is using the Domain Names, which are identical to Complainant's well-established and pre-existing GITHUB trademark, without Complainant's authorization. Moreover, Respondent is not commonly known by the Domain Names. Complainant has alleged that Respondent's is using Complainant's GITHUB trademark in the Domain Names to capitalize on the goodwill in Complainant's mark.

The Policy provides that to demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following:

(i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The crux of this case turns on the third of these illustrative defenses: whether Respondent is making a legitimate noncommercial or fair use of the Domain Names. Respondent states that the use made of the Domain Names is legitimate as a descriptive location to provide a free type of aftermarket service for software code developers who store code on Complainant's website. Respondent claims he making use of Complainant's GITHUB trademark, but only so much as is necessary, as a descriptive identifier of the stored location of code (*i.e.*, on Complainant's website) that can be accessed and run by the software developer on Respondent's site, and that this constitutes fair use.

The Panel does not doubt, based on the limited evidence adduced in this case, that Respondent is using the Domain Names for the purposes he has described – that is, to link to Respondent's website where a software developer can “host” and “run” (and thereby demonstrate) software code that is stored on Complainant's website (or on the websites of third-parties who might be Complainant's competitors).

Respondent has also indicated that he has charged no fee for this type of service for developers. At the same time, however, Respondent has stated that his project is still immature; thus, there can be no guarantee beyond Respondent's statements that, with greater usage by developers, he would continue in the future to provide his services free of charge. Moreover, the Domain Names previously redirected to Respondent's website at <dotrun.xyz>, where there was no disclaimer distinguishing Respondent from Complainant, although Respondent has stated that he has stopped redirecting the Domain Names and they currently resolve to blank webpages. All of these factors highlight, however, that further changes are possible and Respondent's current use does not necessarily control how he will use the Domain Names in the future.

Importantly, this point is particularly problematic because the Domain Names are identical to Complainant's distinctive GITHUB trademark, with no additional descriptive term or phrase that might serve to differentiate Respondent and his services from Complainant and its services. Moreover, Respondent's services and the gTLDs chosen by Respondent in this case relate to Complainant's area of business activity, or to a natural zone of expansion for Complainant's activities. The same therefore effectively holds true even if one were to imagine the TLDs chosen would be part of the domain names themselves (*e.g.*, if instead of <github.build> and <github.run>, they were <githubbuild.TLD> and <githubrun.TLD>). See [WIPO Overview 3.0](#), sections 2.14.1 and 3.2.1. Thus, by using these Domain Names, Respondent is offering services that could potentially come into competition with Complainant's services in the future, yet would be offered under Complainant's own trademark.

In view of these circumstances, this case raises the issue of whether Respondent – by registering and using the Domain Names that are identical to Complainant’s GITHUB mark – is effectively impersonating Complainant, or giving the wrong impression that it is affiliated with them when in fact it is not. Respondent seems to have acknowledged in his email exchange with Complainant’s agent that the Domain Names have value precisely because they are identical to Complainant’s GITHUB mark. In an email sent to Complainant’s agent, Respondent states:

“Honestly; your client would have to buy my startup and not just the domain - because w/o the domain the startup loses [sic] a ton of value.”

Unfortunately for Respondent, demonstrating fair use under the Policy when the disputed domain name is identical to a complainant’s trademark is extremely difficult, if at all possible. For example, section 2.5 of the WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), states that “[f]undamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry.”

Moreover, section 2.5.1 provides as follows:

“Generally speaking, UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.”

The Panel finds that in this case, the Domain Names effectively impersonate or at least suggest sponsorship or endorsement by Complainant – when one does not exist, while the chosen gTLDs in which the Domain Names are registered bring further emphasis to this potential confusion. Upon seeing the Domain Names, it is well within reason for users to believe that Respondent’s related services are sponsored or sanctioned by, or affiliated or connected with, Complainant in some manner — when, in fact, they are not and no relationship whatsoever exists between Complainant and Respondent. In support of this finding and by comparison, under the Policy even a general right to legitimate criticism, or establishing a noncommercial fan site, would not support registering or using a domain name that is identical to a complainant’s trademark. See [WIPO Overview 3.0](#), sections 2.6.2 and 2.7.2.

In support of his arguments, Respondent cites to a number of prior UDRP cases, while also referring to principles of US trademark law. However, none of the UDRP cases cited by Respondent involved domain names that were identical to the complainants’ trademarks. See *e.g.*, *F. Hoffmann-La Roche AG v. Alexandre Grog*, WIPO Case No. [D2013-0995](#) (<diet-xenical.com>); *Educational Testing Service (ETS) v. Morrison Media LLC*, WIPO Case No. [D2006-1010](#) (<acethepraxis.com>, <gre-secrets.com>, <praxis-secrets.com>, <toefl-secrets.com> and <toeic-secrets.com>); *Walbro Engine Management, LLC v. Registration Private, Domains By Proxy, LLC / Shahrokh Gabbaypour, Express Fuel Pumps*, WIPO Case No. [D2021-2409](#) (<walbrofuelpumps.com>); and *Red Pocket Inc. v. American Wireless LLC*, WIPO Case No. [D2013-0318](#) (<goredpocketmobile.com> and <redpocketbillpayment.com>).

