

ADMINISTRATIVE PANEL DECISION

Elasticsearch B.V. v. TENGFEI WANG, PremiumDomainSeller
Case No. DME2023-0008

1. The Parties

The Complainant is Elasticsearch B.V., Netherlands (Kingdom of the), represented by Quinn IP Law, United States of America (“United States”).

The Respondent is TENGFEI WANG, PremiumDomainSeller, China.

2. The Domain Name and Registrar

The disputed domain name <elasticsearch.me> is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 10, 2023. On July 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 17, 2023, 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 (Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 18, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 23, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on July 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 22, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on August 25, 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.

4. Factual Background

According to information in the Complaint, the Complainant uses its ELASTICSEARCH and ELASTIC trademarks in connection with its platform for search-powered solutions. The Complainant's solutions in enterprise search, observability, and security help enhance customer and employee search experiences, keep applications running smoothly, and protect against cyber threats. As of April 2023, the Complainant's Elasticsearch platform has been downloaded more than 3.6 billion times. In China, ELASTICSEARCH and ELASTIC branded software is widely accessed, licensed, and distributed through large commercial distribution relationships with Tencent Cloud and Alibaba Cloud platforms.

The Complainant has registered several trademarks consisting of ELASTICSEARCH including the United States trademark registration No. 4212205, registered on September 25, 2012 for ELASTICSERACH.

The disputed domain name was registered on October 30, 2022 and at the time of the filing of the Complaint it was offered for sale on a third-party platform for USD 1,450.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name fully incorporates the well-known and famous Complainant's ELASTICSEARCH trademark, thus paragraph 4(a)(i) of the Policy is satisfied.

With respect to the second element, the Complainant argues that there is no evidence that the Respondent is commonly known by the disputed domain name or has a trademark registration for ELASTICSEARCH. Further, the Respondent is not affiliated with or licensed by the Complainant and there is no evidence that the Respondent is making any fair use of the disputed domain name. The Respondent registered the disputed domain name to confuse the public into believing that it is associated or affiliated with the Complainant.

As regards the third element, the Complainant argues that the Respondent's bad faith is demonstrated *inter alia* by the Respondent's failure to respond to the Complainant's demand letter and the passive holding of the disputed domain name. The disputed domain name incorporates the Complainant's well-known and famous ELASTICSEARCH trademark in its entirety, creating an intrinsic likelihood of confusion and affiliation. Also, the Respondent's purposeful incorporation of the Complainant's well-known and distinctive ELASTICSEARCH and ELASTIC trademarks in their entirety, coupled with the Respondent's brief registration period of holding of the disputed domain name and immediate solicitation for sale of the disputed domain name, clearly establishes that the Respondent registered the disputed domain name in bad faith for the purpose of selling, renting, or transferring the disputed domain name to the Complainant, its competitors or another bad faith actor. Moreover, the Complainant submits that two prior WIPO panels held that the Respondent registered and used domain names incorporating well-known trademarks of third parties in combination with the ".me" country-code Top-Level Domain in bad faith, which constitutes evidence of a pattern of conduct of bad faith by the Respondent (See *Solvay SA v. TENGFEI WANG, PremiumDomainSeller*, WIPO Case No. [DME2023-0002](#) and *IM Production v. TENGFEI WANG, PremiumDomainSeller*, WIPO Case No. [DME2022-0024](#)).

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 and is being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to that trademark. This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence of its rights in the ELASTICSEARCH trademark by providing evidence of its trademark registrations.

As regards the second limb of the first element, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name. It is well established that the country code Top-Level Domain (".me") may be ignored when assessing the confusing similarity between the disputed domain name and the Complainant's trademarks as it is viewed as a standard registration requirement. See section 1.11.1 of the [WIPO Overview 3.0](#).

The disputed domain name incorporates the ELASTICSEARCH trademark in its entirety without any addition. It is, therefore, identical to the ELASTICSEARCH trademark in which the Complainant has rights.

The Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name.

As established by previous UDRP panels, it is sufficient for the complainant to make a *prima facie* case demonstrating that the respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the respondent (see section 2.1 of the [WIPO Overview 3.0](#)). In the present case, the Complainant has proved it holds rights over the trademark ELASTICSEARCH, and claims

that the Respondent has no legitimate reason to register or acquire the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate non-commercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

Furthermore, the nature of the disputed domain name carries a high risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the unrebutted assertions of the Complainant, its ELASTICSEARCH trademarks were used in commerce well before the registration of the disputed domain name. The disputed domain name is identical to the Complainant's trademarks. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademarks at the registration date of the disputed domain name.

As regards the use, according to the evidence in the case file, the disputed domain name is offered for sale for USD 1,450. This sustains in the Panel's view the conclusion of bad faith registration and use of the disputed domain name, primarily for the purpose of selling it to the Complainant under paragraph 4(b)(i) of the Policy. Also, there appears to be a pattern of abusive registrations by the Respondent, as the unrebutted evidence in the case file shows that the Respondent was involved in previous UDRP proceeding where similar factual situations caused the concerned UDRP panels to decide in favor of the complainant (See *Solvay SA v. TENGFEI WANG, PremiumDomainSeller*, WIPO Case No. [DME2023-0002](#)). This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering "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".

With the evidence on file, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are 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, <elasticsearch.me>, be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: September 7, 2023