

## **ADMINISTRATIVE PANEL DECISION**

Edmentum, Inc. v. Cheri Dal  
Case No. D2022-3097

### **1. The Parties**

Complainant is Edmentum, Inc., United States of America (“United States” or “U.S.”), represented by Faegre Drinker Biddle & Reath LLP, United States.

Respondent is Cheri Dal, United States.

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

The disputed domain name <edrnentum.com> is registered with Realtime Register B.V. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 23, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on August 25, 2022.

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 Respondent of the Complaint, and the proceedings commenced on August 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2022. Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 20, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on September 23, 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

Without contest by Respondent, the following facts appear from the Complaint (as amended), and Complainant provides evidence in the respective Annexes attached to its Complaint, including a signed declaration by its General Counsel, sufficient to support that:

Based in Minnesota in the United States, Complainant is an educational services provider that offers digital curriculum from kindergarten to adult education, assessments, and services to 43,000 schools in all 50 states of the United States and over 100 countries worldwide under the trademark EDMENTUM (the “EDMENTUM Mark”). Complainant’s educational services provided under the EDMENTUM Mark include all core subjects, career and technical education, health and fitness education as well as social-emotional learning curriculum, as well as related interactive software, printed user manuals, and computer-based teaching systems.

Complainant has used the EDMENTUM Mark in the United States and worldwide as a source identifier for its educational and healthcare goods and services including a range of related software and online educational services for over 10 years, and owns among others, the following trademark registrations:

- United States Trademark Registration No. 4,564,863, EDMENTUM, registered on July 8, 2014, for a range of educational products and services in International Classes 9, 16, 35, 38, 41 and 42, and claiming a first use date as early as November 11, 2012.
- United States Trademark Registration No. 4,577,255, EDMENTUM SENSEI, registered on July 29, 2014, for “Providing temporary use of online non-downloadable software for information reporting in the educational sector, analysis of education data, and statistics related to student performance and growth”, in International Class 42, and claiming a first use date of June 22, 2013.
- International trademark No. 1189243, EDMENTUM, registered on March 15, 2013, for a range of services in International Classes 35, 38, 41 and 42, and designating China, European Union, and Mexico.
- South Africa Trademark Registration No. 2013/06825, EDMENTUM, registered on March 15, 2013, for a range of online educational communications services for students in International Class 3

Complainant is the registrant of and uses the domain name <edmentum.com> created on July 24, 2012, to provide access to Complainant’s official Edmentum website at the URL “www.edmentum.com” (“Official Edmentum Website”) which has since its creation in 2012 prominently featured the EDMENTUM Mark to advertise and provide information regarding Complainant’s educational goods and services.

The disputed domain name was registered on July 20, 2022, and resolves to a parked website with no content. The record submitted provides probative evidence of use of the disputed domain name to engage in the abusive conduct known as “homograph spoofing” because the disputed domain appears to replicate Complainant’s mark in its entirety, but actually replaces one letter “m” with the lookalike combination of the two letters “r” and “n” (rn) to fabricate a variant letter “m”, and Annexes to the Complaint also show Respondent has configured its servers associated with the disputed domain name to perpetrate a fraudulent phishing scheme by sending emails to Complainant’s customers on behalf of an executive of Complainant forwarding fraudulent “amended” bank account information to reroute payments to Respondent.

## 5. Parties' Contentions

### A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's well-known trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

### B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Paragraph 15(a) of the Rules provides that the Panel shall 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. Furthermore, paragraphs 10(b) and 10(d) of the Rules provide that the Panel shall ensure that the parties are treated with equality and shall determine the admissibility, relevance, materiality and weight of the evidence.

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint as amended, notwithstanding the failure of Respondent to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall "draw such inferences therefrom as it considers appropriate".

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied. Taking the aforementioned provisions into consideration, the Panel will address its findings on each of these requirements in more detail below.

The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.2.

### A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that Complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has demonstrated its rights because it has shown that it is the holder of multiple valid and subsisting trademark registrations for its EDMENTUM Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant's rights in the EDMENTUM Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's EDMENTUM Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name". Moreover, prior UDRP panels have held that "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of" the UDRP. [WIPO Overview 3.0](#), section 1.7.

