

ADMINISTRATIVE PANEL DECISION

Educational Testing Service v. diggy feezy
Case No. D2025-0134

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 diggy feezy, France.

2. The Domain Name and Registrar

The disputed domain name <etsglobaltoeic.org> is registered with Squarespace Domains LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 15, 2025. On January 16, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 16, 2025, 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 (Registrant Name: REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 20, 2025, 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 January 22, 2025.

On January 20, 2025, the Center informed the parties in French and English, that the language of the registration agreement for the disputed domain name is French. On January 22, 2025, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 the Respondent of the Complaint, and the proceedings commenced on January 28, 2025. In accordance with the Rules, paragraph

5, the due date for Response was February 17, 2025. The Respondent sent an email communication to the Center on February 16, 2025.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on February 26, 2025. 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 an American educational testing and measurement organization established in 1947. The Complainant operates globally and, besides its headquarters in Princeton, NJ, it has locations in Canada, France, Germany, Italy, China, and India. The Complainant owns trademarks consisting of or comprising ETS and TOEIC, among which:

- International Trademark No. 1289624 for ETS, registered on September 30, 2015, in International Classes 9, 16, 35, 36, 41, 42, designating, amongst other jurisdictions, the European Union; and
- European Union Trademark No. 000103010 for TOEIC, registered on November 16, 1998, in International Classes 9, 16, 41, 42.

In addition, the Complainant owns domain names containing the ETS mark, among which <ets.org> and <etsglobal.org>.

The disputed domain name was registered on January 4, 2025, well after the Complainant secured rights in the marks. The disputed domain name is currently inactive (leads to an error page). However, evidence submitted by the Complainant shows that the disputed domain name previously resolved to a website impersonating the Complainant's official website. The home page of the Respondent's look-a-like website prominently displayed the ETS and TOEIC marks and purported to show official TOEIC digital score reports. The look-a-like website also claimed that it is copyrighted by "ETS" and that ETS, the ETS logo and TOEIC are registered trademarks of ETS in the United States and other countries. Moreover, a subpage of the look-a-like website showed false score report information from the "ETS Global data base" and mentions that the issuer is verified by "Blockchain Certified Data" and "[a]uthorized by ETS and GLOBAL, a subsidiary of ETS".

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.

With respect to the first element, the Complainant contends that it has rights in the marks ETS and TOEIC and that the disputed domain name is confusingly similar to these marks. The disputed domain name incorporates these marks in their entirety and only adds the descriptive term "global" and the generic Top-Level Domain ("gTLD") ".org". The Complainant also points out that prior panels have long held that the gTLD of a domain name may be disregarded under the first element confusing similarity test.

Regarding the second element, the Complainant claims that the Respondent lacks rights or legitimate interests in the disputed domain name. First of all, the Complainant contends that their rights in the ETS and TOEIC marks were firmly established before the registration of the disputed domain name and that they are unaware of any prior rights that the Respondent has in the disputed domain name or in the ETS and TOEIC marks. Second, the Complainant notes that they are not aware of any relationship between them and the Respondent that would give rise to any license, permission, or authorization by which the Respondent could own or use the disputed Domain Name. In addition, the Complainant claims that the Respondent is not

commonly known by the disputed domain name. Third, the Complainant points out that the use of the disputed domain name for a website that purports to be the Complainant's official ETS website is not a legitimate noncommercial or fair use of the disputed domain name. The Complainant also notes in this regard that by doing so the Respondent aims to capitalize on the Complainant's reputation and goodwill of its ETS and TOEIC marks with the intent to confuse and defraud visitors of the look-a-like website.

