

ADMINISTRATIVE PANEL DECISION

Datadog, Inc. v. Andrea Harris
Case No. D2023-3442

1. The Parties

The Complainant is Datadog, Inc., United States of America, represented by Noah M. Lerman, United States of America (“United States”).

The Respondent is Andrea Harris, United States.

2. The Domain Name and Registrar

The disputed domain name <datadog-graph.com> (“Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2023. On August 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 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 (Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 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 August 18, 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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 11, 2023.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on September 18, 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 an information technology company that provides an observability service for cloud-scale applications, providing monitoring of servers, databases, tools, and services, through a SaaS-based data analytics platform.

The Complainant owns trademarks and service marks for its DATADOG mark, including:

- United States Registration Number 6,225,826, registered December 22, 2020, for DATADOG covering “downloadable computer software for use in application and server infrastructure performance management and for collecting, monitoring and analyzing data generated by computer applications, systems and networks; software as a service (SAAS) services, featuring software for a user interface designed to enable access to application and server infrastructure performance management with a dashboard for software application and computing infrastructure performance metrics and events for aggregation, manipulation, graphing and reporting, and correlating application performance and errors with infrastructure metrics and alerts; Computer services, namely, machine data management services in the nature of electronically collecting, monitoring and analyzing data generated by computer applications, computer systems, and computer networks for use in IT operations, IT application management, and IT security and compliance” in Classes 9 and 42. First use date July 27, 2010.
- United States Registration Number 4,885,599, registered January 12, 2016, for DATADOG covering “computer software for use in application and server infrastructure performance management; software as a service (SAAS) services, namely, hosting software for use by others for use in application and server infrastructure performance management” in Classes 9 and 42. First use date July 27, 2010.

The Disputed Domain Name was registered on June 23, 2023, and does not resolve to an active website. According to the information provided in the Complaint, the Disputed Domain Name has been used for the purpose of downloading malware or spyware, having been listed in a July 2023 security threat as a malicious domain name.

5. Parties' Contentions

A. Complainant

The Disputed Domain Name is confusingly similar to the Complainant's registered trademarks for DATADOG and Complainant's registered Domain Name <datadoghq.com>. The Disputed Domain Name includes the trademarked name “DATADOG” with the exact same spelling and that would lead a reasonable observer or casual observer to believe the names are related.

Respondent does not have a right or legitimate interest to the domain name because: (1) there is no evidence that the Respondent's use of the domain name is in connection with a *bona fide* offering of goods or services; (2) there is no evidence that an individual, business, or other organization other than Complainant has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; and (3) the Respondent is not making a legitimate noncommercial or fair use of the domain name. In furtherance of the foregoing, as of August 11, 2023, the Disputed Domain Name does not resolve to an active website.

Respondent intentionally attempted to attract Internet users to pages with malware or spyware by creating a likelihood of confusion with the Complainant's well-known mark. The use of the mark to maliciously redirect users is not a *bona fide* use; the dissemination of malware through a predictable typo-variant is often used to steal consumer information for commercial gain and this is evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated it owns registered trademark rights in the DATADOG mark and has shown that no other entity has rights in or uses the Complainant's mark. The addition of "graph" does not prevent the Complainant's trademark from being recognizable in the Disputed Domain Name. The generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Accordingly, the Disputed Domain Name is confusingly similar to a mark in which the Complainant has rights.

See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.8 and 1.11.1, and *F. Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Conan Corrigan*, WIPO Case No. [D2015-2316](#).

Accordingly, the Disputed Domain Name is confusingly similar to a mark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has presented a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has not been commonly known by the Disputed Domain Name. The fact that the Respondent obtained the Disputed Domain Name years after the Complainant had begun using its DATADOG mark indicates that the Respondent sought to piggyback on the mark for illegitimate reasons.

After a complainant has made a *prima facie* case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Respondent has provided no evidence of any rights or legitimate interests in the Disputed Domain Name. Moreover, the Disputed Domain Name incorporates the Complainant's trademark in its entirety along with the added word "graph" which is associated with data analysis, potentially conveying to unsuspecting Internet users the false belief that the Disputed Domain Name is associated with the Complainant. Such a risk of affiliation or association with the Complainant and its mark cannot constitute fair use.

In the absence of any evidence rebutting the Complainant's *prima facie* case indicating the Respondent's lack of rights or legitimate interests in respect of the Disputed Domain Name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Disputed Domain Name was registered years after the Complainant first registered and used its DATADOG marks. The evidence provided by the Complainant with respect to the extent of use and fame of its DATADOG marks, particularly in the United States where the Respondent is reportedly located, combined with the absence of any evidence provided by the Respondent to the contrary, is sufficient to satisfy the

Panel that, at the time the Disputed Domain Name was registered, the Respondent more likely than not knew of the Complainant's widely-known DATADOG marks.

Moreover, UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

In the circumstances of this proceeding, there is *prima facie* no good faith reason for the Respondent to have registered the Disputed Domain Name. While the Disputed Domain Name does not resolve to an active website, there is ample evidence of bad faith use on the part of the Respondent, specifically noting the flagged nature of the Disputed Domain Name for prior malware activity. UDRP panels have found that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. See section 3.4 of the [WIPO Overview 3.0](#). While the Disputed Domain Name does not resolve to an active website, the totality of the circumstances support a finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has 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 <datadog-graph.com> be transferred to the Complainant.

/Colin T. O'Brien/

Colin T. O'Brien

Sole Panelist

Date: October 2, 2023