

## **ADMINISTRATIVE PANEL DECISION**

Energy Transfer LP v. Jim Mangum, HFOTCO LLC  
Case No. D2024-3347

### **1. The Parties**

The Complainant is Energy Transfer LP, United States of America (“United States”), represented by Sheppard, Mullin, Richter & Hampton, United States.

The Respondent is Jim Mangum, HFOTCO LLC, United States.

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

The disputed domain name <houstonterminalenergytransfer.org> is registered with Hostinger Operations, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2024. On August 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 2024, 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 (Privacy Service provided by Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 26, 2024, 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 August 30, 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 September 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on October 9, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on October 15, 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, with an office in Houston, Texas, United States, operates in the energy infrastructure industry. It constructs and operates natural gas pipelines and exports, transports, processes, stores and terminals natural gas, crude oil and related products. It was founded in 1996, has approximately 10,000 employees, and reported earnings of over USD 13.1 billion in 2022. As will be discussed below, the Complainant asserts unregistered trademark rights in its ENERGY TRANSFER mark based on more than 25 years of continuous use.

The Complainant is the proprietor of several trademark registrations for its “E” device mark, which appears as follows<sup>1</sup>:



For example, the Complainant has registered United States Trademark Registration No. 3127824 for E (device mark), registered on August 8, 2006 for services in class 39, namely, “fuel services, namely, the storage and transportation of natural gas through pipelines”, claiming a date of first use in October 2002.

The Complainant operates its corporate website at the domain name <energytransfer.com>, which it registered in 1997.

The disputed domain name was registered on January 28, 2024. At the time of the Complaint, it resolved to a website purporting to offer storage services for “petroleum based products and bio fuels”. The website lists the Complainant’s corporate address and features a logo identifying it as “Houston Terminal Energy Transfer”, incorporating a symbol consisting of three horizontal lines as follows:



At the time of this Decision, the disputed domain name did not resolve to an active website.

No information is available about the Respondent.

#### 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 common-law trademark rights in the ENERGY TRANSFER mark based on continuous use for over 25 years; advertising and promotion efforts, operation of a website, and licensing

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<sup>1</sup> The Panel notes that the evidence submitted identifies the trademark owner as “Energy Transfer Group, L.L.C.”. In exercise of the Panel’s general powers under paragraphs 10 and 12 of the Rules, the Panel has conducted limited factual research into matters of public record and notes that the trademark owner is a subsidiary of “Energy Transfer Operating, L.P.”, which is itself a subsidiary of the Complainant. Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 1.4, a trademark owner’s affiliate is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint.

to sports team and community organizations, including to the Texas Rangers, a Major League Baseball team. The Complainant has 250,000 followers across social media channels and its YouTube channel has had over 1 million views. The Complainant's mark has further been publicized through the company's receipt of various awards.

The disputed domain name incorporates the Complainant's mark in its entirety, together with terms that reference the Complainant's location and its business. The Respondent is not affiliated with the Complainant. The disputed domain name resolved to a website that featured a logo that infringes that of the Complainant and list the Complainant's business address at the Houston Terminal as its own, but the Parties do not share a business address. The Respondent's website provides telephone numbers that do not work and social media links that are inoperative. The Respondent purports to offer services identical to those of the Complainant. The Respondent has attempted to induce consumers to believe that it is affiliated with the Complainant and, on its website, invites users to provide personal information on this misleading basis.

The Complainant notes that the disputed domain name was shut down by the hosting provider on July 13, 2024, following receipt of notice from the Complainant.

The Complainant requests transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall 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".

### **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 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 respect of a registered trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. However, the Panel finds that the "E" device mark is not sufficiently distinctive to provide a basis for a finding of confusing similarity with the disputed domain name in these circumstances.

As a basis for standing, therefore, the Panel finds the Complainant has established unregistered trademark or service mark rights in the ENERGY TRANSFER mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The Panel notes the more than 25 years of use in commerce of the ENERGY TRANSFER mark, and also its use in the Complainant's domain name since 1997. Moreover, the Respondent's use of the ENERGY TRANSFER mark together with the words "Houston Terminal" and a logo containing elements similar to those of the Complainant's registered "E" device mark, together with the reference to the Complainant's business location, demonstrates the distinctiveness of the ENERGY TRANSFER mark.

Under these circumstances, the Panel finds that the ENERGY TRANSFER mark has acquired secondary meaning in respect of the services offered by the Complainant.

The Panel therefore finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The entirety of the Complainant's ENERGY TRANSFER mark is reproduced 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.

Although the addition of other terms (here, "houston" and "terminal") may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 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.

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

The Panel notes that the disputed domain name reflects the Complainant's ENERGY TRANSFER mark in its entirety, together with terms directly locating the Complainant's business location in the Houston Terminal. Such a composition carries a risk of implied affiliation with the Complainant, which is inconsistent with a finding that the Respondent has rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel notes that the Respondent's website displays the words "Houston Terminal Energy Transfer" together with a logo containing elements related to the Complainant's registered E mark. The Respondent purports to offer similar services to the Complainant. The Respondent's website lists the Complainant's address. Consistent with UDRP practice, the Panel finds that the use of the disputed domain name for illegal activity (here, claimed impersonation/passing off) cannot confer rights or legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

According to UDRP practice, where a domain name has been registered before a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent's bad faith. [WIPO Overview 3.0](#), section 3.8.2. Accordingly, the Panel must consider whether the record supports a finding that the Complainant had established rights in its mark as of January 28, 2024, the date that the disputed domain name was registered.

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. [WIPO Overview 3.0](#), section 1.3. The evidence in the record supports a finding that the Complainant has established unregistered trademark rights dating to approximately 1996, when the ENERGY TRANSFER business was established. The Panel notes the extent and nature of the use of the ENERGY TRANSFER mark in connection with services related to petroleum products. The Complainant registered its domain name at <energytransfer.com> in 1997. The Panel finds that, due to this lengthy period of use, and the evidence of targeting by the Respondent, the ENERGY TRANSFER mark is not descriptive in respect of the goods and services for which the Complainant claims rights. The fact that the Respondent sought to register a disputed domain name composed of the Complainant's ENERGY TRANSFER mark together with the terms "Houston Terminal", where the Complainant operates a location, also supports the notion that the Complainant's trademark was already recognized a source identifier for the Complainant at the time of registration. [WIPO Overview 3.0](#), section 1.3.

Accordingly, in the present case the Panel finds that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The disputed domain name was registered after the Complainant established rights in its ENERGY TRANSFER trademark. It reflects a deliberate targeting of the Complainant and its mark.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The record contains evidence that the Respondent's website features a logo containing elements similar to the Complainant's registered E device mark and is used in combination with the terms "Houston Terminal Energy Transfer", directly referencing one of the Complainant's locations. The Respondent's website purports to offer services that overlap with those of the Complainant. The Respondent's website lists the Complainant's business address as its own. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name, nor does the Panel find any such use plausible.

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 <houstonterminalenergytransfer.org> be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: October 29, 2024