With respect to the third element, the Complainant claims that the Respondent registered the disputed domain name in bad faith since the fact that the disputed domain name contains the well-known ETS and TOEIC marks in their entirety and its use for a look-a-like ETS website shows that the Respondent knew of the Complainant's ETS and TOEIC marks when it registered the disputed domain name. Furthermore, the Complainant contends that the Respondent also uses the disputed domain name in bad faith since it resolves to a look-a-like ETS website. In particular, the Complainant points out, the Respondent's look-a-like website demonstrates an intention to unlawfully profit from the use of the Complainant's marks by using the ETS and TOEIC marks in the disputed domain name and misdirecting customer traffic from the Complainant's legitimate websites thereby disrupting its business in violation of the Policy and the Rules. In addition, the Complainant claims, the look-a-like website may be used to phish information from ETS customers of the Complainant. It appears, the Complainant concludes, that the Respondent has registered the disputed domain name to capitalize on Complainant's reputation and goodwill of its ETS and TOEIC marks with the intent to confuse and defraud the Complainant's ETS customers.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. The Respondent stated in its email that the disputed domain name was used as part of an experimental exercise, with no commercial, fraudulent, or malicious intent and that it was willing to reach an amicable solution.

The Panel notes that the Center received an email from the Respondent on February 16, 2025. However, the Panel finds that the Respondent's email does not meet the requirements for a response as set out in Paragraph 5 of the Rules and merely contains unsupported conclusory statements. In keeping with decisions of prior panels, the Panel will therefore treat this submission by Respondent of an "informal response" in a similar manner as a respondent default. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.3.

6. Discussion and Findings

A. Preliminary Issue: Language of the Proceedings

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The language of the Registration Agreement for the disputed domain name is French. However, the Complainant has requested to conduct the proceeding in English on the basis of the following grounds:

- the Complainant prepared the Complaint in English in good faith, considering that the Registration Agreement for the disputed domain name is also available in English;
- the disputed domain name is made of the English abbreviations "ETS", which stands for "Educational Testing Service", "TOEIC", which stands for "Test of English for International Communication", as well as the English word "global";
- the disputed domain name resolves to a website containing only English language content and showing a "forged" TOEIC test results page of the Complainant;
- the Center has notified the Respondent in English of the language of the proceeding and the Complaint, and the Respondent has made no objection to the Complainant's request that English be the language of the proceeding;

- the Complainant is a company from the United States, and would be unfairly burdened and in a disadvantage if French would be the language of the proceeding;
- it would pose an unfair financial burden for the Complainant to prepare a new Complaint and translate the content and annexes to French and conduct the proceeding in French, considering that the Complaint and annexes have already been prepared and submitted; and
- it would cause unwarranted delay to translate the Complaint to French and conduct the proceeding in French because not only the Complaint, but all future correspondence would need to be translated to French.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules which provide that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see *Volkswagen AG v. Nowack Auto und Sport - Oliver Nowack*, WIPO Case No. [D2015-0070](#); *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#); *Beiersdorf AG v. Good Deal Communications*, WIPO Case No. [D2000-1759](#); and *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

Taking the abovementioned requirements and the circumstances of this case all into account, the Panel considers that conducting the proceeding in English would not be disadvantageous to the Respondent. Based on the circumstances presented by the Complainant and the English language email sent by the Respondent to the Center on February 16, 2025, the Respondent appears to speak and understand English. In addition, the Panel believes that there does not otherwise appear to be a risk that the Respondent may not appreciate the true nature of the proceeding and that they therefore may be deprived of a fair opportunity to present their case. The Center duly notified the Respondent in both English and French of these proceedings and the Complainant's request to conduct these proceedings in English instead of French. The Center's notices were issued to the email and correspondence addresses stated in the Whois records and, indeed, the Respondent's email of February 16, 2025, was a response to these notices. The Center's notice communicated both in English and French that "the Respondent may submit any comments on the Complainant's proposed language of the proceedings in its Response". However, the Respondent failed to submit comments on the language of the proceeding.

