

## **ADMINISTRATIVE PANEL DECISION**

EnsembleIQ, Inc. v. Daniel Townsend, Plum Tree Group  
Case No. DIO2023-0013

### **1. The Parties**

Complainant is EnsembleIQ, Inc., United States of America ("United States"), represented White and Williams LLP, United States.

Respondent is Daniel Townsend, Plum Tree Group, United States.

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

The disputed domain name <ensembleiq.io> is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 27, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on May 2, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 5, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the "Policy"), the Rules for .IO Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .IO Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on May 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 2023. Respondent sent an informal email communication on May 22, 2023. The Center informed the Parties of its commencement of Panel appointment process on June 6, 2023.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on June 9, 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.

#### **4. Factual Background**

Complainant is a company based in the United States. For several years prior to the registration of the disputed domain name, Complainant has offered business solutions via various goods and services to clients under the mark ENSEMBLEIQ. Complainant owns trademark registrations for the ENSEMBLEIQ mark in the United States, where Respondent lists an address of record, including United States Registration No. 5,932,341 (registered December 10, 2019). Complainant further communicates with prospective consumers via its website, located at “www.ensembleiq.com”.

The disputed domain name was registered on March 18, 2022. Respondent has used the URL associated with the disputed domain name to resolve to a website that appears to mimic an official website of Complainant. The website includes references to the ENSEMBLEIQ mark, and it includes links inviting prospective consumers to “Hire With Ensemble” or to “Apply for Jobs” via the website. Complainant has not authorized any activities by Respondent, nor any use of its trademarks thereby.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant’s trademarks, (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

Specifically, Complainant contends that it has established rights to its registered ENSEMBLEIQ mark. Complainant contends that Respondent has incorporated the ENSEMBLEIQ mark in full into the disputed domain name, simply adding the country code Top-Level-Domain (ccTLD) “.io,” which is non-source-identifying. Complainant asserts that Respondent has no rights or legitimate interest in the disputed domain name registration or use of the disputed domain name. Rather, Complainant contends that Respondent has acted in bad faith in setting up a website and possibly email addresses meant to impersonate Complainant and to confuse prospective partners seeking the business solutions offered by Complainant via its ENSEMBLEIQ mark.

In this regard, Complainant asserts that Respondent has used Complainant’s mark in an apparent phishing scheme, attempting to obtain sensitive personal and financial information from prospective consumers and clients of Complainant for Respondent’s own commercial gain.

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

The Center received an informal email communication from Respondent on May 22, 2023. Respondent did not submit a formal response to the Complaint, and did not address Complainant’s contentions in this proceeding.

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

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

The Panel must first determine whether the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy. The Panel finds that it is.

The disputed domain name incorporates in full Complainant’s ENSEMBLEIQ mark.

It is well-established by prior panels that when a domain name incorporates a complainant’s registered

trademark, such incorporation is sufficient to establish identity or confusing similarity. See *IMC B.V. v. JustinBaer, YKTS*, WIPO Case No. [DIO2023-0001](#). The Panel finds that the disputed domain name is identical to a trademark in which Complainant has rights in accordance with paragraph (4)(a)(i) of the Policy.

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

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. No evidence has been presented to the Panel that might support a claim of Respondent's rights or legitimate interests in the disputed domain name, and Respondent has no license from, or other affiliation with, Complainant.

Therefore, the Panel finds that Complainant has provided sufficient evidence for a *prima facie* case of Respondent's lack of rights or legitimate interests in accordance with paragraph 4(a)(ii) of the Policy, which Respondent has not rebutted.

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

There are several ways that a complainant can demonstrate that a domain name was registered or used in bad faith. As noted in section 4 above, Respondent has used the URL associated with the disputed domain name to resolve to a website that appears to mimic an official website of Complainant. The website includes references to the ENSEMBLEIQ mark, and it includes links inviting prospective consumers to "Hire With Ensemble" or to "Apply for Jobs" via the website. Respondent is thus trading on the goodwill of Complainant's trademarks to attract Internet users, presumably for Respondent's own commercial gain. See *Starbucks Coffee Company Corporation v. Mohammad Mukati*, WIPO Case No. [DIO2023-0015](#).

The Panel finds that Respondent registered and used the disputed domain name in bad faith for purposes of 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, <ensembleiq.io>, be transferred to Complainant.

/Lorelei Ritchie/

**Lorelei Ritchie**

Sole Panelist

Date: June 23, 2023