

ADMINISTRATIVE PANEL DECISION

Elasticsearch B.V. v. Host Master, Transure Enterprise Ltd
Case No. D2023-2937

1. The Parties

The Complainant is Elasticsearch B.V., Netherlands (Kingdom of the), represented by Quinn IP Law, United States of America (“United States” or “US”).

The Respondent is Host Master, Transure Enterprise Ltd, United States.

2. The Domain Name and Registrar

The disputed domain name <live-elasticsearch.com> is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 10, 2023. On July 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 14, 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 (Above.com Pty Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 25, 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 on July 31, 2023.

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 of the Complaint, and the proceedings commenced on August 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 28, 2023.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on September 4, 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

The Complainant is in the business of creating search-powered solutions in relation to Enterprise Search, Observability and Security for the purpose of helping enhance customer and employee search experiences and to keep mission-critical applications running smoothly and protect against cyber threats.

The Complainant's products and services are utilized and integrated in the data infrastructures of some of the world's most recognizable and technically advanced businesses and solutions providers in addition to many governments. Software branded ELASTIC is widely distributed and accessed worldwide through major platform Cloud partnerships with Microsoft, Amazon Web Services, (AWS), Google, IBM and many others.

In China, ELASTICSEARCH and ELASTIC branded software is widely accessed, licensed, and distributed through large commercial distribution relationships. Tencent Cloud and Alibaba Cloud platforms make the brand specifically well known in China to the developer and software communities as well as internationally.

The Complainant has an active Elastic Meetup community of over 92,000 members across 59 countries with the first Meetup event held in September 2012. It also creates user event experiences and connections, including the Elastic Community, where the Complainant hosts meetups, conferences, in-person, and virtual events and has chapters in 124 cities around the world.

Evidence of the above and the Complainant's trading activities is set out in Annex IV to the Complaint.

The Complainant has registered the trade marks ELASTICSEARCH and ELASTIC in numerous jurisdictions worldwide. It currently owns over 155 applications and registrations worldwide for ELASTICSEARCH and ELASTIC. It exhibits at Annex V to the Complaint a schedule of trademark applications and registrations worldwide including for ELASTICSEARCH in Australia, Brazil, Canada, the European Union, the United Kingdom, Hong Kong, China, Israel, Japan, the Russian Federation, Taiwan Province of China, and the US, as well as for ELASTIC in the US and for ELASTIC plus design logo in the above jurisdictions.

Also set out in Annex V to the Complaint are copies of search results from the United States Patent and Trademark Office ("USPTO" for US registered trade marks including:

- ELASTICSEARCH, Registration No. 4212205, in Classes 9 and 42, registered September 25, 2012;
- ELASTIC, Registration No. 6263801, in Classes 9 and 42, registered February 9, 2021.

The disputed domain name was registered on November 24, 2022 which is a date after the dates of registration of the above trade marks by the Complainant.

The Complainant owns over 110 domain names that begin with or contain the trade marks ELASTICSEARCH or ELASTIC including <elasticsearch.com>, <elasticsearch.biz>, <elasticsearch.net> and <elasticsearch.org> as well as domain names using country code Top-Level Domains ("TLDs") including <elasticsearch.us>. A list of selected Complainant's domain names is exhibited at Annex VI to the Complaint.

The disputed domain name appears to redirect to various different websites including the website encouraging the user to download the "Total AdBlock extension", and the website with pay-per-click links (Annex VII to the Complaint).

In the absence of a Response the Panel finds the above evidence adduced by the Complainant to be true.

5. Parties' Contentions

A. Complainant

The Complainant submits:

- i. The disputed domain name is identical or confusingly similar to the trade marks ELASTICSEARCH and ELASTIC in which the Complainant has rights;
- ii. On the evidence adduced by the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- iii. On the evidence adduced by the Complainant, the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel is satisfied on the basis of the evidence of the Complainant's trade mark rights as set out in section 4 above that the Complainant owns registered trade mark rights in the marks ELASTICSEARCH and ELASTIC which predate the date of registration of the disputed domain name.

The Complainant submits that the disputed domain name fully incorporates the trade mark ELASTICSEARCH. The domain name consists of "elasticsearch" in conjunction with the prefix "live" and linked to "elasticsearch" by a hyphen. It submits that this is sufficient to establish confusing similarity. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1,7.

The Panel agrees with this submission and finds that the disputed domain name is confusingly similar to the trade mark ELASTICSEARCH in which the Complainant has rights within paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons:

- a. There is no evidence of a *bona fide* use of the disputed domain name since it was registered on November 24, 2022. The Respondent cannot demonstrate that it registered and used the disputed domain name in connection with a *bona fide* offering of goods or services;
- b. There is no evidence that the Respondent is known by the disputed domain name. The Complainant submits that:
 - i. The Respondent does not own any trade mark registrations for the mark ELASTICSEARCH or for the disputed domain name;

- ii. The Respondent is not affiliated with or licensed by the Complainant;
 - iii. There is no evidence that the Respondent is commonly known by the mark ELASTICSEARCH.
 - iv. The Respondent registered the disputed domain name on November 24, 2022 whereas the Complainant has been using the marks ELASTICSEARCH and ELASTIC since as early as 2010.
- c. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name is misleadingly diverting the public. The fact that the disputed domain name incorporates the mark ELASTICSEARCH in its entirety makes the disputed domain name “ripe for potential malicious use against the Complainant”. It effectively impersonates or falsely suggests sponsorship or endorsement by the Complainant.
- d. On the basis of the evidence set out in section 4 above the Complainant's trade marks ELASTICSEARCH and ELASTIC are used and have become well known worldwide and achieved significant recognition in the marketplace in connection with the Complainant's goods and services since before the date of registration of the disputed domain name. The Respondent knew or should have known, at the time of registration of the disputed domain name of the Complainant's well-known trade mark.

