

## **ADMINISTRATIVE PANEL DECISION**

Epik LLC v. Jim Bugg, BUGG Marketing Inc.  
Case No. D2024-2295

### **1. The Parties**

The Complainant is Epik LLC, United States of America (“US”), internally represented.

The Respondent is Jim Bugg, BUGG Marketing Inc., Canada.

### **2. The Domain Name and Registrar**

The disputed domain name <epik.hosting> (the “Disputed Domain Name”) is registered with eNom, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 4, 2024. On June 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 6, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the relevant contact details.

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 June 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on July 23, 2024. 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**

In the absence of a Response the Panel accepts the following evidence from the Complainant as factually correct. The Complainant is a US corporation. It provides domain name registration, email, and web hosting services via its website (the “Complainant’s website”) linked to the domain name <epik.com>. The Complainant acquired this business from its predecessor in interest in June 2023. The Complainant is the proprietor of US trademark no. 3958035 registered May 10, 2011, for the term EPIK (the “EPIK trademark”). The EPIK trademark claims a first use date of February 1, 2009, and the Panel infers that the Complainant’s predecessor carried on its business from that date.

The Respondent registered the Disputed Domain Name on January 31, 2016. It does not currently resolve to an active website. The filed evidence shows it has previously resolved to a website (the “Respondent’s website”) which offers services similar to those provided by the Complainant. See further below as to the detail of the Respondent’s website.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant accepts that the Respondent has offered its services using the Disputed Domain Name for eight years but contends this has not been a “bona fide offering of goods or services” since the Respondent was aware of the Complainant’s prior use of the EPIK trademark for identical services, and was aware of the Complainant’s website as indicated by statements made on social media. The Complainant exhibits in this regard a comment made by the Respondent on social media on January 19, 2021, as follows: “No, we are not hosting @parler\_app. We are a small hosting company from Canada. You’re looking for a different Epik located at epik.com. We’re epik.hosting. Thank you for your comments, but we’re not THAT Epik”.

The Complainant also relies on similarities between the content of the Respondent’s website and that of the Complainant’s website – see further below.

##### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions

#### **6. Discussion and Findings**

##### **Preliminary Matters**

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favour of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

## **Substantive Matters**

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has rights in the EPIK trademark. The Disputed Domain Name is identical to that trademark. It is well established that the generic Top-Level Domain (“gTLD”), in this case “.hosting”, is not generally taken into account for the purpose of determining whether a domain name is identical or confusingly similar – see for example *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#). See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.

Accordingly the Panel finds that the Disputed Domain Name is identical to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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 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 Respondent has operated its business via the Respondent’s website for 8 years. Conceivably (i) and/or (ii) above may be applicable. In assessing whether this is likely to be the case the Panel takes into account the following. The term “epik” is not a word in the English language. It can however be regarded as a stylised or fancy form of the word “epic”. “Epic” means, amongst other things, “heroic or grand in scale or character”. “Epic” and “epik” would be pronounced identically by a native English speaker. Given this linguistic background it seems to the Panel at least conceivable that the Respondent could have independently derived the Disputed Domain Name and the fact that it is identical to the Complainant’s domain name and trademark would be coincidental. The Complainant’s evidence as to the social media comment by the Respondent (see above) shows the Respondent was (at minimum by 2021) aware of the Complainant, but that alone does not necessarily show the identity of names is not a coincidence. However, the Complainant has also adduced evidence which shows the Respondent’s website contains a number of features which are similar to features found on the Complainant’s website. Both the Complainant’s website and the Respondent’s website prominently describe their business by the name “Epik Hosting”.

