

ADMINISTRATIVE PANEL DECISION

eBay Inc. v. Lei Hsueh, Hsueh, KHSING.NET
Case No. DIO2022-0039

1. The Parties

Complainant is eBay Inc., United States of America (“United States” or “U.S.”), represented by Hogan Lovells (Paris) LLP, France.

Respondent is Lei Hsueh, Hsueh, KHSING.NET, United States.

2. The Domain Name and Registrar

The disputed domain name <ebay.io> (the “Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2022. On August 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on September 5, 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 7, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 September 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2022. Respondent did not submit any formal response. On September 14, 2022, Respondent sent an email to the Center.

The Center appointed John C. McElwaine as the sole panelist in this matter on October 7, 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 an online ecommerce platform. Complainant has secured ownership of trademark registrations for EBAY in jurisdictions throughout the world. Complainant is the owner of the following trademark registrations relevant to this matter:

- United States Trademark Registration No. 2218732, EBAY, registered on January 19, 1999;
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- United Kingdom Trade Mark Registration No. UK00002185144, EBAY, registered on December 8, 2000;
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- European Union Trade Mark No. 001499599, EBAY, registered on June 6, 2001;
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- United States Trademark Registration No. 2592515, EBAY, registered on July 9, 2002; and
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- European Union Trade Mark No. 002392264, EBAY, registered on January 31, 2003.

Complainant's registered trademark rights are referred to herein as the "EBAY Mark."

On November 23, 2011, Respondent registered the Domain Name. At the time of the filing of the Complaint, the Domain Name did not resolve to a functioning website.

5. Parties' Contentions

A. Complainant

As background information, Complainant asserts that it was founded in 1995 and has grown to be a global leader in the field of online commerce and shopping. Complainant contends that it is widely recognized as the "world's largest online marketplace", servicing some 138 million active buyers in 190 markets. Complainant alleges that it has provided its online marketplace via its official website located at "www.ebay.com". Complainant further alleges that this website generates 1 billion page views per day and that in second quarter of 2022, the total value of goods sold on this website was USD 18.5 billion. Complainant alleges that the EBAY Mark has been used extensively for over 20 years and has acquired considerable renown and goodwill worldwide. In 2021, Complainant's EBAY Mark ranked 56th in the Interbrand Best Global Brands.

Complainant further claims that it owns and uses numerous domain names incorporating its EBAY Mark, including the domain name <ebay.com>, registered in 1995, along with many others under various generic Top-Level Domains ("gTLDs"), as well as under many of the world's country code Top-Level Domains ("ccTLDs"). In addition, Complainant asserts that it has made substantial investments to develop a strong presence online by being active on different social-media platforms, including Facebook, Twitter, YouTube and LinkedIn. As a result, Complainant claims that the term EBAY is exclusively associated with Complainant.

With respect to the first element of the Policy, Complainant alleges that it owns numerous trademark registrations for the EBAY Mark copies of which were provided as Annex 8. Complainant further alleges that the Domain Name is identical to Complainant's EBAY Mark.

With respect to the second element of the Policy, Complainant contends that Respondent is not using the Domain Name in connection with any *bona fide* offering of goods or services. Complainant asserts that Respondent is not a licensee of Complainant, is not affiliated with Complainant in any way, nor has Complainant granted any authorization for Respondent to make use of its EBAY Mark in a domain name or otherwise. Complainant notes that the Domain Name does not resolve to an active web page, which does not qualify as use of the Domain Name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. Complainant also asserts that there is no evidence of Respondent having made demonstrable preparations to use the Domain Name. Complainant points out that Respondent is not commonly known by the Domain Name and that it was registered using a privacy service, but that the identity of the underlying registrant bears no resemblance to the Domain Name. Lastly, Complainant alleges that Respondent who is passively holding the Domain Name and which does not resolve to an active website, is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers within the meaning of paragraph 4(c)(iii) of the Policy.

With respect to the third element of the Policy, Complainant alleges that Registrant registered the Domain Name to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's EBAY Mark, within the meaning of section 4(b)(iii) of the Policy. Specifically, Complainant asserts that Respondent could not credibly argue that it did not have knowledge of Complainant or its EBAY trademark when registering the Domain Name, given that by this time eBay had acquired significant reputation and goodwill.

Furthermore, Complainant assert that the passive holding of the Domain Name is also bad faith use of the Domain Name because (i) Complainant's EBAY Mark is distinctive and well known throughout the world in connection with its online commerce and shopping platform; (ii) Respondent did not reply to Complainant's notice submitted on July 6, 2022 via the Registrar's contact form, nor is there any evidence of actual or contemplated good-faith use of the Domain Name on the part of Respondent; (iii) Respondent registered the Domain Name using a privacy service and provided false contact information, and (iv) the potential for use of the Domain Name carries with it a high risk of implied affiliation with Complainant and Respondent could use the Domain Name for malicious actions.

B. Respondent

Respondent did not reply to Complainant's contentions but the Center received an informal email from the Respondent on September 14, 2022. Respondent stated in his email that "I have no intention to infringe on the trademark of eBay and I am very happy to transfer ebay.io to eBay. Since I registered this domain, I didn't use it for any reason and I had no purpose to use it in the future. Would eBay reimburse the expense of the domain that I paid in past years? It's USD 771.00 in total which I can provide receipts."

6. Discussion and Findings

Even though Respondent did not formally reply to the Complaint, paragraph 4 of the Policy requires that, in order to succeed in this proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants have rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered or is being used in bad faith.