The Complainant submits that the above evidence shows a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel also takes into account section 2.1 of [WIPO Overview 3.0](#) that 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.

In the Panel's view that is the position here. It is satisfied upon the evidence that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests and that the Respondent in the absence of a Response has failed to show rights or legitimate interests. Accordingly, and considering the Panel's findings under section 6.C, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

To support its contention that the disputed domain name was registered and is being used in bad faith the Complainant relies upon the following:

- (1) The Respondent's failure to respond to the Complainant's demand letter;
- (2) The Respondent has created a likelihood of confusion by adopting the Complainant's trade marks so as to create customer confusion;
- (3) The Respondent registered the disputed domain name to intentionally attract Internet users to the Respondent's website;
- (4) The Respondent has used the disputed domain name for phishing or pharming activity;
- (5) The Respondent has engaged in a pattern of bad faith conduct in registering domain names incorporating third-party trade mark rights.

With regard to point (1) above the Complainant sent the demand letter to the Registrar Above.com Pty Ltd. via email. The Respondent failed to respond. It is well-established that a failure to respond to a demand letter may support the finding of bad faith.

Point (2) above is based upon the fact that the Complainant's trade marks ELASTICSEARCH and ELASTIC are distinctive and well known and the Respondent therefore has no legitimate reason to have registered the disputed domain name incorporating the ELASTICSEARCH trade mark and that it has done so to capitalize upon the Complainant's goodwill in its well-known mark.

In relation to point (3) the Complainant points out that the mark ELASTICSEARCH is reproduced in the disputed domain name in its entirety. It submits that this was done with the intention of impersonating the Complainant and of attracting Internet users to its website in a mistaken belief that it is an authorized website operated by or otherwise legitimately associated with the Complainant. This is likely to cause confusion as to the source, sponsorship, affiliation, or endorsement of the website and business under the disputed domain name. The Complainant submits that this is preparatory for possible use as a "phishing" or "pharming" site as part of a fraudulent and criminal enterprise for commercial gain.

Point (4) is dependent upon evidence that the Respondent registered the disputed domain name primarily for phishing or pharming activity to divert users to another website to install third-party software that may contain malicious content or expose users to computer attacks and possible data breaches or security concerns.

The evidence relied upon is set out in Annex VII to the Complaint which illustrates content generated by a redirected website from the disputed domain name. The screenshot illustrates an attempt to mimic a Firefox web browser notification encouraging users to download the "Total Adblock extension". Users are deceived into believing their device is subject to a security threat. This is evidence of a fraudulent scheme to trick users to download or install malicious content. It is well-established that "use of a domain name for per se illegitimate activity [...] is manifestly considered evidence of bad faith" ([WIPO Overview 3.0](#), section 3.1.4).

In addition, the Panel notes that the disputed domain name appears to redirect to various different websites as Annex VII to the Complaint also shows that the disputed domain name resolves to a website displaying pay-per-click links.

Point 5 is dependent upon the existence of evidence of a pattern of conduct in registering domain names incorporating third-party trade marks. To support this submission the Complainant relies upon evidence that the Respondent is a well-known cybersquatter, having been named as Respondent in over 45 UDRP complaints under the name "Host Master, Transure Enterprises Ltd" and in approximately 70 UDRP complaints under the name "Transure Enterprises Ltd". Prior UDRP panels have regularly found that the Respondent registered and used the domain names incorporating the well-known trade marks in bad faith. A full list of decisions to evidence this is exhibited at Annex XI to the Complaint.

In this Panel's view it is significant that prior UDRP panel decisions found that the Respondent "undoubtedly knew" of a complainant's well-known trade mark at the time of registration of the domain name. The Complainant submits that the voluminous number of UDRP panel decisions which found against the Respondent and found bad-faith conduct in the Respondent's registration of a domain name incorporating a well-known third-party trade mark constitutes evidence of a pattern of conduct of bad faith by the Respondent.

In particular, the Panel finds that the Respondent has, within paragraph 4(b)(ii) of the Policy, registered the disputed domain name to prevent the Complainant as owner of the trade mark ELASTICSEARCH from reflecting the mark in a corresponding domain name and that it has engaged in a pattern of such conduct.

Having considered the Complainant's submissions and evidence and in the absence of a Response the Panel is satisfied that the Respondent has registered and used the disputed domain name in bad faith within 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 <live-elasticsearch.com> be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: September 19, 2023