

ADMINISTRATIVE PANEL DECISION

Educational Testing Service v. lori harv
Case No. D2024-4442

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 lori harv, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 29, 2024. On October 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 30, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 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 November 9, 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 November 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 11, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on December 18, 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 a private educational testing and measurement organization. The Complainant was formed in 1947 and is headquartered in Princeton, New Jersey, and has nine additional locations in the United States, Canada, France, Germany, Italy, China, and India, and three subsidiaries/acquisitions in Israel, Canada, and France. The Complainant develops, administers, and scores more than 50 million tests annually, such as the industry-standard college admissions tests, SAT and GRE, and international English language proficiency test for non-native speakers, the Test of English for International Communication, in more than 180 countries at more than 9,000 locations. The Complainant has used the ETS trademark in connection with the Complainant's services since 1951 and owns trademark registrations for the ETS trademark in a number of countries including the following in the United States: Trademark Registration Number 559686 registered on June 3, 1952; Trademark Registration Number 1166461 registered on August 25, 1981; and Trademark Registration Number 1592803 registered on April 24, 1990.

The Respondent appears to be an individual with an address in the United States.

The disputed domain name was registered on October 11, 2024 and does not resolve to any website with content. The Complainant has provided evidence that the disputed domain name was used in connection with an email address impersonating the Complainant's Human Resources department.

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 the disputed domain name is confusingly similar to the Complainant's ETS mark in which the Complainant has rights since it incorporates the Complainant's ETS mark in its entirety and merely adds the non-distinctive and descriptive term "careers" at the end.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant also contends that the Respondent generated email addresses from the disputed domain name and used the email addresses to approach potential job seekers and sent them fake screening questions, fake offer letters, and fake checks in furtherance of a phishing scheme. The Complainant contends that such use is not bona fide use of the disputed domain name in connection with the offering of goods or services, and that it does not represent legitimate use or interest in the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. The Complainant contends that the Respondent used the email addresses generated from the disputed domain name to further a fraudulent and phishing scheme impersonating the Complainant, and that based on the fame of the ETS mark and the use of the disputed domain name, it is clear that the Respondent knew of the Complainant and the ETS mark when registering the disputed domain name.

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 mark 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.

Although the addition of other terms – here, “careers” – 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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.

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.

Panels have held that the use of a domain name for illegal activity – here, claimed phishing and impersonation/passing off – can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 the Respondent used email addresses generated from the disputed domain name to impersonate the Complainant and attempt to defraud perspective job seekers believing that they are communicating with the Complainant.

Panels have held that the use of a domain name for illegal activity – here, claimed phishing and impersonation/passing off – constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Further, based on the Respondent's use of the disputed domain name to impersonate the Complainant and the fact that the disputed domain name is identical to the Complainant's mark with just the term "careers", it is apparent that the Respondent had bad faith when registering the disputed domain name, and intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

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 <etscareers.org> be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: January 1, 2025