

ADMINISTRATIVE PANEL DECISION

eBay Inc. v. Hossam Monsef
Case No. D2023-3292

1. The Parties

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

Respondent is Hossam Monsef, Egypt.

2. The Domain Name and Registrar

The disputed domain name <ebaydigital.com> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2023. On August 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on August 5, 2023 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 August 8, 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 Respondent of the Complaint, and the proceedings commenced on August 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2023. The Center received email communications from Respondent on August 9, August 24, August 25, and September 4, 2023.

By email of August 25, 2023, Respondent asked that the current dispute be put on hold. The Center forwarded the request to Complainant, informing that Complainant should submit a request for suspension by September 1, 2023. No Response to this was received from Complainant, so the proceedings were not suspended.

The Center notified the commencement of Panel appointment process on September 15, 2023.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on September 19, 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

Complainant is an online ecommerce platform.

Complainant has secured ownership of trademark registrations for EBAY in jurisdictions throughout the world, *inter alia*:

- United States trademark, registration No. 2218732, word mark EBAY, registered on January 19, 1999;
- United Kingdom trademark, registration No. UK00002185144, word mark EBAY, registered on December 8, 2000; and
- European Union trademark, registration No. 001499599, word mark EBAY, registered on June 6, 2001.

The registrations have been duly renewed and are still valid and will hereafter together referred to in singular as the "Trademark".

The disputed domain name was registered on September 5, 2021, and resolved to a website prominently displaying a logo "eBay Digital" and offering various goods for sale.

5. Parties' Contentions

A. Complainant

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

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 2023, the total value of goods sold on this website was USD 18.2 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 60th 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.

At the time of filing of the Complaint, the disputed domain name resolves to a website titled “eBay Digital, All you need in one place” (Respondent’s website). Respondent’s website purports to be a marketplace for various items, primarily clothing as well as software. These items are sold at amounts substantially below market value.

The “About” page of Respondent’s website lists the names as members of the team operating the website. However, these names belong to characters of the TV show “Suits”.

Finally, Respondent’s website contains no visible disclaimer stating that it is not affiliated with Complainant. The footer of Respondent’s website simply reads “Copyright © 2023 eBay Digital”.

The disputed domain name comprises the Trademark as its leading element, followed by the descriptive term “digital”. Complainant submits that the inclusion of the Trademark mark in its entirety in the disputed domain name is sufficient to establish confusing similarity between the disputed domain name and the Trademark. The addition of the descriptive term “digital” in the disputed domain name does not prevent a finding of confusing similarity with the Trademark.

With respect to the second element of the Policy, Complainant contends that Respondent is not using the disputed 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 the disputed domain name or otherwise. Complainant notes that the disputed domain name resolves to a website named “eBay Digital, All you need in one place” that purports to be a marketplace for various items sold at amounts substantially below market value. Moreover, fictitious names are listed as those of members of the team operating Respondent’s website. These factors support an inference that Respondent has not been using the disputed domain name in connection with any genuine business offering, but rather, has been using the disputed domain name in an attempt to promote a fictitious business, making unauthorized use of the Trademark as part of the disputed domain name in order to lend a veneer of authenticity to Respondent’s illegitimate online activities.

Complainant points out that Respondent is not commonly known by the disputed domain name.

With respect to the third element of the Policy, Complainant alleges that Respondent registered the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Trademark, within the meaning of section 4(b)(iv) 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 disputed domain name, given that by this time eBay had acquired significant reputation and goodwill.

Respondent appears to be using the disputed domain name in the furtherance of a fraudulent scheme, aimed at misleading unsuspecting Internet users into making purchases on Respondent’s website for products that Respondent has no intention of providing, and in turn disclosing sensitive financial and personal identifying information. Even if Respondent is treated as making a genuine offering of online retail services, Complainant submits that Internet users viewing the disputed domain name and Respondent’s website will be misled as to the source of the disputed domain name itself, as well as the goods purportedly offered for sale via Respondent’s website.

In view of the above, Complainant asserts that the disputed domain name was registered and is being used in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.

Complainant requests that the disputed domain name be transferred to Complainant.

B. Respondent

Respondent did not file a formal response. In the email dated August 9, 2023, he states:

“I bought this domain in September 2021 for \$9,000.

I did not use anything that refers to the mentioned brand.

Because I created a special website with a domain name that is completely independent of any trademark.

However, I would like to send an email to one of the managers in the company complaining about me to talk to them.

Or they can pay me the amount with which I bought the domain and take the domain without any issues I have no problem.”

6. Discussion and Findings

Dealing, first, with Respondent’s failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that Complainant prove each of the following three elements in order to succeed in its Complaint:

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

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 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.

Based on the available record, the Panel finds 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 Panel finds the entirety of the Trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here “digital”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of respondent. As such, where a complainant makes out a *prima facie* case that respondent lacks rights or legitimate interests, the burden of production on this element shifts to respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If respondent fails to come forward with such relevant evidence, complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Complainant’s case summarized in sections 5A above is, in the Panel’s opinion, well made out. Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services. 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 the Trademark.

The composition of the disputed domain name carries a risk of implied affiliation with the Complainant ([WIPO Overview 3.0](#), section 2.5.1). The use of “eBay Digital, All you need in one place” and the use of fictitious names on the “About” page all indicate that Respondent is using the disputed domain name in an attempt to promote a fictitious business, making unauthorized use of the Trademark as part of the disputed domain name in order to lend a veneer of authenticity to Respondent’s illegitimate online activities.

Based on the available record, 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.

The Panel refers to its considerations under section 6B and adds the following.

Section 3.1.4 of the [WIPO Overview 3.0](#) states that “the mere registration of a domain name that is identical or confusingly similar (particularly domain name comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”.

In the present case, the Panel notes that the Trademark is a famous and worldwide known trademark.

On top of that the disputed domain name replicates the Trademark in its entirety, with the addition of the additional term “digital”, which strongly suggests that Respondent was aware of Complainant and its Trademark.

Therefore, the Panel finds that the disputed domain name was registered in bad faith.

With a domain name containing the Trademark in its entirety and to which only minor, insignificant additions have been made Internet users are likely to believe that the disputed domain name is related to or endorsed by Complainant and that it will direct them to an official website providing information on the services.

Based on the information and the evidence provided by Complainant, Respondent has never used and does not intend to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Panel is convinced that Respondent is using the inherently misleading disputed domain name to take unfair advantage of the reputation of Complainant's well-known Trademark, and in so doing to disrupt Complainant's business and to attract, for commercial gain, Internet users to another website, by creating a likelihood of confusion with Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement (paragraph 4(b)(iv) of the Policy).

Furthermore, the failure of Respondent to submit a formal response or to provide any evidence of actual or contemplated good faith use, is further evidence of bad faith, given all the circumstances of the case (see [WIPO Overview 3.0](#), section 3.2).

The Panel finds the above confirms the disputed domain name was registered and is being used in bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <ebaydigital.com> be transferred to Complainant.

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: October 3, 2023