The Panel is therefore satisfied that the Respondent was given a fair opportunity to appreciate the true nature of the proceedings and what its consequences may be, as well as present its case, to raise objections as to the request for English to be the language of proceedings or to inform the Center on its language preference. It has however chosen not to comment on any of these issues (see *Volkswagen AG v. Song Hai Tao*, WIPO Case No. [D2015-0006](#)). The Panel concludes that the Respondent will not be prejudiced by the proceeding being conducted in English and it has the advantage of avoiding unnecessary delay of the proceeding and further expense on translations into French of the Complaint and the annexes. Accordingly, the Panel determines that the language of the proceeding shall be English.

B. 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 3.0](#), section 1.7.

The Complainant has shown rights in respect of the trademarks ETS and TOEIC for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the ETS and TOEIC marks are 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.

Although the addition of other terms, here “global”, 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.

Finally, as for the applicable gTLD “.org”, the Panel holds that this can be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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

C. 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.

The Panel finds that the Respondent does not use, or has made demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of services and neither makes a legitimate noncommercial or fair use of the disputed domain name. There is a risk of implied affiliation here since the disputed domain name is confusingly similar to the Complainant’s ETS and TOEIC trademarks. The overall facts and circumstances of the case do not show a bona fide offering of services or legitimate noncommercial or fair use either. The Panel is required to assess rights or legitimate interests with a view to the circumstances prevailing at the time of the filing of the Complaint. At that time, the disputed domain was being used for a look-a-like website purporting to be an official website of the Complainant by prominently displaying the ETS and TOEIC marks and including a statement that it is copyrighted by “ETS” and that ETS, the ETS logo and TOEIC are registered trademarks of ETS in the United States and other countries. The look-a-like website also claimed to provide official TOEIC digital score reports from the “ETS Global data base” and mentions that the issuer is verified by “Blockchain Certified Data” and “[a]uthorized by ETS and GLOBAL, a subsidiary of ETS”. The look-a-like website was therefore clearly intended to attract Internet users by creating a likelihood of confusion with the Complainant’s trademarks and was potentially even aimed to defraud such visitors through phishing or other means. Panels have held that the use of a domain name for illegitimate or illegal activity, here, claimed impersonation/passing off and phishing, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), sections 2.2, 2.5, 2.11 and 2.13.1.

In addition, the Complainant confirmed that the Respondent is not affiliated with the Complainant in any way nor has the Complainant licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant’s trademarks. The Panel has taken note of the Complainant’s confirmation in this regard and has not seen any evidence that would suggest the contrary. In the absence of any license or permission from the Complainant to use its trademarks, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v.*

Tang Hong, WIPO Case No. [D2014-1875](#); and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

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

D. 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 intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's ETS and TOEIC marks (paragraph 4(b)(iv) of the Policy). As the Panel found above under the first element, the disputed domain name is confusingly similar to the ETS and TOEIC marks. In addition, as discussed in further detail under the second element above, the Respondent previously used the disputed domain name for a look-a-like website of the Complainant's website purporting to provide official TOEIC digital score reports. These circumstances, in combination with the Respondent's clear absence of rights or legitimate interests in the disputed domain name, are strong indicators of bad faith.

The fact that the disputed domain name no longer resolves to this look-a-like website and is no longer being used does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Moreover, paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. The following other circumstances further support a finding of bad faith.

The Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name included the Complainant's ETS and TOEIC trademarks. As demonstrated by the Complainant, its ETS and TOEIC trademarks were registered many years before the registration of the disputed domain name in several countries, including in the Respondent's registered country of residence, France. Moreover, as detailed under the second element above, the disputed domain name previously resolved to a look-a-like website of the Complainant's website purporting to provide official TOEIC digital score reports. This indicates that the Respondent had the Complainant and its ETS and TOEIC trademarks in mind when registering the disputed domain name. The Respondent's registration in bad faith of the disputed domain name may accordingly also be inferred from these circumstances. [WIPO Overview 3.0](#), section 3.2.2.

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 <etsglobaltoeic.org> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: March 7, 2025