

ADMINISTRATIVE PANEL DECISION

Elasticsearch B.V. v. Zachary Winslow
Case No. D2024-3758

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 Zachary Winslow, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <clojureelasticsearch.info> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2024. On September 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 17, 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 (Above.com Pty Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 amended Complaint on September 24, 2024.

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 September 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on October 25, 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. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's physical address is stated to be in Ukraine which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Respondent's reported physical address includes at least one inaccurate information since the street indicated is located in another city, Kyiv, whereas the city indicated in the Whols is Chernivtsi. The Panel further notes, however, that the Center also sent Notification of Complaint through the Registrar's contact form; and by email to the Respondent at its email address as registered with the Registrar and to a postmaster email address as specified by the Rules. The Complaint was delivered to the Respondent's email address provided by the Registrar and there is no evidence that the case notification through the Registrar's contact form was not successfully delivered.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark. The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant is in the business of creating search-powered solutions in relation to Enterprise search, Artificial Intelligence, Observability, and Security for the purpose of helping enhance consumer and employee search experiences, and to keep mission-critical applications running smoothly, and protect against cyber threats.

As of November 2023, the Complainant's Elasticsearch platform has been downloaded more than 4 billion times, which makes the Complainant's application one of the most ubiquitous software programs adopted and licensed through the Open-Source distribution channels in the world. The Complainant has also directly licensed its search solutions under its ELASTIC and ELASTICSEARCH trademarks to around 20,000 commercial enterprise and government customers in approximately 175 countries.

Also, the Complainant has an active Elastic Meetup community of over 101,000 members across 55 countries. Elastic Meetups have occurred for over a decade, with the first event held in September 2012.

The Complainant owns numerous registered trademarks for ELASTICSEARCH and ELASTIC, such as the following:

- the International trademark registration number 1114893 for ELASTICSEARCH (word), registered on January 30, 2012, designating the European Union inter alia, covering goods and services in International classes 9 and 42;
- the International trademark registration number 1315717 for ELASTIC (word), registered on July 21, 2016, designating the European Union inter alia, covering goods and services in International classes 9 and 42; and
- the United States trademark registration number 6263801 for ELASTIC (word), filed on August 2, 2019, registered on February 9, 2021, covering goods and services in International classes 9 and 42.

The Complainant also holds numerous domain names comprising the mark ELASTICSEARCH and/or ELASTIC, such as the following: <elastic.co>, <elastic.info>, <elasticsearch.com>, <elasticsearch.biz>, or <elasticsearch.us>.

The disputed domain name was registered on July 13, 2024.

When the Panel visited the disputed domain name, it was used in relation to a blog style webpage, providing few pieces of information about technology, such as how the technology is transforming the travel industry, or the future of smart home appliances, without providing any information about the holder of the disputed domain name or disclaimer in relation to the mark ELASTICSEARCH and/or ELASTIC.

The Panel notes that the Whois records of the disputed domain name, submitted by the Complainant as an annex to the Complaint, indicate a different registrar and show a registration date of April 28, 2012. The records also list an organization as the registrant. However, the current Whois records reflect a different Registrar and list a privacy service as the registrant, with a registration date in 2024. Given these discrepancies, it appears highly unlikely that the registrant of the disputed domain name has remained the same. In the absence of a Response to suggest otherwise, and noting the current use of the disputed domain name, the Panel's findings remain unaffected by this situation.

6. 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 its trademarks ELASTICSEARCH and/or ELASTIC are distinctive and well-known, having been in use since at least as early as 2010; it owns over 155 registered trademarks for ELASTICSEARCH and/or ELASTIC and holds more than 110 domain names comprising these marks; the disputed domain name is confusingly similar to its trademark ELASTICSEARCH since it incorporates it exactly with the additional term "clojure", a trademark/technical term used to identify a functional dialect of the Lisp programming language on the Java platform; the Respondent has no rights or legitimate interests in the disputed domain name; the Respondent is not an affiliated company or licensee of the Complainant; the Respondent has registered the disputed domain name in bad faith, since the Respondent could have ascertained the existence of the Complainant and the Complainant's use of the Elasticsearch corporate name and trademarks with a simple Internet search; the Respondent registered the disputed domain name and incorporated the Complainant's well-known and famous ELASTICSEARCH trademark in its entirety, in combination with the term "clojure", with the intention of impersonating the Complainant and of attracting Internet users to its website in the mistaken belief that it is an authorized website, operated by, or otherwise legitimately associated with the Complainant; the Respondent uses the disputed domain name in

a manner that is likely to cause confusion as to the source, sponsorship, affiliation, or endorsement of the website and business at the disputed domain name; the Complainant suggests that the Respondent's registration of the disputed domain name appears strongly preparatory for possible use as a "phishing" or "pharming" site; the Internet users accessing the website under the disputed domain name were deceived into believing that their device is subject to a security threat and were encouraged to install a "Total Adblock" feature from the disputed domain name, without authentication of the source or validity of the offered software, this being evidence of a fraudulent scheme to trick users to download or install malicious content; and the Complainant asserts the Respondent registered the disputed domain name primarily for the purpose of phishing or pharming, to divert users to another website to install third-party software that may contain malicious content or expose users to computer attacks and possible data breaches or security concerns.

B. Respondent

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

7. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (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 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 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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark ELASTICSEARCH 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.

While the addition of other term, here "clojure", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 composition of the disputed domain name, which incorporates the Complainant's mark ELASTICSEARCH and company name together with a technical term associated with the Complainant's business related to software and programming language, carries a risk of implied affiliation.

UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel notes that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its trademark and business particularly because the disputed domain name incorporates the Complainant's trademark preceded by a term closely related to the Complainant's business, i.e., "clojure" which is a term for a programming language dialect on the Java platform, the Complainant holds trade name, as well as numerous trademarks, and domain names comprising ELASTIC and/or ELASTICSEARCH trademarks, which predate the registration of the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may 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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's well-known trademark together with additional technical term related to the Complainant business, the content on the website operated under the disputed domain name is related to the Complainant's field of activity and lacks any information regarding the entity operating such website, the Panel finds that the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

The Panel further notes the distinctiveness and reputation of the Complainant's trademark in its field, the Respondent's failure to provide a response in this proceeding, the Respondent's provision of inaccurate contact details in the WhoIs (as detailed in section 4 above), a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, and finds that, in the circumstances of this case, such facts are further evidence of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

8. 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 <clojureelasticsearch.info> be transferred to the Complainant.

/Marilena Comanescu /

Marilena Comanescu

Sole Panelist

Date: November 6, 2024