

ADMINISTRATIVE PANEL DECISION

Educational Testing Service v. Anand Kannan, Valued Epistemics Private Limited

Case No. D2023-3484

1. The Parties

The Complainant is Educational Testing Service, United States of America (“United States”), represented by Jones Day, United States.

The Respondent is Anand Kannan, Valued Epistemics Private Limited, India.

2. The Domain Name and Registrar

The disputed domain name <greedge.com> 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 16, 2023. On August 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 18, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 21, 2023 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 amendment to the Complaint on August 21, 2023.

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 August 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on October 2, 2023. 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

According to information in the Complaint, the Complainant is a large private non-profit educational testing and assessment organization. The Complainant develops, administers and scores more than 50 million tests per year, in more than 180 countries and 9,000 locations worldwide. The tests developed and administered by the Complainant or its related companies include the TOEFL tests, the TOEIC program, the PRAXIS tests, and the GRE tests. The GRE test is one of the best-known tests for students seeking advanced degrees, and it is made available worldwide by the Complainant and administered by authorized institutions under contracts with the Complainant.

The Complainant is the owner of various registered trademarks that consist of or include GRE in various jurisdictions throughout the world, including the following:

- the United States trademark no. 1146134 GRE registered on January 20, 1981, covering goods and services in classes 16 and 41; and
- the Indian trademark no. 377190 GRE registered as of June 17, 1981, covering goods in class 16.

The Complainant also owns the domain names <gre.com> and <gre.org>.

The disputed domain name was registered on May 31, 2008, and it resolved to a website prominently displaying a logo "GREEDGE" and purporting to offer education and training programs for GRE related products and services without any disclaimer. Currently, the disputed domain name redirects to "www.admittedge.com", purporting to offer education and training programs for GRE related products and services. The website at which the disputed domain name redirects includes at the bottom of the homepage a disclaimer stating that:

"GRE® and TOEFL® are registered trademarks of ETS. This website is not endorsed or approved by ETS. Test names and other trademarks are the property of the respective trademark holders. None of the trademark holders are affiliated with this website."

The Complainant has sent several cease-and-desist letters to the Respondent who agreed in pre-Complaint correspondence to remove GRE from the website at the disputed domain name and replace with "admit" and also to redirect the disputed domain name to "www.admittedge.com", but refused to transfer the disputed domain name.

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 the disputed domain name incorporates the GRE trademark in its entirety and that the inclusion of the wording "edge" does not alleviate any confusing similarity to the GRE trademark.

As regards the second element, the Complainant contends that the Respondent is not a licensee and it is not otherwise affiliated with the Complainant, which has never authorized nor otherwise consented to the

Respondent's registration of the disputed domain name. Given the extensive advertising on the website at the disputed domain name for a "Rapid GRE Program" available for purchase, it is clear that the website is for a commercial purpose. The disputed domain name was being used to attract web traffic to sell a competitive test preparation course for the GRE test and now redirects to "www.admittedge.com" for the same purpose, disrupting the Complainant's business.

With respect to the third element, the Complainant argues that the Respondent clearly knew of the Complainant's GRE trademark at the time it registered and used the disputed domain name, which was registered decades after the Complainant began using the GRE trademark, which supports an inference of bad faith. The Respondent has registered and used the disputed domain name in connection with the provision of a website that uses the GRE trademark to offer preparation courses and materials for the GRE test, in a bad faith effort to usurp the Complainant's offering of goods and services.

B. Respondent

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

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 respect of 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 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 entirety of the mark is reproduced 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 terms here, "edge" 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.

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 the 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 recognized 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.

