

## **ADMINISTRATIVE PANEL DECISION**

Elasticsearch B.V. v. Nanci Nette  
Case No. D2023-2938

### **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 Nanci Nette, United States.

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

The disputed domain name <elastisearch.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 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 11, 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 (Registration Private, Domains By Proxy, LLC.) 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 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 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 5, 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 including, Adobe, Cisco, Procter & Gamble, Wal-Mart, John Deere, Comcast and T-Mobile 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 US and for ELASTIC plus design logo in the above jurisdictions.

Also set out in Annex V are copies of search results from the 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 May 14, 2018, and at the time of filing the Complaint, the disputed domain name resolved to a parked page displaying Pay-Per-Click ("PPC") links.

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.

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 mark 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 mark ELASTICSEARCH which predate the date of registration of the disputed domain name.

The Complainant submits that the disputed domain name fully incorporates the Complainant's trade mark ELASTICSEARCH save for the omission of the letter "c". The disputed domain name consists of the word "elastisearch" together with the Top Level Domain ".com". The Panel finds that the absence of the letter "c" to the word "elastisearch" is otherwise identical to the Complainant's mark ELASTICSEARCH. Similarly, the omission of the letter "c" in the disputed domain name should be considered as typosquatting according to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9, "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

The Complainant also rightly relies upon [WIPO Overview 3.0](#), section 1.7 to the effect that where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the trade mark. That is the position in this case.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark ELASTICSEARCH in which it owns rights which predate the date of registration of the domain name, in accordance with 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 May 14, 2018. 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;
  - i. the Respondent does not own any trade mark registrations for the mark ELASTICSEARCH or for the spelling as used in the disputed domain name of “elastisearch”;
  - 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 May 14, 2018 whereas the Complainant has been using the marks ELASTICSEARCH and ELASTIC since at least 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 Internet users or tarnishing the Complainant's trade marks. The fact that the disputed domain name substantially incorporates the mark ELASTICSEARCH 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 mark ELASTICSEARCH has been used and has 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 domain name of the Complainant's well-known status.
- e. The Complainant submits that the Respondent purposefully “typosquatted” by registering the disputed domain name with the obvious misspelling of the Complainant's well-known trade mark ELASTICSEARCH so as to confuse the Internet users.

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.

Furthermore, the PPC links do not represent a *bona fide* offering since such links compete with or capitalize on the reputation and goodwill of the Complainant's trade mark ELASTICSEARCH or otherwise mislead the Internet users. See [WIPO Overview 3.0](#), section 2.9.

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;

- (a) The Respondent's failure to respond to the Complainant's demand letter;
- (b) The Respondent has created a likelihood of confusion by adopting the Complainant's trade marks so as to create customer confusion;

- (c) The Respondent registered the disputed domain name to intentionally attract Internet users to the Respondent's website;
- (d) The Respondent has used the disputed domain name for phishing or pharming activity;
- (e) 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 (a) above the Complainant sent the demand letter, exhibited as Annex VIII, to the Registrar via electronic mail. The Respondent failed to respond. It is well-established that a failure to respond to a demand letter can constitute evidence of bad faith.

Point (b) 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. Moreover, the fact that the disputed domain name omits the letter "c" but otherwise is identical to the mark ELASTICSEARCH creates a likelihood of confusion and a risk of affiliation with the Complainant.

The Complainant submits that the disputed domain name was registered with the intention of impersonating the Complainant and to attract 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 (c) above is based upon a submission that the Respondent chose to register a domain name that "typosquats" the Complainant's trade mark ELASTICSEARCH. It is being used in a manner that is likely to cause confusion as to the source, sponsorship, affiliation or endorsement of the website and business as to the disputed domain name. Since the Respondent is not making a legitimate use of the domain name, no other conclusion can be drawn other than the disputed domain name was registered in bad faith.

Point (d) above 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.

Point (e) above is dependent upon the existence of evidence of a pattern of conduct in registering domain names incorporating well-known 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 between 25 and 50 earlier WIPO UDRP complaints in which the transfer of the domain names was ordered. Prior UDRP panels have regularly found that the Respondent registered and used domain names incorporating 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 have found that the Respondent "undoubtedly knew" the Complainant's well-known trade mark at the time of registration of the disputed domain name.

The Respondent has registered a domain name confusingly similar to the Complainant's trade mark ELASTICSEARCH and which resolves to a page featuring PPC advertising in order to create a likelihood of confusion and to generate commercial gain via the PPC links.

The Complainant also 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 (see, for example, *HomeAway.com, Inc.v. Nanci Nette*, WIPO Case No. [D2023-1561](#)).

In particular the Panel finds, based upon the evidence, that the Respondent, 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 <elastisearch.com> be transferred to the Complainant.

*/Clive Duncan Thorne/*

**Clive Duncan Thorne**

Sole Panelist

Date: September 19, 2023