

ADMINISTRATIVE PANEL DECISION

Elasticsearch B.V. v. yanlu lu
Case No. D2023- 3043

1. The Parties

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

The Respondent is yanlu lu, China.

2. The Domain Name and Registrar

The disputed domain name <elasticsearchguru.com> is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 15, 2023. On July 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 18, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 18, 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 23, 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 23, 2023.

The Center appointed Federica Togo as the sole panelist in this matter on September 1, 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 the registered owner of many trademarks in several jurisdictions for “ELASTICSEARCH”, e.g., United States Trademark Registration No. 4212205 ELASTICSEARCH (word) registered on September 25, 2012 for goods and services in classes 9 and 42.

According to the information in the Complaint, the Complainant’s ELASTICSEARCH trademarks are used in connection with its platform for search-powered solutions.

The disputed domain name was registered on November 24, 2022. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolves to a website displaying also gambling and pornographic content.

Finally, the Complainant sent a cease and desist letter to the Respondent through the Registrar on June 28, 2023. The Respondent did not reply to it.

5. Parties’ Contentions

A. Complainant

It results from the Complainant’s allegations that the Complainant’s ELASTICSEARCH and ELASTIC trademarks are used in connection with its platform for search-powered solutions. The Complainant’s solutions in Enterprise Search, Observability, and Security help enhance customer and employee search experiences, keep mission-critical applications running smoothly, and protect against cyber threats. According to the Complainant, its Elasticsearch platform has been downloaded more than 3.6 billion times. The Complainant has also directly licensed its search solutions under its ELASTICSEARCH and ELASTIC trademarks to around 20,000 commercial enterprise and government customers in approximately 175 countries. Moreover, 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.

The Complainant uses the domain name <elastichsearch.com>, which redirects to its official website <elastic.co>.

The Complainant contends that its trademark is distinctive and well-known. According to the Complainant, in China, where the Respondent is located, ELASTICSEARCH and ELASTIC branded software is widely accessed, licensed, and distributed through large commercial distribution relationships with Tencent Cloud and Alibaba Cloud platforms making the brand specifically well-known in China to the developer and software communities as well as internationally.

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant’s trademark ELASTICSEARCH as the disputed domain name incorporates the Complainant’s trademark in its entirety. The addition of the term “guru” is not sufficient to escape the finding that the disputed domain name is confusingly similar to its trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent is not affiliated with or licensed by the Complainant and is not commonly known as “ELASTICSEARCH.” Furthermore, since the Complainant is

well-known in its industry and has a long history of use of its trademarks with established rights in the well-known ELASTICSEARCH and ELASTIC trademarks and enjoys extraordinary global marketplace recognition of these brands, the Respondent knew, or should have known, at the time of registration of the disputed domain name, of the Complainant and the Complainant's ELASTICSEARCH and ELASTIC trademarks. In addition, the content displayed on the disputed domain name includes images of gambling and pornographic content, therefore the Respondent lacked rights or legitimate interests in the disputed domain name, as it cannot demonstrate that it used the disputed domain name in connection with a *bona fide* offering of goods or services. Thus, the Respondent purposefully registered the disputed domain name to confuse the public into believing that the disputed domain name is associated or affiliated with the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent's bad faith is demonstrated by the Respondent's failure to respond to the Complainant's demand letter, thereby forcing the Complainant to institute this proceeding to prevent further abuse of its well-known trademarks. Further, given the fame and distinctiveness of the Complainant's trademarks, the Respondent has no legitimate reason to have registered a domain name which incorporates the Complainant's ELASTICSEARCH trademark in combination with the term "guru," and instead registered the disputed domain name to prevent the Complainant from registering the disputed domain name and/or attempting to profit from the Complainant's intellectual property rights in its famous and well-known trademarks. Moreover, the Respondent's use of the disputed domain name to offer gambling and pornographic content is a significant indicator of bad faith. The Respondent created the disputed domain name that incorporated the Complainant's famous and well-known ELASTICSEARCH trademark to capitalize on the Complainant's renown and to have the disputed domain name resolve to a pornographic and gambling website for commercial gain. Such conduct is known as " pornosquatting," the practice whereby confusion with a trademark is used to divert Internet users to a website with pornographic content. The Respondent attempted to attract the Complainant's customers to its pornographic and online gambling website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and thus generate revenue through the unauthorized use of the ELASTICSEARCH trademark. Moreover, redirection to pornographic sites from the misuse of major brands in domain names can be used for purposes of malware insertion from unsuspecting accidental visitors to the redirected website. For cyber-security purposes, it is critical that this risk be addressed by the Complainant in order to protect its employees, partners, and clients where it may be a reasonable possibility.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "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". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (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 Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

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

It results from the evidence provided, that the Complainant is the registered owner of trademark registration for ELASTICSEARCH as indicated in the Factual Background of this Decision.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.7.

This Panel shares this view and notes that the Complainant's registered trademark ELASTICSEARCH is fully included in the disputed domain name, followed by the term "guru". Furthermore, it is the view of this Panel that the addition of the term "guru" in the disputed domain name cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the Complainant's trademark is clearly recognizable in the disputed domain name (see [WIPO Overview 3.0](#) at section 1.8).

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#) at section 1.11.1). In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and, in particular, did not authorize the Respondent's use of the trademark ELASTICSEARCH, e.g., by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contains the Complainant's registered trademark ELASTICSEARCH and that trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant.

In addition, it results from the undisputed evidence before the Panel that the disputed domain name resolves to a website displaying also gambling and pornographic content. Prior UDRP panels have found that no rights or legitimate interests could be expected to derive from using another's trademark to divert Internet users to a pornographic website (e.g., *Red Bull GmbH v. Mandysen*, WIPO Case No. [D2022-3517](#); *Laboratoires Thea v. Peiyi Zi*, WIPO Case No. [D2021-1045](#) and the related cases cited therein). This Panel shares this view. Therefore, such use can neither be considered as *bona fide* offering of goods or services nor 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.

It is acknowledged that once the Panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see [WIPO Overview 3.0](#) at section 2.1). Since the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must, lastly, establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in its paragraph 4(b) may, “in particular but without limitation”, be evidence of the disputed domain name’s registration and use in bad faith. One of these circumstances is that the respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand. The Complainant’s trademarks have existed for many years. Therefore, this Panel has no doubt that the Respondent positively knew of the Complainant and its trademarks when the Respondent registered the disputed domain name. Registration of the disputed domain name by the Respondent in awareness of the ELASTICSEARCH mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

Finally, the further circumstances surrounding the disputed domain name’s registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith (see [WIPO Overview 3.0](#) at section 3.2.1):

- (i) the nature of the disputed domain name (*i.e.*, a domain name incorporating the Complainant’s mark);
- (ii) the content of the website to which the disputed domain name directs (*i.e.*, website displaying also gambling and pornographic content);
- (iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name;
- (iv) the Respondent’s failure to reply to the cease and desist letter sent by the Complainant.

The Panel finds that the Complainant has therefore satisfied 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, <elasticsearchguru.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: September 15, 2023