

ADMINISTRATIVE PANEL DECISION

Datadog, Inc. v. Juergen Neeme
Case No. DCO2022-0081

1. The Parties

The Complainant is Datadog, Inc., United States of America (“United States” or “U.S.”), represented internally.

The Respondent is Juergen Neeme, Germany.

2. The Domain Name and Registrar

The disputed domain name <datadoghq.co> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 28, 2022, 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.

The Center verified that 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 October 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2022.

The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 24, 2022.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on October 31, 2022. 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 the holder of the following United States trademark registrations for the DATADOG trademark:

- United States Trademark Registration No. 4,885,599 for DATADOG, registered on January 12, 2016, for goods of International Classes 9 and 42. First use in commerce is claimed as of July 27, 2010.
- United States Trademark Registration No. 6,225,826 for DATADOG, registered on December 22, 2020, for goods of International Class 9 and services of International Class 42. First use in commerce is claimed as of July 27, 2010.

The DATADOG trademark is used for monitoring and security platform for cloud applications.

The Complainant operates the domain name <datadoghq.com> created on July 9, 2010.

The disputed domain name <datadoghq.co> was created on December 7, 2021, and resolves to a website showing a parking page containing various commercial or sponsored pay-per-click ("PPC") links to third-party websites.

5. Parties' Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant claims that it has registered and common law rights in the DATADOG trademark and that the disputed domain name include the Complainant's trademark in its entirety and is confusingly similar to the Complainant's DATADOG trademark and the Complainant's registered domain name <datadoghq.com>.

No rights or legitimate Interests

The Complainant further contends that the Respondent does not have a right or legitimate interest to the disputed domain name because (1) there is no evidence that the Respondent's use of the disputed domain name is in connection with a *bona fide* offering of goods or services. The website to which the disputed domain name resolves displays "Related searches" and an option to "Buy this domain"; (2) there is no evidence that an individual, business, or other organization (other than the Complainant) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; (3) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

Registered and used in bad faith

The Complainant submits that the disputed domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration for valuable consideration (e.g., in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name). Evidence of this is that the disputed domain name forwards to multiple different web sites includes a website that prominently displays the option to "Buy this domain" at the top of the main homepage.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules. Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel “shall draw such inferences therefrom as it considers appropriate”.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant submitted evidence that the DATADOG trademark enjoys protection under U.S. trademark registrations.

Ownership of a nationally or regionally registered trademark serves as a *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Thus, the Panel finds that the Complainant has proved that it has rights in the DATADOG trademark.¹

The disputed domain name incorporates the entirety of the Complainant's DATADOG trademark, that leads to the finding that the disputed domain name is considered confusingly similar to the Complainant's trademark for purposes of the UDRP (section 1.7. of the [WIPO Overview 3.0](#)).

As provided in section 1.8 of the [WIPO Overview 3.0](#), the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. Thus, addition of the term “hq” (which is the well-known abbreviation of the term “headquarters”) does not prevent a finding of confusing similarity between the Complainant's trademark which remains recognizable in the disputed domain name.

The applicable Top-Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (section 1.11.1. of the [WIPO Overview 3.0](#)).

The first element of paragraph 4(a) of the Policy is therefore satisfied.

¹ Given that the Complainant owns U.S. trademark registrations for the DATADOG trademark, which establish the registered trademark rights to the Complainant's trademark, it is not necessary for the Panel to make a determination on the Complainant's alleged common law rights in the DATADOG trademark.

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 possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

In light of the particular facts and circumstances of the case, the Panel draws the inference that the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its DATADOG trademark.

Based on the case records, the Panel finds that there is no evidence that the Respondent has been commonly known by the disputed domain name, and there is no similarity or association between the name of the Respondent and the disputed domain name, which could demonstrate rights or legitimate interests of the Respondent. See, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#).

According to section 2.9. of the [WIPO Overview 3.0](#), applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

Taking into account that the disputed domain name fully incorporates the Complainant DATADOG trademark and closely imitates the Complainant's domain name <datadoghq.com>, the Panel finds that the use of the disputed domain name could not constitute any *bona fide* offering of goods or services using the disputed domain name (section 2.5.1 of the [WIPO Overview 3.0](#)). See also [WIPO Overview 3.0](#), section 2.9 (unless "genuinely related to the dictionary meaning" of the disputed domain, "[pay-per-click] links do not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of Complainant's mark or otherwise mislead Internet users".) See, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#) ("use of a domain name in connection with a web page that "only contains advertisements as sponsored links" is "for presumed commercial gain"); *Zions Bancorporation v. Domain Administrator, Fundacion Private Whois*, WIPO Case No. [D2014-0465](#) ("a parking website containing sponsored links [...] cannot be considered either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Domain Name as the Respondent is unduly profiting from the Complainant's goodwill by misleading Internet users to its website"); and *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. [D2014-0206](#) (a disputed domain name "pointing to a website featuring PPC [pay-per-click] links [...] could not be construed as a *bona fide* or legitimate noncommercial or fair use").

By not submitting a Response, the Respondent has failed to invoke any circumstances which could demonstrate any rights or legitimate interests in the disputed domain name. Under such circumstances the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

Accordingly and absent specific allegations of the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name may lead, in appropriate circumstances, to a finding that a disputed domain name was registered in bad faith. The Panel comes to the conclusion that the circumstances of the present case (*i.e.*

the use of the website resolving to pay-per-click links, and the fact that that DATADOG trademark was registered well before the disputed domain name, and that the disputed domain name fully incorporates the Complainant DATADOG trademark and closely imitates the Complainant's domain name <datadoghq.com>), justify a finding that the disputed domain name has been registered in bad faith, and the Panel, accordingly, finds that the disputed domain name was registered in bad faith.

As for the use of the disputed domain name, the Panel finds that the use of a domain name that is identical or confusingly similar to a trademark to obtain click-through-revenue can amount to bad faith use (see, among others, *Ifscience Limited v. Domains By Proxy LLC / Dr Chauncey Siemens*, WIPO Case No. [D2016-0909](#); *AMADEUS IT GROUP, S.A. v. Contact Privacy Inc. Customer 0151133672, Contact Privacy Inc. Customer 0151133672 / Milen Radumilo*, WIPO Case No. [D2018-2192](#)).

Based on the available record, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.²

Thus, the Panel establishes that the Respondent registered and is using the disputed domain name in bad faith.

The third element of paragraph 4(a) of the Policy is therefore satisfied.

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, <datadoghq.co>, be transferred to the Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: November 14, 2022

² In light of the Panel's findings, the Panel does not need to address the Complainant's allegation that the disputed domain name was acquired primarily for the purpose of selling, renting, or otherwise transferring it to Complainant or to a competitor of the Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name.