The disputed domain name incorporates Complainant's EDMENTUM Mark in its entirety with one minor distinction, the replacement of the first occurrence of the letter "m" in the mark with the two letters "r" and "n" adjacent to one another to create the appearance of a letter "m". This contrived substitute mutant letter does not significantly affect the appearance or pronunciation of the disputed domain name. In fact, this intentional misspelling involving two adjacent letters carefully configured by Respondent to create confusion represents a form of typosquatting known as "homograph spoofing", a form of bad faith conduct, which will be considered in Section 6.C. below. See, *Wolf Oil Corporation N.v. v. Peter Hugeman*, WIPO Case No. [D2016-1398](#). The disputed domain name, therefore, is essentially identical to Complainant's official domain name <edmentum.com> from which Complainant operates its Official Edmentum Website and mimics its registered EDMENTUM Mark changing only the first letter "m" with the substitute lookalike combination of letters "rn".

As Complainant contends, a domain name composed solely of a trademark that has been purposefully misspelled by a typo-squatter is still confusingly similar to the trademark. See *AdvanSix Resins & Chemicals, LLC v. Contact Privacy Inc. Customer 1244657330/Benjamin Thomasson*, WIPO Case No. D2019-1581 (finding <advansilx.com> an "obvious misspelling" of Complainant's ADVANSIX mark confusingly similar). The fabricated difference in spelling here could be easily overlooked or considered a "typo" by consumers allowing Respondent to use a link based on this variant spelling to redirect unwary consumers to a website controlled by Respondent.

Prior UDRP panels have also found a difference of only one letter, genuine or mimicked, between a disputed domain name and a complainant's mark does not prevent a finding of confusing similarity. See, e.g., *Electronic Arts Inc. v. John Zuccarini*, WIPO Case No. [D2003-0141](#) (<simscity.com> "the domain name differs from [SIMCITY] trademark in only one letter; this small difference establishes the confusingly similarity with [the complainant's trademark]"). The addition of the Top-Level Domain ("TLD") ".com" is irrelevant in determining whether the disputed domain name is confusingly similar. See, *Eli Lilly and Company v. Lilly Careers*, WIPO Case No. [D2016-0641](#); [WIPO Overview 3.0](#), section 1.11.

Not only is Complainant's EDMENTUM Mark recognizable in the disputed domain name but the disputed domain name is also essentially identical to Complainant's EDMENTUM Mark. Accordingly, the Panel finds the disputed domain name confusingly similar to the EDMENTUM Mark in which Complainant has rights.

Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *The American Automobile Association, Inc. v. aaaaautoinsurance.com Privacy--Protect.org, aaa-netaccess.com Privacy--Protect.org, aaanetacceess.com Privacy--Protect.org, Isaac Goldstein*, WIPO Case No. [D2011-2069](#). Respondent is in default and thus has not attempted to come forward to show any rights or legitimate interests in the disputed domain name under the Policy at paragraph 4(c).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, it is clear from the record submitted that Respondent is not a licensee of or affiliated with Complainant, nor has Complainant consented to or granted any authorization for Respondent to make use of Complainant's EDMENTUM Mark in a domain name or otherwise. Complainant has also shown that Respondent is not commonly known by the disputed domain name because Respondent is listed in the Whois record submitted with the initial Complaint as Redacted for Privacy, and thereafter revealed by the concerned registrar to be Cheri Dal, identified as the additional Respondent in the amended Complaint. Neither Respondent bears any resemblance to the disputed domain name whatsoever.

It is generally regarded as *prima facie* evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to a complainant's trademark, that the respondent is not commonly known by the disputed domain name, and that a complainant has not authorized the respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See, *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#); see also *Marriott International, Inc. v. Thomas, Burstein and Miller*, WIPO Case No. [D2000-0610](#) (no rights or legitimate interests when there is no evidence that respondent is commonly known by the domain name).

Complainant also contends that since the disputed domain name resolves to a parked "blank" webpage with no content, that Respondent has no genuine actual or legitimate business which uses the name or mark "EDMENTUM", or any similar name and has not used the EDMENTUM name or mark (or any similar name) in connection with the *bona fide* offering of goods or services so that it benefits from any goodwill as such term is reflected in the disputed domain name.