Because of the absence of a formal Response, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom¹. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules (“If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel’s findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant to show that the Domain Name is identical or confusingly similar to a trademark or service mark in which it has valid trademark rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2. Complainant has provided evidence that it is the owner of valid and subsisting trademark registrations for the EBAY trademark.

In this matter, the Domain Name consists entirely of Complainant’s EBAY Mark. Thus, it is the Panel’s finding that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant need only make a *prima facie* showing on this element, at which point the burden shifts to Respondent to present evidence that it has some rights or legitimate interests in the Domain Name. If Respondent has failed to do so, then Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainant asserts that (i) Respondent is not commonly known by the name EBAY, (ii) that Respondent is not a licensee of the EBAY Mark, nor has Complainant consented to Respondent’s use of the EBAY Mark, (iii) Respondent is not using (and has not made demonstrable preparations to use) the Domain Name in connection with a *bona fide* offering of goods or services, and (iv) Respondent is not making a legitimate noncommercial or fair use of the Domain Name.

Although properly notified by the Center, Respondent failed to submit any response on these points. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant’s assertions, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#). Accordingly, as discussed in detail below, the Panel finds that Complainant has met its burden and Respondent will not be able to show rights or legitimate interests under any of the three conditions under paragraph 4(c) of the Policy.

¹ The Panel notes the similarities between the .IO Policy and the UDRP. As such, to count with criteria of interpretation for the analysis of the present case, the Panel will recur to previous UDRP decisions.

Respondent cannot satisfy paragraph 4(c)(ii) of the Policy. There is no evidence in the record that Respondent is commonly known by the name “EBAY” or any other similar term that could potentially establish a legitimate interest or right in the Domain Name. In fact, to the contrary, the Whois information indicates that Respondent’s name is Lei Hsueh, Khsing.Net. See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#) (“the Panel notes that the respondent’s name is ‘Bestinfo’ and that it can therefore not be commonly known by the Domain Name.”).

Furthermore, the Panel finds that Respondent is currently not making any use, let alone *bona fide* use, of the Domain Name under paragraph 4(c), as the Domain Name resolves to an inactive webpage. It is well established that passive holding can, in certain circumstances, constitute bad faith use. See *CBS Broadcasting Inc. v. Edward Enterprises*, WIPO Case No. [D2000-0242](#). Here, with a statement from Respondent that he did not intend to use the Domain Name and with no explanation concerning Respondent’s intent in registering the Domain Name, Respondent’s passive holding of the Domain Name incorporating the well-known EBAY Mark, does not amount to a *bona fide* use. Moreover, the use of the Domain Name is not fair use.

Accordingly, for the reasons detailed above, Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent had the opportunity to put forth evidence of its rights or legitimate interests yet provided no substantive response as to why its conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a response and combined with the factors as detailed above, the Panel finds that Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered or Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered or is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration or use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent “knew or should have known” of a complainant’s trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). Complainant contends that Respondent’s registration and use of the Domain Name was in bad faith and is evidenced by (i) the fact that Complainant’s EBAY Mark is well-known and exclusively connected to Complaint; and (ii) the Domain Name to Complainant’s EBAY Mark that is also used as a domain name in other gTLD and ccTLD spaces. Based on Complainant’s submissions, which were not rebutted by Respondent, the Panel agrees that Respondent must have known of Complainant’s distinctive EBAY Mark when Respondent registered the Domain Name. Accordingly, on the record there is no explanation or legitimate interest to justify Respondents’ choice to register the Domain Name. With no response from Respondent, this claim is undisputed, and the Panel can infer bad faith particularly in light of the other elements of bad faith that are present.

Furthermore, the fact that the Domain Name does not currently resolve to a website and is being passively held does not obviate a finding of bad faith use of the mark. When a domain name is being passively held, the question of bad faith use does not squarely fall under one of the aforementioned non-exhaustive factors set out in paragraph 4(b) of the Policy. The three-member panel, in *Magazine Publishers Inc. and Les Publications Conde Nast S.A. v. ChinaVogue.com*, WIPO Case No. [D2005-0615](#), made the following observations in its determination that the respondent was acting in bad faith: (i) the complainant’s trademark has a strong reputation and is widely known, as evidenced by its substantial use in the United States of America and in other countries; (ii) the respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name; (iii) the respondent registered the domain name in 1999, and seems not to have been using the domain name; (iv) the respondent did not reply to the complainant’s communications before the proceedings; and (v) the respondent did not reply to the complainant’s contentions.

Likewise, Section 3.3 of the [WIPO Overview 3.0](#), instructs that panelists should examine the totality of the circumstances in each case and that the following factors that have been considered relevant in applying the passive holding doctrine: “(i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.” *Id.*

In this matter, Complainant submitted evidence that its EBAY Mark is well-known and has been used for 25 years on an international basis. Furthermore, by virtue of its failure to respond to the Complaint, as well as Complainant’s pre-proceedings cease and desist letter, Respondent has provided no evidence of its intended use of the Domain Name. In fact, Respondent has asserted to intention not to use the Domain Name and requested its fees relating to registration. The Panel finds it implausible, based on the record, that Respondent could have had any good faith for registering the Domain Name or that there was any good faith use to which Respondent could have made of the Domain Name. In light of these factors, the Panel finds that Respondent’s passive holding of the Domain Name satisfies the requirement of paragraph 4(a)(iii) of the Policy that the Domain Name was registered and is being used in bad faith by Respondent.

For the reasons set forth above, the Panel finds that Complainant has met its burden of showing that Respondent registered or is using the Domain Name in bad faith under paragraph 4(a)(iii) 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 Name <ebay.io>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: October 21, 2022