

ADMINISTRATIVE PANEL DECISION

elasticsearch B.V. v. 何晓群 (he xiao qun)
Case No. DCC2023-0015

1. The Parties

The Complainant is elasticsearch B.V., Netherlands, represented by Quinn IP Law, United States of America (“United States”).

The Respondent is 何晓群 (he xiao qun), China.

2. The Domain Name and Registrar

The disputed domain name <elasticsearch.cc> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2023. On September 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 21, 2023, 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 (Alibaba Cloud Computing (Beijing) Co., Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 21, 2023 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 September 27, 2023.

On September 21, 2023, the Center informed the Parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On September 25, 2023, the Complainant requested English to be the language of the proceeding. On 25 September 2023, the Respondent sent an informal email in Chinese to the Center, containing inter alia, a request that the language of the proceeding be Chinese.

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 proceeding commenced on October 2, 2023.

On October 20, 2023, the Complainant submitted a supplemental filing in English.

In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties on October 23, 2023 that it would proceed with Panel Appointment.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on November 13, 2023. 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.

On November 23, 2023, the Center issued Procedural Order No. 1 (the "Order") in Chinese and English:

- (i) Requesting the Complainant to provide evidence by November 30, 2023 regarding the reputation and use of its ELASTIC SEARCH and/or ELASTIC trade marks including in particular in China prior to the registration date of the disputed domain name, i.e., November 1, 2016;
- (ii) Granting the Respondent the opportunity to comment on the Complainant's submission in response to the Order by December 6, 2023; and
- (iii) Extending the Decision due date until December 15, 2023.

The Complainant submitted its response to the Order on November 30, 2023.

The Respondent did not comment on the Complainant's response to the Order.

4. Factual Background

A. Complainant

The Complainant is a company headquartered in the Netherlands and a provider of search engine services under the trade mark ELASTICSEARCH (the "Trade Mark").

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the Trade Mark, including United States registration No. 4212205, with a registration date of September 25, 2012; and International registration No. 1114893, with a registration date of January 30, 2012.

The Complainant has sold its search engine products under the Trade Mark worldwide, including in China, since 2010; and it has marketed and promoted the Trade Mark in China, including in respect of annual developers conferences since 2013.

B. Respondent

The Respondent is located in China.

C. The Disputed Domain Name

The disputed domain name was registered on November 1, 2016.

D. Use of the Disputed Domain Name

The disputed domain name has not been used in respect of any active website.

It has been offered for sale via the Sedo website for USD888.

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.

B. Respondent

In his email communication regarding the language of the proceeding, the Respondent contended as follows:

- (i) The disputed domain name consists of the common words ELASTIC and SEARCH which do not correspond with the Complainant's rights;
- (ii) The Respondent initially intended to use the disputed domain name in respect of an Internet search website, but due to the Respondent's lack of investment, the project was never launched;
- (iii) The Respondent has never sold the disputed domain name on Sedo at the price mentioned by the Complainant (the Panel understands this to possibly be an argument that the Respondent has not listed the disputed domain name for sale; the Complainant has however provided screenshot evidence that it was so listed).

6. Discussion and Findings

6.1 Supplemental Filing

Panels have sole discretion, under paragraphs 10 and 12 of the Rules, whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting its filing would normally need to show its relevance to the case and explain why it was unable to provide that information in the complaint or response (for example, owing to some exceptional circumstance).

Paragraph 12 of the Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6.

The Complainant seeks to submit, as a supplemental filing, three recent decisions under the Policy in which the Complainant obtained transfer of domain names comprising the Trade Mark, or a typo version of the Trade Mark. The Complainant seeks to rely upon the findings in respect of each of the limbs under paragraph 4(a) of the Policy in the decisions, and the fact the decisions involved similar underlying facts to the facts in this proceeding.

As (fairly) noted by the Complainant in its submissions in support of the supplemental filing, the UDRP does not operate on a binding precedent system. WIPO Overview 3.1, section 4.1.

The Panel does not consider it is necessary or appropriate, in all the circumstances, to allow the supplemental filing.

6.2 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name 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 fact that the disputed domain name has been offered for sale on the English language Sedo website, and the disputed domain name is an English language domain name - which demonstrates that the Respondent understands English; the Complainant conducts its business in English; and requiring translation of the Complaint would unfairly prejudice the Complainant by causing unnecessary costs and delay.

The Respondent contended that he is a Chinese citizen and his first language is Chinese; and, although the Respondent has studied English for a period of time, the Respondent relies mainly on translation software, so the Respondent cannot accurately understand the difference between the original English text and the translated text.

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 3.0](#), section 4.5.1).

Having considered all the matters above, and bearing in mind also the Respondent did not avail itself of the opportunity to file a formal response in this proceeding, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.3 Substantive Elements of the Policy

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Respondent's argument that the disputed domain name consists of two generic terms "Elastic" and "Search" does not have any relevance to the finding of identity or confusing similarity under the first element assessment.

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.

While 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 often impossible 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. 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 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 mentioned in his informal email of September 25, 2023 that he initially intended to use the disputed domain name in respect of an Internet search website, but due to his lack of investment, the project was never launched. However, such assertion is not supported by any evidence. Even if such evidence was provided, it would lead to the inference that the Complainant was being targeted, it being difficult to overlook that the Respondent’s proposed service is in the same area of services as those provided by the Complainant. Therefore, the Respondent has failed to rebut 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.

Moreover, the disputed domain name being identical to the Trade Mark carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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 according to the Complainant’s evidence annexed to the Complaint, the disputed domain name was offered for sale via the Sedo website for USD888. The Panel finds that such conduct amounts to bad faith under paragraph 4(b)(i) of the Policy.

In addition, having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness and reputation of the Complainant’s Trade Mark, the composition of the disputed domain name, the Respondent’s confirmation that he intended to use the disputed domain name in respect of an Internet search website – the very industry and service provided by the Complainant under the mark exactly matching the disputed domain name, and finds therefore that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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

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 <elasticsearch.cc> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: December 14, 2023