Between 2014 and 2021 the Complainant’s predecessor offered hosting plans named Bronze, Silver, Gold, and Platinum, whereas the Respondent offered hosting plans named Epik Bronze, Epik Silver, Epik Gold and Epik Platinum. If all of this is coincidence (and clearly the choice of bronze, silver, gold and platinum tiers is not likely to be unique to either party), it is in the opinion of the Panel a coincidence which calls for an explanation – and none has been provided given the lack of any Response or any communication at all from

the Respondent. The Panel considers that to be significant. The Panel also thinks it more likely than not that when the Respondent selected the Disputed Domain Name it would have carried out searches which would have identified that <epik.com> was already registered to a business similar to that which the Respondent was proposing. The Panel notes that the Respondent would appear to be a bona fide Canadian business (see “www.buggmarketing.com”) and was properly served with the Complaint in accordance with the Rules – this service included a hard copy of the Complaint delivered by courier to the Respondent’s business address. [WIPO Overview 3.0](#) says at section 4.3 in relation to lack of a response: “Further to paragraph 14(b) of the UDRP Rules however, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case e.g., where a particular conclusion is prima facie obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent.” The Panel also notes that it would appear that at some stage following service of the Complaint the Respondent’s website has been taken down (it was still live when the Complaint was filed with the Center). It now resolves to a webpage with a stylised image of a hammer and wrench, presumably intended to convey an “under construction” message. This change would appear to indicate the Respondent did not think it could defend the content of the Respondent’s website. That also suggests the Respondent does not have a legitimate interest in the Disputed Domain Name

Taking all of the above into account the Panel considers an inference is to be drawn that the Respondent deliberately adopted the Disputed Domain Name to use it in a business which was substantially the same as the Complainant’s business and which would likely benefit from confusion by actual or potential customers of the Complainant. Such a use cannot be bona fide within the meaning of 4(c)(i) (above).

So far as 4(c)(ii) is applied the Panel notes that the Respondent’s corporate name is Bugg Marketing Inc. Exercising its general power to carry out limited factual research (see [WIPO Overview 3.0](#) at section 4.8) the Panel has identified “www.buggmarketing.com” as being the Respondent’s general corporate website. There is nothing on that website to suggest the Respondent is known as “epik hosting”. Further, any claim to the benefit of 4(c)(ii) would normally require supporting by evidence and none has been provided – see [WIPO Overview 3.0](#) at section 2.3.

More generally, although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. In circumstances where: (i) the Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the EPIK trademark; (ii) the Complainant has prior rights in the EPIK trademark which precede the Respondent’s acquisition of the Disputed Domain Name; and (iii) the Panel considers the Respondent deliberately chose the Disputed Domain Name because it corresponded to the Complainant’s domain name (see above), the Complainant has established the necessary prima facie case. As a result the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); and *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)). The Respondent has not produced such evidence.

Overall the Panel concludes that the Complainant’s case is sufficient to have expected the Respondent to explain relevant facts if it contended it had a legitimate interest unrelated to the Complainant, and it has failed to do so. The Panel also notes that paragraph 5(f) of the Rules provides that “[i]f a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”.

Accordingly, the Panel finds the Respondent has no rights or legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

### **C. Registered and Used in Bad Faith**

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have 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 that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present case, the Panel takes the view that whether registration and use in bad faith is established depends on whether the Respondent registered the Disputed Domain Name because of its association with the Complainant and its EPIK trademark (in which case an inference can be drawn that paragraph 4(b)(i) applies) as opposed to registering it independently of any connection with the Complainant, in which case no inferences of bad faith can be drawn. Once again, given the lack of Response the Panel does not know what the Respondent has to say about this. However, for the reasons discussed above the Panel concludes that an inference can be drawn that the Respondent registered the Disputed Domain Name because of its association with the Complainant. Again, given the lack of Response that inference has not been rebutted.

Further, given the similarities discussed above between the Complainant's website and the Disputed Domain Name, as well as the Respondent's apparent knowledge of the Complainant dating back to at least three years before the Complaint was filed, the Panel concludes that paragraph 4(b)(iv) of the Policy applies as well.

Accordingly the Panel finds that the Complainant has established 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 disputed domain name <epik.hosting> be transferred to the Complainant.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: August 6, 2024