

## **ADMINISTRATIVE PANEL DECISION**

### **Educational Testing Service (ETS) v. Domain Privacy Case No. D2025-0253**

#### **1. The Parties**

The Complainant is Educational Testing Service (ETS), United States of America ("US"), represented by Cantor Colburn LLP, US.

The Respondent is Domain Privacy, India.

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

The disputed domain name <toeflibtets.org> is registered with Hostinger Operations, UAB (the "Registrar").

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 22, 2025. On January 23, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 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 (Redacted for Privacy, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 28, 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 February 3, 2025.

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 February 6, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 4, 2025.

The Center appointed Anton Polikarpov as the sole panelist in this matter on March 7, 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, established in 1947, is the US-based company which is recognized as one of the world's largest private educational testing and assessment organizations. It designs, administers, and scores a variety of standardized exams, including: TOEFL, TOEIC, GRE and Praxis.

Caring for distinctiveness on the market, the Complainant owns a significant number of trademarks, reflecting its extensive range of assessments and services, namely:

- US Trademark No. 559686 for , registered on June 03, 1952, covering goods in Class 16;
- International Trademark No. 882054 for TOEFL, registered on November 09, 2005, covering goods and services in Classes: 09, 16, 41 and 42;
- International Trademark No. 1026719 for TOEFL IBT, registered on December 17, 2009, covering goods and services in Classes: 09, 16, 41 and 42;
- International Trademark No. 1289624 for ETS, registered on September 30, 2015, covering goods and services in Classes: 09, 16, 35, 36, 41 and 42;
- Indian trademark No. 5040438 for TOEFL, registered on July 12, 2021, covering goods and services in Classes: 09, 38 and 42.

The Complainant is also the registrant of a substantial number of domain names comprising the trademark including <ets.org>, which resolves to the main public-facing website.

The disputed domain name was registered on December 23, 2024. The Respondent has set up a website that purports to offer testing and assessment services using the Complainant's trademarks. At the same time, opening the page, there appears a pop-up form to enter personal data, which cannot be closed until it is filled out.

#### **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 disputed domain name is identical or confusingly similar to the trademarks in which the Complainant has established rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

The Panel will now evaluate this case in light of the Complaint, the Respondent's lack of response, the Policy, the Rules, and any relevant principles of law deemed applicable, as outlined in accordance with paragraph 15(a) of the Rules.

In order to prevail, the Complainant must prove each of the following: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the 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.

On the other hand, the Respondent is expected to provide a detailed reply to the claims made in the Complaint, addressing each allegation and presenting all arguments supporting its right to retain the registration and use of the disputed domain name.

Despite the right to do so, the Respondent has not submitted a response addressing the contentions of the Complainant and the evidence provided by it.

Considering these circumstances, the Panel rules as follows.

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

Pursuant to paragraph 4(a)(i) of the Policy, a Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights.

Section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) makes clear that, where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

In the present case the Complainant has sufficiently demonstrated existence of its rights for the ETS, TOEFL and TOEFL IBT marks in numerous jurisdictions.

Concerning the potential confusing similarity, in numerous UDRP cases panels decided that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see the [WIPO Overview 3.0](#), section 1.7.).

Here, the Panel finds that the TOEFL, TOEFL IBT and ETS marks are fully incorporated in the disputed domain name.

The presence of the Top-Level Domain ("TLD") ".org" is irrelevant for the purpose of determining confusing similarity, as it is a standard requirement of domain names registered under this TLD (see the [WIPO Overview 3.0](#), section 1.11.1).

As such, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks. Accordingly, the Complainant has beyond doubt established the first element of paragraph 4(a) of the Policy.

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

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant must establish that the respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy sets out a non-exhaustive list of circumstances under which a respondent may demonstrate rights or legitimate interests in a disputed domain name. However, the Respondent failed to describe any reason supporting such rights or legitimate interests.

As explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of

production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

The TOEFL, TOEFL IBT and ETS were well established prior to the registration of the disputed domain name and the Respondent is not authorized, licensed, or otherwise permitted to use the trademarks.

Instead, the website associated with the disputed domain name appears to be misleading consumers by creating a purposeful impression of affiliation with the Complainant. The improper use of the Complainant's trademarks increases the likelihood that visitors will believe the said website is endorsed by or connected to the Complainant. This actions does not constitute a bona fide offering of goods or services under the Policy.

Moreover, the website associated with the disputed domain name exhibits characteristics that may indicate phishing or other deceptive practices. Specifically, upon accessing the site, users are immediately presented with a pop-up form requesting personal data without an option to decline. Such a mechanism raises concerns about the legitimacy of the site's purpose and suggests a higher likelihood that it is being used in a manner inconsistent with bona fide commercial or non-commercial activity.

Previous UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see the [WIPO Overview 3.0](#), section 2.13.1.).

In light of the above, the Panel finds that the Respondent has failed to establish any rights or legitimate interests in the disputed domain name. The Complainant has therefore satisfied the second element of paragraph 4(a) of the Policy.

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

In this case, the disputed domain name was registered long after the ETS, TOEFL and TOEFL IBT marks were granted protection.

The Complainant is a well-known company with a recognized reputation worldwide, which was also confirmed by multiple panel decisions (see *Educational Testing Service v. Int'l Names Ltd.*, WIPO Case No. [D2007-0449](#); *Educational Testing Service v. Park Jeong Foreign Language Institute*, WIPO Case No. [D2001-1064](#)).

Previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names 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 (see the [WIPO Overview 3.0](#), section 3.1.4).

Having reviewed the available record, the Panel considers that the Respondent was aware or ought to have been aware that the disputed domain name incorporated the ETS, TOEFL and TOEFL IBT marks at the time of creating.

Given also the lack of rights to or legitimate interests in the disputed domain name, as detailed above in Section 6.B., everything points in favor of bad faith registration by the Respondent (see the [WIPO Overview 3.0](#), section 3.2.2.).

With respect to use of the disputed domain name, the website falsely presents itself as a testing and assessment platform purporting to offering service competitive to those of the Complainant, prominently using the Complainant's trademarks, and includes the unclosable pop-up form asking visitors to fill out personal data.

Although the Complainant did not provide exhaustive evidence of the Respondent's intention to use the mentioned form only for phishing purposes, given the other circumstances, the Panel believes that such a risk exists.

The use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith (see the [WIPO Overview 3.0](#), section 3.1.4.).

Additionally, there is no information about the Respondent, its contacts, address etc., which indicates an intention to conceal the true identity. In the Panel's view, this further corroborates the finding of bad faith. Therefore, the Panel believes that the Respondent is using the disputed domain name in bad faith to intentionally attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademarks as to source, sponsorship, affiliation or endorsement of the Respondent's website, in violation of paragraph 4(b)(iv) of the Policy.

Based on its evaluation of all evidence presented, the Panel finds that the Complainant succeeds under paragraph 4(a)(iii) 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, <toeflibtets.org>, be transferred to the Complainant.

*/Anton Polikarpov/*

**Anton Polikarpov**

Sole Panelist

Date: March 21, 2025