

## ADMINISTRATIVE PANEL DECISION

Educational Testing Service (ETS) v. 上海企安在线信息科技有限公司 (shang hai qi an zai xian xin xi ke ji you xian gong si)

Case No. D2025-1728

### 1. The Parties

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

The Respondent is 上海企安在线信息科技有限公司 (shang hai qi an zai xian xin xi ke ji you xian gong si), China.

### 2. The Domain Names and Registrar

The disputed domain names <itoeft.com>, and <toeflgrowth.com> (collectively the “Disputed Domain Names”, each a “Disputed Domain Name”) are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 29, 2025. On April 30, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On May 7, 2025, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details of the registrant. The Center sent an email communication to the Complainant on May 8, 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 amended Complaint in English on May 13, 2025.

On May 8, 2025, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On May 13, 2025, the Complainant confirmed its request that English 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 in Chinese and English of the Complaint, and the proceedings commenced on May 14, 2025. In accordance with the Rules, paragraph 5, the due date for the Response was June 3, 2025. The Respondent did not submit any formal response, although the Respondent sent an email communication in English to the Center on May 27, 2025. Accordingly, the Center notified the commencement of panel appointment process on June 16, 2025.

The Center appointed Rosita Li as the sole panelist in this matter on June 20, 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 one of the world’s largest private educational testing and measurement organizations. Formed in 1947, the Complainant is headquartered in Princeton, New Jersey, United States of America with additional locations in the United States of America, Canada, France, Germany, Italy, China, and India, with three additional subsidiaries in Israel, Canada, and France. The Complainant has developed, administered, and scored more than 50 million tests in more than 180 countries at more than 9,000 locations each year, with the TOEFL iBT test being one of the world’s most widely respected English-language assessments used for admissions purposes in more than 160 countries.

The Complainant is the owner of trademark registrations for TOEFL throughout the world, including but not limited to the following:

- 1) United States of America Registration No. 73155230 for TOEFL registered on October 3, 1978;
- 2) United States of America Registration No. 78738224 for TOEFL registered on November 7, 2006;
- 3) United States of America Registration No. 85952811 for TOEFL registered on October 11, 2016;
- 4) Brazil Registration No. 810581833 for TOEFL registered on May 10, 1983;
- 5) Singapore Registration No. T8102386H for TOEFL registered on March 22, 1985;
- 6) International Registration No. 1208644 for TOEFL ITP registered on April 17, 2014 designating Egypt, India, Tunisia, China, and Mexico; and
- 7) International Registration No. 905050 for TOEFL ACCELERATOR registered on September 7, 2006 designating Germany, Republic of Korea, China, United Kingdom, Italy, France, and Türkiye

(collectively, the “TOEFL Trademarks”).

The Complainant submitted that it has used the TOEFL Trademarks in connection with its business since November 1964. It is also an industry leader and has always been recognized in connection with the TOEFL Trademarks.

The Disputed Domain Names were registered by the Respondent on September 3, 2024 (for <toeflgrowth.com>) and November 17, 1999 (for <toefl.com>).

As of the date of filing this Complaint, the Disputed Domain Name <toeflgrowth.com> redirected to the Disputed Domain Name <toefl.com>, which is connected to a website purportedly offering “TOEFL official AI learning and practice platform”.

## 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 Names. A summary of the Complainant's submissions is as follows:

