

ADMINISTRATIVE PANEL DECISION

eBay Inc. v. Registration Private, Domains By Proxy, LLC / Thomas Ronk, Tendency LLC

Case No. DIO2022-0040

1. The Parties

Complainant is eBay Inc., United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

Respondent is Registration Private, Domains By Proxy, LLC, United States / Thomas Ronk, Tendency LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <ebaynfts.io> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2022. On August 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 30, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on August 31, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 7, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondents of the Complaint, and the proceedings commenced on September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. Respondents did not submit any response. Accordingly, the Center notified Respondents’ default on September 28, 2022.¹

¹ Further references to “Respondent” herein signify the individual respondent Thomas Ronk, Tendency LLC.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on October 4, 2022. 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

Complainant owns several registrations worldwide for its EBAY trademark including, for example, United States Trademark Registration No. 2,218,732, registered January 19, 1999 in International Class No. 35, with a first use in commerce dating back to September 4, 1995.

The disputed domain name was registered on May 3, 2021. The disputed domain name routes to a parking page devoid of substantive content other than a statement that the disputed domain name “may” be for sale, providing contact information for potential buyers of the disputed domain name.

5. Parties’ Contentions

A. Complainant

Complainant avers that Respondent is attempting to create an online trading platform for non-fungible tokens, or NFTs, citing statements from Respondent’s website at “www.tendynft.com”.

Complainant also quotes additional statements from the website at “www.tendynft.com”. The statements include representations that Respondent has registered 3,300 domain names based on a large number of brands combined with the term “nfts,” with the intention of providing NFT-related services and leasing, selling or charging transaction fees related to these domain names. Complainant notes that many of these domain names are based on well-known trademarks, and that Respondent claims an average value of USD 43,268 for each of the domain names.

Complainant also avers that on July 6 and July 13, 2022 Complainant’s lawyers, via use of the Registrar’s contact forms, sought to contact Respondent to resolve the matter of Respondent’s registration of the disputed domain name. Complainant states that no reply was received.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant’s trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered or is being used in bad faith, all in violation of the Policy.

On the above grounds, Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

So far as the .IO Policy is concerned, the Panel notes that it is substantially similar to (though not identical to) the Uniform Domain Name Dispute Resolution Policy (the “UDRP”). The Panel will, where appropriate, apply principles that have been established in relation to the UDRP in determining this dispute.

The .IO Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems

applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the .IO Policy, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered or is being used in bad faith.

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#). In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. E.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name <ebaynfts.io> is confusingly similar to Complainant's EBAY trademarks.

Panels commonly disregard Top Level Domain ("TLD") suffixes in determining whether a disputed domain name is identical or similar to a complainant's marks. See, e.g., *HUK-COBURG haftpflicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands A.G. v. DOMIBOT (HUK-COBURG-COM-DOM)*, WIPO Case No. [D2006-0439](#); *VAT Holding AG v. Vat.com*, WIPO Case No. [D2000-0607](#); *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#).

Omitting the ".io" country-code Top-Level Domain ("ccTLD"), the disputed domain name incorporates the entire EBAY mark, adding only the plural of the common acronym for "non-fungible tokens," or "nfts." The Panel finds therefore that the disputed domain name is confusingly similar to Complainant's marks. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 1.7 ("[WIPO Overview 3.0](#)") (UDRP panels often determine that disputed domain names are confusingly similar to a complainant's marks where the disputed domain names fully incorporate a complainant's marks).

Therefore, the Panel concludes that the first element of paragraph 4(a) of the .IO Policy is established.

B. Rights or Legitimate Interests

The Panel also agrees that Complainant establishes that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4c of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in the use of a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods and services;
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Complainant must establish a *prima facie* case that Respondent lacks rights or legitimate interests. See e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#) (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)). The absence of rights or legitimate interests is established if a *prima facie* case is established and Respondent does not rebut that *prima facie* case.

Complainant avers that Respondent is not affiliated with Complainant, has no authorization to use Complainant's trademarks, and that Respondent is not commonly known by the disputed domain name. The Panel accepts these undisputed allegations.

The statements quoted by the Complaint from the "www.tendynfts.com" website establish Respondent's intention to profit and make a business from its mass registration of domain names based on third-party trademarks adding the term "nfts," boasting of the average high value of its domain names. In the absence of a response to the Complaint, the Panel is inclined to accept that Respondent also plans to use the disputed domain name for the same business purpose. This precludes any possibility that Respondent is making a legitimate noncommercial or fair use.

Respondent's mass registration of domain names based on third-party trademarks, apparently without their authorization, also eliminates any possibility of *bona fide* use.

Complainant establishes a *prima facie* case. Refraining from submitting a response, Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that Respondent has rights or legitimate interests in respect of the disputed domain name.

Therefore, the Panel concludes that the second element of paragraph 4(a) of the .IO Policy is established.

C. Registered or Used in Bad Faith

Finally, while paragraph 4(a)(iii) of the .IO Policy requires Complainant to prove *either* bad faith registration or bad faith use, the Panel agrees that the Complaint establishes *both* bad faith registration and bad faith use of the disputed domain name.

Policy paragraph 4(b) requires Complainant to prove one of the following:

- (i) That Respondent "registered or ... acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 your documented out-of-pocket costs directly related to the domain name; or"
- (ii) That Respondent "registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [Respondent] ... engaged in a pattern of such conduct; or"
- (iii) That Respondent "registered the domain name primarily for the purpose of disrupting the business of a competitor; or"
- (iv) "By using the domain name, [Respondent] ... intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site or other online location, by creating a likelihood of confusion with [C]omplainant's mark as to the source, sponsorship, affiliation, or endorsement of [Respondent's] web site or location or of a product or service on [Respondent's] web site or location." Policy paragraph 4(b).

The record makes abundantly clear that Respondent registered a large portfolio of domain names based on well-known third-party trademarks (including the disputed domain name in this proceeding) with the stated intention of profiting by leasing, selling, or otherwise charging for use of the domain names. Respondent in its posted statements boasts of an average value for its portfolio of domain names far higher than any conceivable costs of registration. This clearly establishes bad faith registration *and* use under Policy paragraph 4(b)(i).

The Panel also finds that the circumstances show that Respondent has engaged in a pattern of domain name registration aimed at preventing the owner of the trademark from reflecting the mark in a corresponding domain name. This evidences bad faith pursuant to paragraph 4(b)(ii) of the .IO Policy. See

LEGO Juris A/S v. Thomas Ronk, Tendency LLC, WIPO Case No. [D2022-1284](#) (multiple domain names in proceeding were used and registered in bad faith by Respondent Thomas Ronk, Tendency LLC).

Again, the statements discussed above from Respondent's website at "www.tendynft.com" and the terms comprising the disputed domain name itself are also uncontroverted evidence that Respondent "intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site or other online location, by creating a likelihood of confusion with [C]omplainant's mark." This fulfills the requirements of .IO Policy paragraph 4(b)(iv).

Respondent's failure to respond to the Complaint and the absence of any conceivable good-faith use of the disputed domain name by Respondent are cumulative evidence of bad faith.

The Panel holds therefore that Respondent registered and used the disputed domain name in bad faith; thus, establishing the third element under Paragraph 4(a) of the .IO Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .IO Policy and 15 of the .IO Rules, the Panel orders that the disputed domain name, <ebaynfts.io> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: October 18, 2022