The Complainant claims that the Respondent is not sponsored by or affiliated with the Complainant in any way and that the Complainant has not given the Respondent permission to use the Complainant’s trademarks in any manner, including in domain names. There is no evidence indicating that the Respondent is commonly known by the disputed domain name or the name “gre”. Also, there is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name as provided by paragraph 4(c)(iii) of the Policy. Before sending cease-and-desist letter to the Respondent, the disputed domain name resolved to a website prominently displaying a logo “GREEDGE” and purporting to offer education and training programs for GRE related products and services without any disclaimer. Even though the disputed domain name currently redirects to the website “www.admittedge.com”, the Respondent cannot claim any a legitimate noncommercial or fair use of the disputed domain name, as the main page of the website at which the disputed domain name redirects promotes a 50% offer for a “30 Days New GRE Crash Course”. Rather, according to evidence in the case file, the disputed domain name is used to redirect to a website that purports to offer training services affiliated with the Complainant’s GRE products and services and provides information on “GRE Preparation”, “GRE Exam”, “GRE Quant”, “GRE Verbal”, “GRE Analytical Writing”, “GRE Long term/Short term/Quick Prep”, “GRE Score Predictor”, “Talk to a GRE Expert”. The website repetitively displays the GRE trademark of the Complainant. There is a disclaimer for the lack of affiliation of the website with the trademark holder, but, first, it is only included at the bottom of the website and is written in small dark grey font on black background, which makes it quite difficult to notice and consider, so its existence does not appear as likely to prevent the confusion of Internet users. Second, the disclaimer does not accurately mention the relationship (or lack thereof) between the Respondent and the trademark of the Complainant. The overall impression of the website to the Internet users is that the website is endorsed or at least somehow related with the Complainant. Also given the composition of the disputed domain name, which incorporates the Complainant’s trademark in its entirety, the information provided in the disclaimer is not sufficient to clarify the relationship (or lack thereof) between the Respondent and the Complainant. This cannot amount in the Panel’s view to a *bona fide* offering of goods or services within the meaning of paragraphs 4(c)(i) of the Policy.

Furthermore, and given also the content of the website at which the disputed domain name redirects, the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

In the present case, the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has failed to come forward with any explanation to show that it has rights or legitimate interests in the disputed domain name and has not refuted the *prima facie* case made by the Complainant.

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.

According to the un rebutted assertions of the Complainant, its GRE trademark was widely used in commerce well before the registration of the disputed domain name. The disputed domain name is confusingly similar with the Complainant's trademark. Before sending cease-and-desist letter, the disputed domain name resolved to a website prominently displaying a logo "GREEDGE" and purporting to offer education and training programs for GRE related products and services without any disclaimer. The website to which the disputed domain name currently redirects offers services similar to those offered by the Complainant and repetitively displays the GRE trademark of the Complainant. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The Respondent provided no explanations for why it registered the disputed domain name.

As regards the use of the disputed domain name, the Panel finds that, according to the un rebutted evidence submitted by the Complainant, the disputed domain name resolved to a website prominently displaying a logo "GREEDGE" (even if removed in part during pre-Complaint communication between the Parties), and purporting to offer education and training programs for GRE related products and services without any disclaimer offering competing services with those of the Complainant. The Panel finds that the Respondent intentionally attempted to attract Internet users to its website for commercial gain. Given the confusing similarity between the GRE trademark and the disputed domain name, Internet users would likely be confused into believing that the Complainant is affiliated with the website to which the disputed domain name resolved. Presumably, the Respondent intended to benefit from the confusion created. This amounts to use in bad faith under the terms of paragraph 4(b)(iv) of the Policy.

The Respondent added a disclaimer to the website at "www.admittedge.com" for the lack of affiliation with the Complainant, but it is only included at the bottom of the website and is written in small dark grey font on black background, which makes it quite difficult to notice and consider. As discussed in section 3.7 of the [WIPO Overview 3.0](#), the mere existence of a disclaimer cannot cure the finding of bad faith, when the overall circumstances of the case point in this direction. In this case, considering the configuration of the website at which the disputed domain name redirects with the Complainant's trademark repetitively displayed, and the nature of the disputed domain name, the Panel considers that the redirection of the disputed domain name to the website "www.admittedge.com" and addition of disclaimer thereon is not enough as to avoid the likelihood of confusion.

Moreover, the Respondent has not participated in these proceedings and has failed to rebut the Complainants' contentions or provide any evidence of actual or contemplated good faith use, and indeed none would seem plausible. Rather, the redirection of the disputed domain name during pre-Complaint communication and partial removal of GRE from the website at the disputed domain name further supports the bad faith indicia. Furthermore, the Respondent availed of a privacy shield service to protect its identity. While the use of a privacy shield is not necessarily objectionable in itself, in the present case it contributes to the accumulation of elements pointing to bad faith registration and use.

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 <greedge.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: October 16, 2023