- (i) The Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant contends that:
- The Complainant's registrations in the United States of America all predate the registration of the Disputed Domain Names, and the TOEFL Trademarks are incontestable within the meaning of the United States of America Lanham Act. There is conclusive evidence of the validity of the TOEFL Trademarks, the Complainant's ownership of the TOEFL Trademarks, and the Complainant's exclusive right to use the TOEFL Trademarks in commerce or in connection with the services;
  - The Complainant owns exclusive rights in and to the well-known TOEFL Trademarks, in particular when used in connection with educational services;
  - The Disputed Domain Names wholly incorporate the TOEFL Trademarks in their entirety as the distinctive and dominant portion with the descriptive/generic dictionary term "growth" or the letter "i";
  - The additional term "growth" merely adds the non-distinctive and highly descriptive term "growth". It implies that the Respondent offers growth or development related to TOEFL tests, as the dictionary term of growth has the meaning of "the process of growing" or "progressive development";
  - The Disputed Domain Names as a whole convey a confusing impression of the Complainant's TOEFL Trademarks.
- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. The Complainant contends that:
- The Complainant is unaware of any prior rights that the Respondent has in the Disputed Domain Names;
  - The Respondent cannot claim any rights to the Disputed Domain Names, as the Complainant's TOEFL Trademarks had been firmly established prior to the registration of the Disputed Domain Names on September 3, 2024 and November 17, 1999;
  - The Complainant is unaware of any relationship between it and the Respondent that would grant any license, permission, or authorization where the Respondent could own or use the Disputed Domain Names;
  - The Disputed Domain Name <toeflgrowth.com> redirects to the Disputed Domain Name <toefl.com>, which resolves to a website used to mislead potential customers of the Complainant that the Disputed Domain Names are connected to the Complainant;
  - The Disputed Domain Name <toefl.com> resolves to a website that holds itself out as "TOEFL official AI learning and practice platform". The website uses the marks and photos of the Complainant to promote a false connection between the Disputed Domain Names and the Complainant.
  - The Disputed Domain Name <toeflgrowth.com> previously purported to offer a method for test takers to obtain their TOEFL score in advance. The Disputed Domain Names appear to have been created for phishing and credential harvesting purposes, as the websites require users to input their credentials to view their testing scores;
- (iii) The Disputed Domain Names were registered and were being used in bad faith. The Complainant contends that:
- The Respondent selected the Disputed Domain Names to disrupt the business of the Complainant and/or to attract Internet users to its website by creating a likelihood of confusion with the Complainant's TOEFL Trademarks;
  - The inclusion of the TOEFL Trademarks in the Disputed Domain Names in their entirety, with the descriptive/generic term "growth" or the letter "i" and the manner of use of the Disputed Domain Names shows that the user of the Disputed Domain Names knew of the existence of the Complainant's TOEFL

Trademarks and the significance of TOEFL in the market;

- The Respondent acted with opportunistic bad faith by registering the Disputed Domain Names that are confusingly similar to the Complainant's TOEFL Trademarks;
- The Respondent demonstrates an intention to unlawfully profit from the use of the Complainant's TOEFL Trademarks in the Disputed Domain Names and misdirect customer traffic from the Complainant's legitimate websites;
- The Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's TOEFL Trademarks in bad faith;
- The registration of the Disputed Domain Names by the Respondent is unlawful and in bad faith, as it violates the Registrar's Domain Name Registration Agreement.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. The Respondent sent an email communication in English to the Center on May 27, 2025, stating that: "We are currently undergoing domain name adjustment and expect to complete the replacement with a new domain name within one month. During this period, we kindly request that the old domain name retain the automatic redirect function for three months and add an intermediate transition page to ensure a smooth transition."

## **6. Discussion and Findings**

### **6.1 Language of the Proceeding**

The language of the Registration Agreements for the Disputed Domain Names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the following:

- (i) English is the language that the Complainant transacts business in;
- (ii) The Disputed Domain Names include English words, such as "growth", and the TOEFL Trademarks, which itself is used as an acronym for "Test of English as a Foreign Language";
- (iii) The website hosted by the Disputed Domain Names purports to offer a tool to aid study of the English language for the TOEFL examination, suggesting the Respondent is sufficiently familiar with the English language that it can instruct others on it; and
- (iv) Translating the Complaint would cause undue delay to the proceedings.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above and the fact that:

- (i) The Disputed Domain Names are registered in Latin script rather than Chinese script;
- (ii) The Disputed Domain Names resolve to websites offering and instructing on the TOEFL examination in English;

- (iii) Even though the Center has used English and Chinese in the relevant correspondences with the Parties, the Respondent has not filed any formal response and did not comment on the language of the proceeding;
- (iv) The email communication sent by the Respondent to the Center on May 27, 2025 was in English; and
- (v) Translating the Complaint will result in a delay in the adjudication of the proceedings and costs to the Complainant.

The Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **6.2 Substantive Issues**

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a complaint:

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

### **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 3.0](#), section 1.7.

Based on the available materials, 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 Panel finds that the entirety of the TOEFL Trademarks is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are 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, "i" and "growth", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Disputed Domain Names and the TOEFL Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available materials, 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 Names. 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 Names such as those enumerated in the Policy or otherwise.

