

## **ADMINISTRATIVE PANEL DECISION**

Educational Testing Service v. 李朋飞  
Case No. D2023-5245

### **1. The Parties**

The Complainant is Educational Testing Service, United States of America (“United States”), represented by Cantor Colburn LLP, United States.

The Respondent is 李朋飞, China.

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

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

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2023. On December 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 28, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 28, 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 in English on January 2, 2024.

On December 28, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On December 28, 2023, the Complainant requested English to be the language of the proceeding. The Respondent objected to the Complainant’s request on December 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 in English and Chinese of the Complaint, and the proceedings commenced on January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. Apart from the Respondent's emails on December 29 and 31, 2023, and January 3 and 8, 2024, the Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on January 29, 2024.

The Center appointed Sok Ling MOI as the sole panelist in this matter on January 31, 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, established in 1947 and headquartered in New Jersey, United States is one of the world's largest private educational testing and measurement provider. The Complaint develops, administers, and scores more than 50 million tests in more than 180 countries at more than 9,000 locations each year. The GRE Test, one of the world's most widely used admissions test for graduate and professional school, was created more than 70 years ago. "GRE" is the abbreviation for "Graduate Record Examination". The Complainant has continuously used the GRE mark in connection with its business since 1941. Its use of the GRE mark can be viewed on its website located at "www.ets.org".

The Complainant owns trade mark registrations for GRE in several jurisdictions (including China where the Respondent is based), including:

Jurisdiction	Trade Mark	Class	Registration No.	Filing Date
China	GRE	16	176266	April 7, 1982
China	GRE	41	771201	September 17, 1993
China	GRE	9	746675	September 23, 1993
United States	GRE	16, 41	1146134	February 14, 1979
United States	GRE	9	1756582	June 22, 1992
United States	GRE	9, 16, 41, 42	1943796	October 17, 1994

The disputed domain name was registered on April 1, 2022. According to the evidence submitted by the Complainant, the disputed domain name resolves to a website with English and Chinese contents, promoting the sale of cheating hardware and/or test-taking services on behalf of student candidates. Currently, the disputed domain name resolves to an inactive website.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its trade mark, as it incorporates the trade mark GRE in its entirety with the addition of the descriptive term "baofen" (the Chinese Pinyin for "保分" which means "guaranteed scores");

- the Respondent has no rights or legitimate interests in respect of the disputed domain name, particularly since it is used for an illegal and/or fraudulent purpose to help students cheat in online tests; and
- the disputed domain name has been registered and is being used in bad faith, particularly since the provision of the Respondent's services clearly targets the GRE tests administered by the Complainant and disrupts its business.

## **B. Respondent**

The Respondent sent email communications to the Center to inform that the website has not been in use for a long time and has been shut down, and the disputed domain name will not be renewed upon its expiry. Other than that, the Respondent did not formally reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1 Procedural Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the disputed domain name resolves to a website which contains both English and Chinese content, and which offers test taking services to cheat on the English language exams (such as GRE, TOEFL, and SAT), suggesting that the Respondent is proficient in the English language.

The Respondent requested that the language of the proceeding be Chinese claiming that he had no knowledge of English and was relying on translation software to read the Complaint, but was unable to translate the contents in the PDF documents. The Respondent sent email communications in both English and Chinese.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2 Substantive Issue: Findings**

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the disputed domain name to be transferred:

- (i) the disputed domain name registered by the respondent is identical or confusingly similar to a trade mark or service mark in which the complainant has rights;
- (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**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name comprises "gre" and "baofen". The Panel finds the mark GRE is recognizable within the disputed domain name. The addition of the term "baofen" (the Chinese Pinyin for "保分" which means "guaranteed scoring") does not prevent a finding of confusing similarity. Accordingly, the disputed domain name is confusingly similar to the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.8.

In the circumstances, the Panel finds the first element of the Policy has been established.

## **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 the 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", requiring information that is often primarily within the knowledge or control of the respondent. 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Panels have held that the use of a domain name for illegal activity or other fraudulent activity (here, the sale of cheating hardware and/or test-taking services to help student candidates cheat in English exams) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In the circumstances, the Panel finds the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent was clearly aware of and targeting the Complainant when he registered the disputed domain name. Further, in offering its cheating hardware and/or test-taking services to help student candidates cheat in the Complainant's GRE exams, the Respondent competes with and disrupts the Complainant's business of selling GRE practice guides and courses. The Respondent is intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's GRE mark. The circumstances referred to in paragraphs 4(b)(iii) and (iv) of the Policy are applicable.

Further, panels have held that the use of a domain name for illegal activity (here, the sale of cheating hardware and/or test-taking services to help student candidates cheat in English exams) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In the circumstances, the Panel finds that the Complainant has established the third element 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 <grebaofen.com> be transferred to the Complainant.

*/Sok Ling MOI/*

**Sok Ling MOI**

Sole Panelist

Date: February 20, 2024