

ADMINISTRATIVE PANEL DECISION

Operation Technology, Inc. v. Mostafa Amiri
Case No. DIR2023-0004

1. The Parties

The Complainant is Operation Technology, Inc., United States of America (“United States”), represented Nameshield, France.

The Respondent is Mostafa Amiri, Iran (Islamic Republic of).

2. The Domain Name and Registrar

The disputed domain name <etap.ir> is registered with IRNIC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2023. On May 24, 2023, the Center transmitted by email to IRNIC a request for registrar verification in connection with the disputed domain name. On May 27, 2023, IRNIC 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 the Complainant on May 30, 2023, providing the registrant and contact information disclosed by IRNIC, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 31, 2023.

The Center verified that the Complaint and the amended Complaint satisfied the formal requirements of the .ir Domain Name Dispute Resolution Policy (the “Policy” or “irDRP”), the Rules for .ir Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .ir Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 2, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was June 22, 2023. On June 28, 2023, the Center notified the Respondent’s default.

The Center appointed Edoardo Fano as the sole panelist in this matter on July 3, 2023. 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 Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Operation Technology, Inc., a United States company, operating as one of the world's leading electrical design and operations digital twin platforms for infrastructure, building and industry, and owning several trademark registrations for ETAP, among which:

- United States Trademark Registration No. 3,749,234 for ETAP, registered on February 16, 2010.

The Complainant also operates on the Internet, its main website being "www.etap.com".

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered by the Respondent on July 13, 2014, and it resolves to a website in Persian where training services related to the Complainant's activities are purportedly offered, the Complainant's trademark is reproduced and there is a reference to the Complainant's software.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is identical to its trademark ETAP.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name resolves to a website in Persian where training services related to the Complainant's activities are purportedly offered, the Complainant's trademark is reproduced and there is a reference to the Complainant's software.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, as the resolving website displays the Complainant's trademark and fraudulently purports to offer services related to the Complainant's products. The Complainant contends that the use of the disputed domain name to impersonate the Complainant in order to attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainant's trademark, offering possibly fraudulent services and disrupting the Complainant's business, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.¹

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant is the owner of the trademark ETAP both by registration and acquired reputation and that the disputed domain name is identical to the trademark ETAP.

It is well accepted that a country code Top-Level Domain ("ccTLD") suffix, in this case ".ir", is typically ignored when assessing the confusing similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is identical to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

"(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

¹ In light of the substantive and procedural similarities between the irDRP and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel has cited decisions under the UDRP and the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where appropriate.

(iii) you are 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.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is generally more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain name for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services, but instead, on the website at the disputed domain name, training services related to the Complainant’s activities are purportedly offered, the Complainant’s trademark is reproduced and there is a reference to the Complainant’s software.

According to the [WIPO Overview 3.0](#), section 2.13.1:

“2.13.1 Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent [...].”

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name.

The Panel therefore concludes that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Based on the facts of this case, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered or Used in Bad Faith

While paragraph 4(a)(iii) of the Policy requires a demonstration that a domain name has either been registered or is being used in bad faith, the Complainant has argued that the Respondent has both registered and used the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides that “for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) that [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark ETAP in relation to electrical design and operations digital twin platform for infrastructure, building and industry is clearly established and the Panel finds that the Respondent likely knew of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because, on the website to which the disputed domain name resolves to, training services related to the Complainant's activities are purportedly offered, the Complainant's trademark is reproduced and there is a reference to the Complainant's software.

The Panel further notes that the disputed domain name is also being used in bad faith since the Respondent is trying to attract Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement, in order to fraudulently try to impersonate the Complainant, an activity clearly detrimental to the Complainant's business. See [WIPO Overview 3.0](#), sections 3.1.4

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order to attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which is identical to the Complainant's trademark, further supports a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

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 <etap.ir> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: July 12, 2023