Prior UDRP panels have held that use of a disputed domain name to resolve to a blank or inactive webpage does not represent a *bona fide* use of the disputed domain name. See *Fetzer Vineyards v. --*, WIPO Case No. [D2019-2285](#). See also [WIPO Overview 3.0](#), section 2.9.

Complainant has also provided detailed explicit evidence in the Annexes to its Complaint showing Respondent's use of the disputed domain name in connection with a homograph spoofing attack to perpetrate a fraudulent scheme sending emails from an outgoing email server impersonating one of Complainant's executives providing "amended" bank account information to one of Complainant's customers so that payments intended for Complainant would instead be made to Respondent. Prior UDRP panels have held that the use of a domain name for such illegal activity (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See, [WIPO Overview 3.0](#), section 2.13. See also, *Springer Nature Limited v. Registration Private, Domains By Proxy, LLC / Collections Springer Nature*, WIPO Case No. [D2020-0955](#).

Furthermore, prior UDRP panels have held that domain names that are identical to a complainant's trademark carry a high risk of implied affiliation, and that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1. In this case, the Panel has found in Section 6.A. above that the disputed domain name is essentially identical to Complainant's EDMENTUM Mark.

In view of the above, the Panel finds that Complainant has made out a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent has not submitted any argument or evidence to rebut Complainant's *prima facie* case. The Panel determines, therefore, that Respondent does not have rights or legitimate interests in the disputed domain name and that Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Complainant contends that because Respondent has created a domain name that is confusingly similar to Complainant's EDMENTUM Mark, as well as its <edmentum.com> domain name, as found in section 6.A. above, it is implausible to believe that Respondent did not have actual knowledge of Complainant's mark when it registered its confusingly similar disputed domain name. UDRP panels have consistently found that the mere registration of a disputed domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See, [WIPO Overview 3.0](#), section 3.1.4.

The Panel also notes here additional factors under section 3.1.4 and its cases from which the Panel may infer bad faith registration:

(i) Respondent's clearly intentional replacement of the first occurrence of the letter "m" in the disputed domain name with the two letters "rn" to fabricate a variant "m", a known form of homograph spoofing to create a subterfuge version of both Complainant's EDMENTUM Mark and official <edmentum.com> domain name to confuse consumers searching for Complainant, as well as email recipients in Respondent's fraudulent amended bank account information scheme discussed in section 6.B.;

(ii) Complainant's official website for Complainant's educational and healthcare goods and services and related software and online educational services is accessed at "www.edmentum.com", a strikingly similar string, which suggests Respondent targeted Complainant's mark when it picked the disputed domain name replacing one character by a combination of characters to create an almost identical character, with the sole intention of deliberately causing confusion through Respondent's use of the disputed domain name <edrntentum.com>;

(iii) the lack of Respondent's rights to or legitimate interests in the disputed domain name registered to engage in per se illegitimate activity for commercial gain; and

(iv) Respondent's submission of patently falsified Whois information (phone, postal address, postal code) as shown in the Annex to Complainant's Amended Complaint to perpetuate fraud and prevent itself from being identified, constituting further cumulative evidence of Respondent's bad faith registration and use of the disputed domain name.

Given the circumstances of this case, such a showing is sufficient to establish bad faith registration. See, [WIPO Overview 3.0](#), section 3.2.1. See also, *dm- drogerie markt GmbH + Co. KG v. Aleksey Maksimyyuk*, WIPO Case No. [D2011-0589](#).

Bad faith use is also clear from Respondent's illegitimate conduct engaging in homograph spoofing, as discussed in detail above, to support sending fraudulent emails under the name of Complainant and its finance executive suggesting an affiliation with Complainant to redirect payments by Complainant's unsuspecting customers from Complainant's account to Respondent's account for Respondent's commercial gain. See, [WIPO Overview 3.0](#), section 3.1.4.; see also, *Wolf Oil Corporation N.v. v. Peter Hugeman, supra* (finding "[i]n the Panel's opinion, registering a domain name mirroring an existing one, but replacing a character by another, almost identical, character, with the sole intention of deliberately causing confusion (a practice often referred to as 'homograph spoofing'), is an activity that illustrates the very essence of bad faith registration and use under the Policy").

For these reasons, the Panel finds bad faith registration and use, and Complainant has met its burden under paragraph 4(a)(iii) 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, <edrntentum.com> be transferred to Complainant.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: October 7, 2022