

## **ADMINISTRATIVE PANEL DECISION**

Elliott Investment Management L.P. v. Domains By Proxy, LLC,  
DomainsByProxy.com / Murat Akbala  
Case No. D2022-2699

### **1. The Parties**

The Complainant is Elliott Investment Management L.P., United States of America (“United States”), represented by ZwillGen PLLC, United States.

The Respondent is Domains By Proxy, LLC, DomainsByProxy.com, United States / Murat Akbala, Germany.

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

The disputed domain name <elliott-investment.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 July 23, 2022. On July 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On July 27, 2022, the Respondent sent an email to the Center. The Complainant filed an amended Complaint on July 29, 2022.

The Center verified that the Complaint together with the amended Complain 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 August 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the Respondent’s default on August 25, 2022.

The Center appointed John Swinson as the sole panelist in this matter on August 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 a global investment management firm with offices located in the United States, Europe, and Asia. Since May 2, 2000, the Complainant has owned the domain name <elliottmgmt.com> and maintained this domain name as its primary internet presence and point of contact for employees, investors, and media.

The Complainant owns United States Trademark Registration for ELLIOTT which was registered with the United States Patent and Trademark Office (“USPTO”) on June 12, 2007 as Registration No. 3250277.

The USPTO records state the following: “The mark ‘ELLIOTT’ is the middle name of applicant’s President, Paul Elliott Singer.”

The disputed domain name was registered on April 10, 2022.

At one time, the disputed domain name resolved to a website titled ELLIOTT that had a similar look to the Complainant’s website located at <elliottmgmt.com>.

The disputed domain name currently resolves to a registrar generated parking page.

#### **5. Parties’ Contentions**

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

In summary, the Complainant made the following submissions:

The disputed domain name is confusingly similar on its face to the Complainant’s ELLIOTT trademark. The disputed domain name consists entirely of the first two words of the Complainant’s name, “Elliott Investment.” The disputed domain name includes verbatim the ELLIOTT trademark and, by using the ELLIOTT trademark in tandem with a reference to Elliott’s core business of investment management, plainly aims to pose as the Complainant and deceive website visitors and email recipients.

The Complainant has not authorized the Respondent to use the ELLIOTT trademark. The Respondent is not affiliated with the Complainant. The Respondent stole content from the Complainant’s website to use on the Respondent’s website. Screenshots show that the Respondent’s website closely copied the Complainant’s website: the layout and graphics are almost identical and the “ELLIOTT” logo at top left is an exact copy.

The Respondent plainly registered and used the disputed domain name in bad faith. Despite having no affiliation with the Complainant, the Respondent willfully chose a domain name consisting of the ELLIOTT firm name and the ELLIOTT trademark, for the apparent purpose of confusing internet users and defrauding investors. This is further confirmed by the content the Respondent published on its website, which was a website that mimicked the graphics and content of the Complainant’s legitimate website.

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

The Respondent did not formally reply to the Complainant’s contentions.

The Respondent sent an email to the Center that states, in part:

“I’m just a technical support person and I’m not the registrant for the [disputed domain name]. A customer who contacted me some time ago wanted this domain as a service from me. Since I was made aware by my service provider Godaddy that this domain registration violates trademark rights, I immediately deleted this domain from my services. I have also deleted all associated services. My customer who wanted the said domain registration had contacted me from Netherland. Unfortunately I don’t have any official documents on the client that I could send you. ... I tried to contact the registrant to get full contact details. Unfortunately, it seems obvious to me that after deleting the service, the registrant can no longer be found. I would like to officially apologize to the trademark owner and to you for all the inconvenience. I had provided the said domain without knowing it and I apologize for that as well.”

While the Panel notes that the Respondent claims to have registered the disputed domain name for a client, the Respondent did not provide any evidence on the existence of such relationship (merely indicating that it does not have any official documents on the client), and that the client is no longer reachable by phone (without disclosing the client’s email address). The Panel agrees with previous panels, as considered for example in *Hays plc v. Privacy service provided by Withheld for Privacy ehf / George Smith*, WIPO Case No. [D2021-2564](#), and in *Société des Produits Nestlé S.A. v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Caleb Jude, Blog design*, WIPO Case No. [D2021-1202](#), that certain obligations arise from the registration of a domain name (and the acceptance of the registration agreement), and in the circumstances of the case the Panel will consider the Registrar-confirmed registrant of the disputed domain name (*i.e.*: Murat Akbala) as the Respondent. The Panel further notes that references to the registration and use by the Respondent shall be construed to include the final holder of the disputed domain name (if any).

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The *onus* of proving these elements is on the Complainant even though the Respondent failed to submit a Response.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has clearly proven ownership of a registered trademark for ELLIOTT.

The disputed domain name includes the Complainant’s trademark ELLIOTT in its entirety.

The disputed domain name also includes the term “investment”, which does not prevent a finding of confusing similarity.

The Panel accordingly concludes that the disputed domain name is confusingly similar to the Complainant's ELLIOTT trademark, disregarding the Top-Level Domain ".com".

The fact that the Respondent is targeting the Complainant's trademark (as discussed below) supports the Complainant's position, in that this assists in demonstrating that its trademark has achieved significance as a source identifier.

The Complainant succeeds on the first element of the Policy in relation to the disputed domain name.

## **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 the 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. Previous UDRP 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 sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that the Complainant has not authorized the Respondent to use the ELLIOTT trademark, and that the Respondent is not affiliated with the Complainant. The Complainant also asserts, for the reasons discussed in relation to the third element discussed below, that the Respondent stole content from the Complainant's website to use on the Respondent's website.

As discussed below, the evidence points to the Respondent masquerading as the Complainant.

The Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that none of the circumstances listed in paragraph 4(c) of the Policy apply in the present circumstances, and that the Respondent has no rights or any legitimate interests in the disputed domain name.

The email from the Respondent, referred to above, does not change the Panel's conclusion, on the contrary it reinforces the Panel's conclusion on this element.

In addition, the Panel notes the nature of the disputed domain name reproducing the Complainant's trademark with the term "investment", which is part of the Complainant's legal name, and it is a term related to the Complainant's activities. The Panel finds that the nature of the disputed domain name carries a risk of implied affiliation, a risk that has materialized through the Respondent's use of the disputed domain name.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

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

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

In the present circumstances, the fact that the disputed domain name resolved at one time to a website which has the same look and feel as the Complainant's website, and includes content copied from the Complainant's website, leads the Panel to conclude the registration and use of the disputed domain name are in bad faith.

The Respondent's conduct demonstrates the Respondent's knowledge of the Complainant and its trademark.

By registering and using the disputed domain name to impersonate the Complainant, it is clear that the Respondent specifically knew of and targeted the Complainant and trick the public into believing that the Respondent is associated with the Complainant.

The Respondent's website appears to be some form of scam or part of a fraudulent scheme which is manifestly evidence of bad faith. See *Australia and New Zealand Banking Group Limited v. Bashar Ltd*, WIPO Case No. [D2007-0031](#). This case was cited with approval in *Regal Funds Management Pty Limited v. WhoisGuard Protected, WhoisGuard, Inc. / John Clerk*, WIPO Case No. [D2020-2773](#), which involved a website that was masquerading as the website of a financial advisory firm.

Accordingly, the Panel finds that paragraph 4(b)(iv) of the Policy applies in the present case.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

### **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 <elliott-investment.com> be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: September 14, 2022