

ADMINISTRATIVE PANEL DECISION

Eldridge Industries LLC v. Graham Potter
Case No. D2023-5176

1. The Parties

The Complainant is Eldridge Industries LLC, United States of America (“United States” or “USA”), represented by ZeroFox, United States.

The Respondent is Graham Potter, United States.

2. The Domain Name and Registrar

The disputed domain name <eldridgelp.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 12, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 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 December 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 amendment to the Complaint on January 11, 2024.

The Center verified that the Complaint together with the amendment to the 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 January 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2024.

The Center appointed Dennis A. Foster as the sole panelist in this matter on February 12, 2024.

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, Eldridge Industries LLC, is an American private equity holding company that makes investments in various businesses including insurance, asset management, media and real estate. The Complainant has been in business since 2015.

The Complainant owns a USA service mark registration, ELDRIDGE, that is contained in the disputed domain name: registration no. 5351039, registered on December 5, 2017, International Class 036 for debt and equity financial services.

The Respondent is an individual about whom little is known.

The disputed domain name was registered on February 28, 2023. The disputed domain name does not resolve to an active website, but has been used for a fraudulent email scheme by impersonating the Complainant and targeting the Complainant's clients.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's mark, in that it wholly incorporates ELDRIDGE and only adds "lp" at the end. This addition does not create a new or unique phrase or mark, and it still refers to the Complainant.

Since the time of registration, the disputed domain name has not been used or prepared for use in a bona fide offering of goods or services. The disputed domain name currently does not resolve to an active website and is not known ever to have hosted any content.

While the Respondent does have the right to register a domain name for the purpose of personal name use or criticism, free speech or other noncommercial use, there is no evidence that this has been the case. The confusingly similar nature of the disputed domain name and evidence of impersonating emails being sent from the disputed domain name reinforce the fact that there are no rights or legitimate interests in the disputed domain name.

Further, the confusingly similar nature of the disputed domain name implies a relationship with the Complainant, such as ownership or affiliation, that has not been authorized.

It is well-established, under the Policy, that knowingly incorporating the Complainant's service mark in a domain name establishes bad faith at the time of registration. As for its use in bad faith, under the doctrine of "passive holding", a disputed domain name can be found to have been used in bad faith even if it is parked or does not resolve to a website.

The facts show that the Respondent registered the disputed domain name while being fully aware of the Complainant's trademark and intended to leverage it to impersonate the Complainant in a phishing campaign targeting the Complainant's clients and employees.

The submitted proof of phishing and confusing similarity of the disputed domain name in the present Complaint, shows that the Respondent is attempting to disrupt the business of the Complainant for either financial gain or simply to harm them.

The Respondent is using a privacy service to obfuscate his registration and contact details. With no additional context and a lack of evidence of legitimate use, this is likely because the Respondent is using fake information or does not wish to be associated with his subversive activities.

The Complainant requests that the disputed domain name be transferred to the Complainant.

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)(i)(ii)(iii) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (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.

A. Identical or Confusingly Similar

The threshold test for confusing similarity involves a comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7. The Complainant has shown rights in the ELDRIDGE name per its USA service mark registration data supra. The entirety of the mark is reproduced within the disputed domain name, and the Panel also finds that the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds that the addition of the letters “lp” does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. The general Top-Level Domain (“gTLD”) is not taken into consideration when assessing identity and confusing similarity. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the Complainant has carried its burden of proof under Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on a complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of proving a negative. As such, 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 Policy paragraph 4(a)(ii). [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant asserts, “[f]urther, the similar nature of the domain [name] implies a relationship with the Complainant such as ownership or affiliation that has not been authorized.”

The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have found that the use of a domain name for illegal activity, such as phishing in the present case, or other types of bad faith, cannot confer rights or legitimate interests on a respondent. Thus, the Respondent cannot use Policy paragraph 4(c)(i) and claim to be making a bona fide offering of goods or services to qualify as having legitimate rights and interests in the disputed domain name. [WIPO Overview 3.0](#), section 2.13.1; and *Wikimedia Foundation, Inc. v. Walter Gerbert*, WIPO Case No. [D2016-1346](#).

While the Respondent does have the right to register a domain name using his personal name (Policy paragraph 4(c)(ii)), or for the purpose of criticism, free speech or other noncommercial uses (Policy paragraph 4(c)(iii)), there is no evidence that the Respondent has done so in this case.

The Panel finds the second element of the Policy at paragraph 4(a)(ii) has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate a domain name was registered and used in bad faith, but other circumstances may also be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel notes that the Complainant has a certain Internet presence and niche reputation in the private equity business sphere. The Respondent did not submit a response, and is using a privacy service to shield its registration and contact details.

The Panel finds the Respondent briefly engaged in phishing immediately after registering the disputed domain name on February 28, 2023. On that same day, the Respondent impersonated the Complainant in emails. Panels have also found that the registration and use of a domain name for illegal activity, such as in this case phishing, can in and of itself constitute bad faith. The Panel so finds in the case under consideration. [WIPO Overview 3.0](#), section 3.4; and *Accor v. Sangho Heo/Contact Privacy Inc.*, WIPO Case No. [D2014-1471](#).

The Panel finds that the Complainant has carried its burden of proof under paragraph 4(a)(iii) of the Policy to show that the Respondent registered and is using the disputed domain name in bad faith.

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 <eldridgelp.com> be transferred to the Complainant.

/Dennis A. Foster/

Dennis A. Foster

Sole Panelist

Date: February 26, 2024