

ADMINISTRATIVE PANEL DECISION

Educational Testing Service v. MUSTAFA SAKALLI
Case No. D2024-3937

1. The Parties

The Complainant is Educational Testing Service, United States of America (“United States”), represented by Cantor Colburn LLP, United States.

The Respondent is MUSTAFA SAKALLI, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <ets-toefl-ibt.com> is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 25, 2024. On September 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 2024, 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 (“redacted for privacy”) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 27, 2024, 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 amendment to the Complaint on September 30, 2024.

The Center verified that the Complaint together with the amendment to 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 October 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 22, 2024.

The Center appointed Andrea Cappai as the sole panelist in this matter on November 4, 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

The Complainant is one of the world's largest private organisations dedicated to educational testing and measurement. It develops, administers, and scores over 50 million tests annually across more than 180 countries and at over 9,000 locations worldwide. Notably, the TOEFL iBT test is one of the most widely respected English-language assessments globally, serving as an admissions criterion in more than 160 countries.

The Complainant has used the mark TOEFL continuously in connection with its business since November 1964 and the ETS marks since 1951. The Complainant is consistently associated with the TOEFL and ETS marks.

The Complainant holds numerous trademark registrations for the marks ETS, TOEFL, and TOEFL iBT, including:

- United States Registration Number: 3953133; mark: TOEFL IBT; Registration Date: May 3, 2011;
- United States Registration Number: 1103427; mark: TOEFL; Registration Date: October 3, 1978;
- European Union Registration Number: 017517467; mark: TOEFL IBT; Registration Date: May 7, 2018;
- International Registration Number: 882054; mark: TOEFL; Registration Date: November 9, 2005;
- United States Registration Number: 4122843; mark: ETS; Registration Date: April 3, 2012; and
- International Registration Number: 1289624; mark: ETS; Registration Date: September 30, 2015.

The Complainant operates the domain <ets.org>, and further details on its services are accessible at "www.ets.org/toefl.html".

The disputed domain name was registered on August 22, 2024. As of the filing of this Complaint, and currently, it redirects to the Complainant'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 contends that it holds trademark registrations for TOEFL, TOEFL IBT, and ETS, which are used to identify its internationally recognised English language certifications. These trademarks are fully incorporated into the disputed domain name and the latter is confusingly similar to the Complainant's marks.

Furthermore, the Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name. There are no prior rights, licenses, permissions, or authorisations linking the Respondent to its use, and evidence suggests that the Respondent is not commonly known by the disputed domain name.

Additionally, the disputed domain name redirects to the Complainant's TOEFL page without authorisation. The Complainant argues that this redirection does not confer rights or legitimate interests, and it could be changed at any time to a fraudulent or phishing site, disrupting the Complainant's business and deceiving users.

Finally, the inclusion of the TOEFL and ETS marks in the disputed domain name and the use of the disputed domain name demonstrate that the Respondent was aware of the Complainant's trademarks. The Complainant contends that the disputed domain name misleads users into believing it is connected to them, increasing the likelihood of confusion.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the ETS, TOEFL, and TOEFL IBT marks is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In this case, the disputed domain name contains multiple trademarks of the Complainant that are clearly recognizable.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Complainant confirms that the Respondent has neither authorisation to use the Complainant's trademarks in any domain names nor is affiliated to them. The disputed domain name combines three of the Complainant's marks – one of which also corresponds to the name of its most renowned certification.

This hints at a deliberate attempt by the Respondent to mislead Internet users into believing that the disputed domain name is operated by, or associated with, the Complainant and take unfair advantage from this association. Furthermore, a respondent's use of a complainant's mark to redirect users would not support a claim of rights or legitimate interests; nor is such use a bona fide offering.

This conclusion is further supported by the absence of evidence demonstrating that the Respondent is commonly known by the disputed domain name.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that it is highly implausible that the Respondent selected and combined the Complainant's trademarks – creating a domain name encompassing all three – without being aware of the Complainant's prior rights. The composition of the disputed domain name strongly indicates bad faith in registration. It contains three marks associated with the Complainant which could not have been combined by the Respondent by mere chance. Lastly, the fact that the disputed domain name redirects to the Complainant's website further reinforces the inference of bad faith.

Regarding use, the Panel must observe that the redirection of the disputed domain name suggests an intent to attract Internet users by creating a likelihood of confusion with the Complainant's marks through implying a false legitimacy of the disputed domain name with respect to the Complainant's rights. Combined with the widespread recognition of the Complainant's TOEFL mark, and the Respondent's failure to submit a response, the Panel finds, on the balance of probabilities, that the Respondent was aware of and intended to target the Complainant.

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 <ets-toefl-ibt.com> be transferred to the Complainant.

/Andrea Cappai/

Andrea Cappai

Sole Panelist

Date: November 20, 2024