In accordance with [WIPO Overview 3.0](#), section 2.5.1, where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The Disputed Domain Name <toeflgrowth.com> has included the Complainant's TOEFL Trademarks in their entirety, as well as a non-distinctive and descriptive term "growth".

The Disputed Domain Names are connected to a website purportedly to be "TOEFL official AI learning and practice platform". Panels have held that the use of a domain name for illegal activity, where the Respondent claimed impersonation as the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. By offering for sale an alleged training program for the Complainant's TOEFL examination that has not been authorized by the Complainant, requiring users to input their credentials issued by the Complainant to view their testing scores, and using the Complainant's TOEFL Trademarks and photos on the website resolved under the Disputed Domain Names, the Respondent falsely associated itself with the Complainant and/or impersonated the Complainant. Given the Respondent's use of the Complainant's well-recognized TOEFL Trademarks in their entirety in the Disputed Domain Names and claiming to be the Complainant's official platform on the website, the Panel finds that the Respondent's registration of the Disputed Domain Names is free-riding on the reputation of the Complainant and creating a false impression that the Respondent may be associated with the Complainant.

Given the above, the Panel finds it apparent that the Respondent had the intention to divert consumers seeking to find the Complainant, the services offered by the Complainant, or to tarnish the Complainant's TOEFL Trademarks. It is clear that the use of the Disputed Domain Names, which incorporates the Complainant's TOEFL Trademarks, is an attempt by the Respondent to capitalize on the goodwill and reputation of the TOEFL Trademarks, which the Panel considers not to be for a legitimate noncommercial or fair use of the Disputed Domain Names.

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's registration of the Disputed Domain Names incorporates the Complainant's TOEFL Trademarks in their entirety. The Panel also notes that the time of the registration of the Disputed Domain Names on September 3, 2024 (for <toeflgrowth.com>) and November 17, 1999 (for <toefl.com>), respectively, are well after the registration of the Complainant's TOEFL Trademarks. The Complainant has provided supporting materials to show that the TOEFL Trademarks are well known and reputable amongst the general public, including evidence that it has developed, administered, and scored more than 50 million tests in more than 180 countries at more than 9,000 locations each year. The Panel accepts that the Complainant has been continuously using their TOEFL Trademarks and finds that it would not be plausible for the Respondent to claim that it was unaware of the Complainant and the TOEFL Trademarks. The Panel is prepared to find that the Respondent knew or should have known that the registration of the Disputed Domain Names would be confusingly similar to the TOEFL Trademarks. [WIPO Overview 3.0](#), section 3.2.2. Accordingly, the Panel finds that the Respondent's registration of the Disputed Domain Names, which are confusingly similar to the TOEFL Trademarks, is a clear indication of bad faith.

In accordance with paragraph 4(b)(iv) of the Policy, if by using the Disputed Domain Names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location, is an indicator of bad faith on the part of the Respondent. As elaborated in the previous section 6.2.B. and in the paragraph above, the Respondent used the Disputed Domain Names to attract Internet users through confusion with the TOEFL Trademarks, and offered for sale a purported official training program for the Complainant's TOEFL examination which has not been authorized by the Complainant. Further, the Respondent impersonated the Complainant by using the Complainant's TOEFL Trademarks and photos to promote a false connection between the Disputed Domain Names and the Complainant. In view of this, the Panel is of the view that the Respondent registered and used the Disputed Domain Names in bad faith.

Having reviewed the materials, the Panel notes that the Respondent submitted by email communication on May 27, 2025 that the Disputed Domain Names would undergo adjustment and would be replaced within one month. As of the date of this decision, the Disputed Domain Names still resolve to a website purporting to offer "TOEFL official AI learning and practice platform" with the TOEFL Trademarks being displayed on the website. The Panel finds that the email communication and submissions of the Respondent do not prevent a finding of bad faith under the Policy.

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 Names <itoeft.com>, and <toeflgrowth.com> be transferred to the Complainant.

*/Rosita Li/*

**Rosita Li**

Sole Panelist

Date: July 3, 2025