

## **ADMINISTRATIVE PANEL DECISION**

Educational Testing Service v. Domains By Proxy, LLC / M S  
Case No. D2022-0867

### **1. The Parties**

The Complainant is Educational Testing Service, United States of America (“United States”), represented by Jones Day, United States.

The Respondent is Domains By Proxy, LLC, United States / M S, United Kingdom.

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

The disputed domain name <takemy-gre.com> 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 March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming it is the registrar for the disputed domain name;
- (b) confirming that the registration agreement through which the disputed domain name was registered incorporated the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”);
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint; and
- (d) confirming that the language of the registration agreement is English.

The Center sent an email communication to the Complainant on March 16, 2022, 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 March 16, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Policy, 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 March 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on May 2, 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 provides educational testing and assessment services and associated research. Amongst other things, it has been providing the GRE General test since 1941 as a tool for rating applicants for entry to graduate and business schools. It also provides a number of subject specific GRE tests and other widely used tests including the TOEFL test, the TOEIC test, and the PRAXIS test.

Currently, the Complainant develops, administers and scores more than 50 million tests per year in more than 180 countries from 9,000 different locations. According to the Complaint, the Complainant currently offers the GRE test several times a year from more than 1,000 testing centers in over 160 different countries. To support these test, the Complainant also offers for sale practice tests as well as other guidance and placement services.

The Complaint includes evidence that the Complainant has registered numerous domain names based on “gre” including both <gre.com> and <gre.org>, both of which redirect to the Complainant’s main website at “www.ets.org/gre”.

The Complaint also includes evidence that the Complainant holds numerous registered trademarks for GRE. The earliest of these is United States Registered Trademark No. 1,146,134, GRE, which has been registered in respect of goods and services in International Classes 16 and 41 in the Principal Register since January 20, 1981. There are numerous other registrations in many other jurisdictions and for these and other goods and services including registrations in China, the European Union, and the United Kingdom as well as many other countries.

According to the Whois record, the Respondent registered the disputed domain name on November 12, 2020.

The disputed domain name resolves to a website which offers what the Complainant describes as services to cheat on its tests. For example, the landing page after declaring “Pass your GRE, GMAT and TOEFL Exam” states:

“Our highly experienced team can discreetly pass your GRE, GMAT, TOEFL and other exams. 100% Money-back Pass Guarantee!”

Other pages including headings like “We take your proctored GRE Exam” and “Cheat on the GRE.”

The Respondent’s website states that the Respondent has been providing these services since 2019.

In January 2022, the Complainant complained to the Registrar about the content of the website. The Registrar advised that the Respondent appeared to have removed the content. However, the content had re-appeared on the website within two weeks. A further objection was filed with the Registrar and the

Registrar advised that the content would be removed. Although the website did become inactive for a time, it has since been reactivated.

## 5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his/her or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate 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; 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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of numerous registered trademarks for GRE.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark and the term "take my" and a hyphen. As this requirement under the Policy is essentially a standing requirement, the addition of other terms does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name after the Complainant had registered its trademark and almost 80 years after the Complainant began using its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The use of the disputed domain name to offer a services where customers pay for someone else to sit the Complainant's tests on their behalf cannot be described as a good faith offering of goods or services under the Policy. At the very least, it involves enabling the customer to make false and misleading statements to the institutions utilising the Complainant's tests.

Perhaps understandably given the content of its own website, the Respondent has not made any attempt to rebut the Complainant's allegation that the Respondent's services involve cheating.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

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

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

There can be no room for any doubt that the Respondent was well aware of the Complainant's trademark when registering the disputed domain name. Putting to one side how long and extensively the Complainant has been using its trademark, the very essence of the Respondent's service presupposes knowledge of the Complainant's trade mark. As the prefix "take my" reinforces, the very point of the Respondent's service is predicated on knowledge of the Complainant and its tests, including of course the GRE tests.

Having regard to the nature of the services the Respondent is offering, therefore, the Panel readily finds that the Respondent registered, has used and is using the disputed domain name in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

### **6. 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, <take-my-gre.com>, be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: May 16, 2022