

## **ADMINISTRATIVE PANEL DECISION**

Educational Testing Service v. N Ara  
Case No. D2024-0656

### **1. The Parties**

Complainant is Educational Testing Service, United States of America, represented by Cantor Colburn LLP, United States of America.

Respondent is N Ara, United States of America.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 13, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to Complainant on February 14, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same day.

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 Respondent of the Complaint, and the proceedings commenced on February 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2024. The Center received an email communication from Respondent on February 17, 2024. Accordingly, the Center notified the Parties of the commencement of panel appointment process on March 8, 2024.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on March 19, 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**

Complainant is the one of the world's largest private educational testing and measurement organizations. Complainant was formed in 1947 and is headquartered in Princeton, New Jersey with its global footprint extending into nine additional locations in the United States of America, Canada, France, Germany, Italy, China, and India.

Complainant develops, administers and scores more than 50 million tests in more than 180 countries at more than 9,000 locations.

Complainant's TOEFL iBT test is used for admissions purposes in more than 160 countries. The TOEFL iBT test measures a test taker's ability to combine listening, reading, speaking, and writing skills for academic purposes. The TOEFL iBT gives more than 12,500 institutions worldwide access to millions of students who have proven they have what it takes to succeed in an English-speaking academic environment.

Complainant has used the mark TOEFL in connection with its business continuously since November 1964, Complainant owns trademark registrations for marks comprising or consisting of TOEFL, including United States of America registration no. 1103427 for TOEFL, registered on October 3, 1978. The domain name <crackmytoefl.com> ("the Disputed Domain Name") was registered on February 6, 2022, and resolves to a website purportedly offering services to "Hire Someone To Take TOEFL Test"..

#### **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.

The Disputed Domain Name is confusingly similar to Complainant's registered TOEFL marks. The Disputed Domain Name wholly incorporates Complainant's well-known TOEFL Marks in their entirety as the distinctive and dominant portion. The Disputed Domain Name merely adds the term "crackmy" and the generic Top-Level Domain ".com".

The term "crack" or "cracking" has the meaning "breaking or removing the copy protection" in the context of "software cracking" and basically means circumventing the copy protection of the software, and is therefore highly descriptive, especially considering Complainant's goods and services and that applicant wishes to circumvent their protection mechanisms of their educational testing services. Complainant's services include, amongst others, educational testing services where ETS has a strict protocol to avoid cheating in the tests. This use of the term "crack" has the dictionary meaning "breaking into or break through". The additional term "crackmy" in the Disputed Domain Name is descriptive of the Respondent's offering of services to circumvent the cheating protection mechanisms and allow test takers to break into their TOEFL and get the necessary score without taking the test, namely "Hire Someone To Do TOEFL Exam For Me".

When the Disputed Domain Name was registered on February 6, 2022, Complainant's rights in the TOEFL Marks had been firmly established as discussed above. Respondent cannot claim any rights to the Disputed Domain Name that are superior to Complainant's rights in the TOEFL Marks. Complainant is unaware of any prior rights that Respondent has in the Disputed Domain Name.

Complainant is not aware of any relationship between it and Respondent that would give rise to any license, permission, or authorization by which Respondent could own or use the Disputed Domain Name. In addition, on information and belief based on the circumstantial evidence available to Complainant, Respondent is not commonly known by the Disputed Domain Name.

The Disputed Domain Name is being used intentionally to mislead consumers that the website is connected with Complainant. The improper use of Complainant's TOEFL and other Complainant's trademarks on the Disputed Domain Name webpage adds to the likelihood of website visitors to be misled into believing that the content on the website is approved of, sponsored by, or affiliated with Complainant, when instead Respondent is attempting to circumvent the Complainant's business. Respondent is therefore not making a legitimate noncommercial or fair use of the Disputed Domain Name.

At the Disputed Domain Name, Respondent purportedly offers its schemes and claims (1) "Hiring someone to do TOEFL test for me is a viable option if you don't have the time to study on your own", (2) "If you need help, it is best to find someone who has been taking the test for some time", and (3) "The TOEFL" test is a flat-rate examination and a qualified expert can get you the best score possible".

It is apparent that Respondent has selected the Disputed Domain Name to disrupt the business of Complainant and/or to attract Internet users to its website by creating a likelihood of confusion with Complainant's TOEFL Marks. It is not possible to conceive of any use of the Disputed Domain Name that would not constitute an infringement of Complainant's rights in the TOEFL.

In view of the notoriety of the TOEFL Marks, the inclusion of "TOEFL" in the Disputed Domain Name in its entirety, coupled with the descriptive and related term "crackmy", and the use of the Disputed Domain Name in connection with content described above, it is clear that the user of the Disputed Domain Name knew of the existence of Complainant's marks and the significance of TOEFL in the market as a strong and well-known mark as of the registration date of the Disputed Domain Name.

Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's TOEFL Marks in bad faith under the Policy.

## **B. Respondent**

Respondent did not make a substantive reply to Complainant's contentions. On February 17, 2024, Respondent sent an email communication: "We require more to do the amendments".

## **6. Discussion and Findings**

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

Complainant has demonstrated it owns trademark rights in the TOEFL trademark by virtue of its registrations. See section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The addition of the term "crack my" does not prevent a finding of confusing similarity as Complainant's TOEFL mark is clearly recognizable in the Disputed Domain Name. See section 1.8 of the [WIPO Overview 3.0](#).

Accordingly, the Disputed Domain Name is confusingly similar to a mark in which Complainant has rights.

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

Complainant has presented a prima facie case that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has not been commonly known by the Disputed Domain Name. The fact that Respondent obtained the Disputed Domain Name which adds the term "crack my" to

Complainant's TOEFL mark indicates that the Respondent sought to piggyback on the mark for illegitimate reasons, namely, to engage in scheme that had people fraudulently take the TOEFL test on behalf of others.

After a complainant has made a prima facie case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, the Respondent has provided no evidence of any rights or legitimate interests in the Disputed Domain Name. Regardless, the use of a domain name for illegal activity can never confer rights or legitimate interests upon a respondent. [WIPO Overview 3.0](#), section 2.13.

In the absence of any evidence rebutting Complainant's prima facie case indicating Respondent's lack of rights or legitimate interests in respect of the Disputed Domain Name, the Panel finds that Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The Disputed Domain Name was registered years after Complainant first used its TOEFL mark. The evidence provided by Complainant makes it clear that Respondent undoubtedly knew of Complainant's TOEFL mark and knew that it had no rights or legitimate interests in the Disputed Domain Name.

There is no benign reason for Respondent to have registered the Disputed Domain Name that is confusingly similar to Complainant's mark.

The Disputed Domain Name resolves to an active website that claims to offer services that allow people to hire individuals to take the TOEFL test in their place. These are clearly fraudulent services. See section 3.4 of the [WIPO Overview 3.0](#).

The Panel finds that the only plausible basis for registering and using the Disputed Domain Name have been in bad faith.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith.

### **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 <crackmytoefl.com> be transferred to the Complainant.

*/Colin T. O'Brien/*

**Colin T. O'Brien**

Sole Panelist

Date: April 3, 2024