

## ADMINISTRATIVE PANEL DECISION

elasticsearch B.V. v. 吴清儒 (wu qing ru)

Case No. D2024-3995

### 1. The Parties

Complainant is elasticsearch B.V., Netherlands (Kingdom of the), represented by Quinn IP Law, United States of America (the “US”).

Respondent is 吴清儒 (wu qing ru), China.

### 2. The Domain Name and Registrar

The disputed domain name <elasticsearch.info> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2024. On September 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 30, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which partly differed from the named Respondent (Redacted for Privacy, wu qing ru) and contact information in the Complaint. The Center sent an email communication to Complainant on October 7, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on October 12, 2024.

On October 7, 2024, the Center informed the Parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On October 11, 2024, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

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 Respondent of the Complaint in Chinese and English, and the proceedings commenced on October 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on November 7, 2024.

The Center appointed Yijun Tian as the sole panelist in this matter on November 14, 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**

##### **A. Complainant**

Complainant is a company incorporated in the Netherlands (Kingdom of the). Complainant has rights in the ELASTICSEARCH marks used in connection with a platform for search-powered solutions. Complainant is the owner of numerous ELASTICSEARCH trademarks worldwide, including the US trademark registration for ELASTICSEARCH, registered on September 25, 2012 (registration number: 4212205), and the International Trademark Registration for ELASTICSEARCH, registered on January 30, 2012 (registration number: 1114893) (Annex V to the Complaint).

Complainant also claims that it operates domain names that contain the ELASTICSEARCH mark in its entirety, such as <elasticsearch.com>, <elasticsearch.org>, and <elasticsearch.net> (Annex VI to the Complaint).

##### **B. Respondent**

Respondent is 吴清儒 (wu qing ru), China.

The disputed domain name <elasticsearch.info> was registered on August 25, 2023.

According to the Complaint and relevant evidence provided by Complainant, the disputed domain name redirects to a "Dan.com" webpage where the disputed domain name is offered for sale for USD 950 (Annex VII to the Complaint).

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that the disputed domain name is identical to Complainant's trademark. The disputed domain name incorporates Complainant's trademark in its entirety.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

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

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

### 6.1. 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.

From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint and amended Complaint in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) The disputed domain name uses Latin script and contains English-language words, specifically “elasticsearch”, “elastic”, and “search” which also align with Complainant’s company name.
- (b) Complainant conducts its business primarily in English.
- (c) Complainant’s international trademark rights for the well-known marks ELASTIC and ELASTICSEARCH are registered in English.
- (d) A substantial number of domain names that include the “elasticsearch” are in English.
- (e) Respondent listed the disputed domain name for sale at USD 950 on an English-language third-party website.
- (f) Requiring translation of the Complaint and supporting evidence into another language would impose significant expense and inconvenience on Complainant, causing undue delay in the proceedings.

Respondent did not make any submissions with respect to the language of the proceeding.

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).

On the record, Respondent appears to be located in China and thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain name is registered in Latin characters, particularly in English (i.e., English words “elastic”, “search”, and “info” (abbreviation of the English word “information”), rather than Chinese script; (b) the generic Top-Level Domain (“gTLD”) of the disputed domain name is “.info”, so the disputed domain name seems to be prepared for users worldwide, particularly English speaking countries; (c) the webpages which the disputed domain name redirected to are in the English language; (d) the Center has notified Respondent of the language of the proceeding in both Chinese and English; (e) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any response.

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 Issues: Three Elements

### 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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 entirety of the ELASTICSEARCH mark is reproduced within the disputed domain name. More specifically, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. 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 record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

More specifically,

(i) there has been no evidence adduced to show that Respondent used the disputed domain name in connection with a bona fide offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the terms "elastic search", which, as combined, is Complainant's ELASTICSEARCH trademark that enjoys long-standing prior use, in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the ELASTICSEARCH or to apply for or use any domain name incorporating the ELASTICSEARCH marks;

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2023, after the ELASTICSEARCH marks became widely known. The disputed domain name is identical to Complainant's ELASTICSEARCH marks; and

(iii) there has been no evidence adduced to show that Respondent was making a legitimate noncommercial or fair use of the disputed domain name. Notably, the disputed domain name redirects to a "Dan.com" webpage where the disputed domain name is offered for sale for USD 950 (Annex VII to the Complaint). In

the circumstances, the Respondent's use of the Complainant's mark to redirect users to an aftermarket website where it is offered for sale would not support a claim to rights or legitimate interests.

Based on the available record, 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 Respondent has registered and used the disputed domain name in bad faith.

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.

Based on the information provided by Complainant, the Panel finds that Complainant has a widespread reputation in the ELASTICSEARCH marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademark in mind at the time of the registration of the disputed domain name (in 2023). This has been reinforced by the fact that the disputed domain name is identical to Complainant's ELASTICSEARCH trademark.

Respondent has used the disputed domain name to redirect to a third-party website offering the disputed domain name for sale for USD 950.

Thus, the Panel concludes, on the balance of probabilities, that Respondent's registration and use of the disputed domain name is primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to Complainant or to a competitor of Complainant, for valuable consideration likely in excess of the documented out-of-pocket costs directly related to the disputed domain name. Such use constitutes bad faith pursuant to paragraph 4(b)(i) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <elasticsearch.info> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Date: November 28, 2024