

ADMINISTRATIVE PANEL DECISION

elasticsearch B.V. v. Michael Nava

Case No. D2024-4001

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 Michael Nava, United States.

2. The Domain Name and Registrar

The disputed domain name <elasticcloud.net> is registered with Spaceship, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed 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 October 2, 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 (Spaceship, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 2, 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 October 2, 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 October 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 29, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on November 1, 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 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 ELASTIC, such as the following:

- the United Kingdom trademark registration number UK00801315717 for ELASTIC (word with device), registered on March 29, 2017, covering goods and services in International classes 9 and 42; and
- 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 contends that it has unregistered trademark rights in ELASTIC CLOUD.

The Complainant also holds domain names comprising the mark ELASTIC, such as: <elastic.co>, <elastic.cloud>, <elastic.info>, or <elastic.direct>.

The disputed domain name was registered on September 20, 2023, and, at the time of filing the Complaint, it was used in relation to a webpage asking the Internet users if they own the respective domain name, and afterwards mentioning that the domain name expired, and further inviting Internet users to log in their account. The website under the disputed domain name did not provide any information about the holder of this domain name or disclaimer in relation to the Complainant or the mark ELASTIC.

According to evidence in the Complaint, the disputed domain name was listed for public sale on the website of the GoDaddy registrar, for the amount of USD 1,988.

On August 8, 2024, before the commencement of this proceeding, the Complainant sent a cease-and-desist letter to the Respondent. No response was received.

The name of the Respondent revealed by the Registrar corresponds to an individual involved in numerous UDRP proceedings decided against it. See *Jumeirah International LLC v. Michael Nava, Domain Nerdz LLC*, WIPO Case No. [D2024-2161](#), *Permian Triassic Ltd. v. Michael Nava, Domain Nerdz LLC*, WIPO Case No. [D2024-0044](#), or *Aquent LLC v. Michael Nava, Domain Nerdz LLC*, WIPO Case No. [D2023-0878](#) and cases cited therein.

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 its trademarks ELASTIC and/or ELASTICSEARCH are distinctive and well-known, having been in use since at least as early as 2010; it owns over 155 registered trademarks for ELASTIC and/or ELASTICSEARCH and holds more than 110 domain names comprising these marks; the disputed domain name is confusingly similar to its trademark ELASTIC since it incorporates it in its entirety, in combination with the word "cloud", which directly relates to the Complainant's ELASTIC CLOUD trademark, the Complainant's business and related goods and services; the Complainant uses ELASTIC CLOUD as a trademark and actively promotes its "Elastic Cloud" products and services and is widely recognized as an industry leader in this technology space; 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 ELASTIC trademark as the primary and prominent term in the disputed domain name, in combination with the word "cloud", a term widely used in the Complainant's digital technology industry; 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 mainly because the disputed domain name incorporates the Complainant's ELASTIC trademark without a legitimate purpose but to create a false impression to the Internet users accessing the website under the disputed domain name that they are somehow on the Complainant's legitimate homepage and further conduct research, business or enter credentials; the public is likely to be confused, misled, and deceived as to the source of the Respondent's disputed domain name and is likely to be misdirected away from the Complainant when, in fact, the public is actually searching for the Complainant; the Respondent listed the disputed domain name for sale for an amount that exceeds the out-of-pocket expenses incurred for registering and maintaining the disputed domain name, coupled with a very brief period of holding of the disputed domain name from its registration before relisting it for sale, and this leads to a "very strong inference" that the Respondent registered the disputed domain name for speculative reasons, to resale it to third parties; the Respondent is a well-known cybersquatter, having been named in at least 15 UDRP proceedings, with prior UDRP panels regularly finding that the Respondent registered and used domain names incorporating third parties' well-known trademarks and, in several cases, listing such domain names for resale for the same price, as the disputed domain name.

B. Respondent

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

6. 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 ELASTIC 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 "cloud", 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 ELASTIC together with a term closely associated with the Complainant's field of activity in the digital technology industry and in fact used by the Complainant to describe its services, 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.

Further, the disputed domain name was offered for public sale on a third party website and the Respondent has been involved in numerous UDRP disputes decided against it. These facts, together with the other circumstances in this case, including a lack of any explanation for the choice of disputed domain name by the Respondent, do not amount to a bona fide offering or legitimate noncommercial or fair use.

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 well-known trademark followed by a term closely related to the Complainant's business and used by the Complainant to describe its services, i.e., "cloud". The Complainant holds a trade name, numerous trademarks, and domain names comprising the trademark ELASTIC, which predate the registration of the disputed domain name by more than a decade.

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)(i) of the Policy provides the circumstance when the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name. The Panel finds that, registering a domain name similar to the Complainant's well-known trademark and offering it for sale to the public at large, for the amount of USD 1,988, is evidence of bad faith behavior in the circumstances of this case. [WIPO Overview 3.0](#), section 3.1.1.

Paragraph 4(b)(ii) of the Policy provides another circumstance of bad faith registration and use when the respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. According to evidence in the Complaint, the Respondent has been involved in numerous UDRP disputes, containing third parties' trademarks and decided against it. [WIPO Overview 3.0](#), section 3.1.2.

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 <elasticcloud.net> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: November 13, 2024