Moreover, while Respondent has invited the Panel to assess fair use while applying principles of US trademark law, the Panel is of the view, as expressed in prior UDRP decisions that, outside the narrow question of the existence of trademark rights under the Policy’s first element, the UDRP is intended to provide an international and uniform policy across all top-level domains for resolving disputes between trademarks owners and domain name registrants. As stated in *1066 Housing Association Ltd. v. Mr. D. Morgan*, WIPO Case No. [D2007-1461](#), an approach applying local rules “risks the UDRP fragmenting into a series of different systems, where the outcome to each case would depend upon where exactly the parties happened to reside”. For these reasons, the Panel also disagrees with the view that UDRP cases involving two parties, both of whom are located in the US, should provide the basis for the US single-country exception to the broader consensus view that national law should not be an element in determining “fair use” under the criteria set forth as to rights or legitimate interests under the second element of the Policy. As

stated in *Dover Downs Gaming & Entertainment, Inc. v. Domains by Proxy, LLC / Harold Carter Jr, Purlin Pal LLC*, WIPO Case No. [D2019-0633](#).

“[d]espite efforts by a number of panels to find a common ground that would support that second view for cases with (only) United States parties and panelists, consensus has not formed around that approach; to the contrary, as noted above, many stakeholders criticized that approach and declined to follow it. For that reason, the time has come to support the developing consensus around the impersonation test, even for cases, like the one here, between United States parties and with a United States panelist and where the location of mutual jurisdiction is in the United States. Significantly, the [WIPO Overview 3.0](#)’s impersonation test does not bar registrants from using a domain name that contains a trademark plus an additional, distinguishing term. Registrants remain free to select such a domain name so long as the domain name makes clear that the registrant is not affiliated with or authorized by the trademark holder.”

After careful consideration of the totality of circumstances in this case – a concept explored in the “Moms Demand” case (*Everytown for Gun Safety Action Fund, Inc. v. Contact Privacy Inc. Customer 1249561463 / Steve Coffman*, WIPO Case No. [D2022-0473](#)) which expanded on the *Dover Downs* case cited above, the Panel is of the view that Respondent is making less than fair use of the Domain Names under the Policy. (See also *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#).) Therefore, in balancing the rights of Complainant in its distinctive and well-established GITHUB mark, and the right of Respondent to choose freely a domain name, the Panel concludes that Respondent has impermissibly taken advantage of Complainant’s interests in its GITHUB mark.

Accordingly, for all of the above reasons, the Panel finds that Complainant has made a *prima facie* showing of Respondent’s lack of rights or legitimate interests in respect of the Domain Names, which has not been sufficiently rebutted by Respondent. The Panel therefore finds that Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Names in bad faith. [WIPO Overview 3.0](#), section 3.1, states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”.

For the reasons discussed under this and the preceding heading, the Panel considers that Respondent’s conduct in this case constitutes bad faith registration and use of the Domain Names within the meaning of paragraph 4(a)(iii) of the Policy. It is evident that Respondent was aware of Complainant and its distinctive GITHUB trademark, and targeted that mark, when registering the identical Domain Names. Respondent provides services, which he has characterized as an “aftermarket service to code developers”, that are in the same field in which Complainant operates its business (and for which Complainant’s trademarks provide coverage for computer software and related services), while using Domain Names that are identical to Complainant’s GITHUB trademark. The Panel disagrees with Respondent contention that there is no likelihood of confusion by code developers. The Panel considers that the Domain Names, identical to Complainant’s GITHUB mark, and their respective gTLD extensions (“.run” and “.build”), are such that users are likely to consider that Respondent’s related services are sponsored or sanctioned by, or affiliated or connected with, Complainant in some manner, when they are not.

The Panel would tend to agree with Respondent that he did not register the Domain Names for the purpose of reselling them to Complainant. However, Respondent’s use of Complainant’s trademark in the identical Domain Names for his own expediency to support his software code running project, and with no additional descriptive term or phrase that might serve to differentiate Respondent and his services from Complainant and its services, is not a good faith use. Instead, Respondent is capitalizing on, or otherwise take advantage of, Complainant’s trademark, for his own purposes. Respondent may argue that he is only using the Domain Names for a technical purpose, and not to capitalize on Complainant’s trademarks. However, as noted above, Respondent acknowledged that the Domain Names have value to his project precisely because they

are identical to Complainant's GITHUB mark. Moreover, as indicated in [WIPO Overview 3.0](#), section 3.4, panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Although there is no finding that Respondent has, as of yet, acted for commercial gain as such (noting that this concept has been understood to also cover things like reputational gain, even in a niche field), the Panel nonetheless finds that, given all of the facts and circumstances of this case, whether or not Respondent's motives were for eventually commercially exploiting Complainant's mark, the Panel determines that Respondent's registration and use of the Domain Names amounts to bad faith use within the ambit of the Policy. If Respondent wishes to develop a service for running and building software code, he can do so in any number of ways without taking advantage of Complainant's name or GITHUB trademarks.

In conclusion, the Panel determines that, for all of the above reasons, the Domain Names were registered and are being used in bad faith. Accordingly, Complainant has satisfied 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 Domain Names, <github.run> and <github.build>, be transferred to Complainant.

/Christopher S. Gibson/

Christopher S. Gibson

Sole Panelist

Date: December 29, 2022