



ADNDRC

Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201640
Complainant:	Educational Testing Service
Respondent:	Lu Zhang
Disputed Domain Name(s):	< www.grebanks.com >

1. The Parties and Contested Domain Name

The Complainant is Educational Testing Service (“ETS”), of 660 Rosedale Road, Princeton, New Jersey 08541, United States of America, represented by Vivien Chan & Co., Hong Kong.

The Respondent is Lu Zhang, of Haidian District, Beijing, 100000, China.

The domain name at issue is <www.grebanks.com>, registered by the Respondent with Wix.com Ltd., of email@wix.com.

2. Procedural History

On 20 July 2022, the Complainant filed a Complaint involving the Disputed Domain Name <www.grebanks.com> with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“Centre”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”) effective from 31 July 2015.

On 21 July 2022, the Centre transmitted by email to the Registrar a request for confirmation of the WHOIS records of the Disputed Domain Name and other related information.

On 10 August 2022, the Registrar confirmed by email that it is the registrar of the Disputed Domain Name that was registered by the Respondent; and that the Policy is applicable to the dispute relating to the Disputed Domain Name and the language of the Registration Agreement of the Disputed Domain Name is English and provided to the Centre the Respondent’ email address and other WHOIS information of the Disputed Domain Name.

On 16 August 2022, in accordance with Articles 2(a) and 4(a) of the Rules, the Centre issued a Written Notice of the Complaint and formally notified the Respondent of the commencement of the proceedings in this dispute. In accordance with Article 5(a) of the Rules, the due date for the Respondent to submit a Response to the Complaint was 5 September 2022.

On 6 September 2022, the Centre issued a notification of the Respondent in Default, confirming that the Centre did not receive response forms from the Respondent in respect of the complaint concerning the Disputed Domain Name within the required time.

On 6 September 2022, the Centre appointed Prof Chan-Mo Chung as the sole panelist of the Panel in this matter. Prior to the appointment, the said sole panelist had submitted to the Centre his Statement of Acceptance and Declaration of Impartiality and Independence in compliance with Article 7 of the Rules.

3. Factual background

The Complainant, ETS, was founded in 1947 and is one of the world's largest private nonprofit educational testing and assessment organizations based in the United States. The Complainant develops various standardized tests primarily in the United States for K-12 and higher education, and it also administers international tests including the TOEFL, TOEIC, GRE Tests, and the Praxis Test Series in more than 180 countries, and at over 10,000 locations worldwide. In total, the Complainant annually administers 50 million international tests worldwide. The Complainant is the owner of over 50 "GRE"-inclusive trademarks around the world.

According to the website created under the Disputed Domain Name, the Respondent is an individual entrepreneur, who is successful to some extent in the businesses of English tutoring and GRE test preparation in China.

4. Parties' Contentions

A. Complainant

The Complainant contends that the Disputed Domain Name is confusingly similar or identical to the Complainant's registered trade marks, the 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

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

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant registered and owns the "GRE" trademarks in the services of administering and scoring examinations relating to academic abilities tests and other education related services in China and other parts of the world.

Since "www." is often omitted these days and ".com" is the most common generic Top-Level Domain, "grebanks" is the main part of the Disputed Domain Name, "www.grebanks.com". The main part wholly incorporates the element "gre" as its first three letters. The term "gre" is a unique name without carrying any specific meaning, while the added term "banks" is plural of "bank", which means, among others, "a safe and guaranteed place of storage for and retrieval of important items or goods". The Disputed Domain Name is now used by the Respondent to host a website which provides assistant services for candidates taking the GRE examination organized by the Complainant, including offering real question banks, free resources, video courses and study plans for candidates. This suggests that the term "banks" following the term "gre" in the Disputed Domain Name refers to storage of GRE examination questions and other related materials and thus this term is descriptive and carries minimal distinctiveness. Accordingly, the distinctive part of the Disputed Domain Name is identical to the Complainant's "GRE" trademarks.

The Panel, therefore, finds that the Disputed Domain Name is confusingly similar to the Complainant's "GRE" trademarks in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances, without limitation, if found by the Panel shall demonstrate a Respondent's rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent has been commonly known by the domain name; or
- (iii) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant in this dispute has no relationship with the Respondent and has never authorized the Respondent to use "GRE" or to register a domain name or part of a domain name on the Complainant's behalf. The Respondent is not in any way related to the Complainant. The Panel notes that there exists some gray area with regard to the concept of a *bona fide* offering of services. However, once the Complainant made a *prima facie*

case, the Panel cannot easily recognize a *bona fide* exception when the Respondent neither asserted nor proved this argument (*Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. D2008-1393).

The Respondent's name also has no connection with the term "gre" and/or "grebanks". No trademark registration in relation to "gre" owned by the Respondent is presented. Accordingly, there is no ground to believe that the Respondent has been commonly known by the domain name.

Lastly, the Respondent is using the Disputed Domain Name for business purposes and certainly not making a legitimate noncommercial or fair use of the domain name.

Therefore, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C) Bad Faith

According to paragraph 4(b)(iv) of the Policy, the following circumstance, among others, if found to be present, shall be evidence of the registration and use of a domain name in bad faith:


- (iv) By using the domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Complainant's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

The Respondent is using the Disputed Domain Name to host a website which provides real question banks, free resources, video courses and study plans targeting candidates taking the GRE examination organized by the Complainant. This shows that the Respondent has actual knowledge of the Complainant's "GRE" marks. Despite the actual knowledge of the existence of the Complainant and its "GRE" marks, the Respondent has registered the Disputed Domain Name which incorporates the Complainant's "GRE" marks and on the whole similar to the Complainant's marks. It is inferred that the Respondent intentionally attempted to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's marks. The general public's interest will be compromised if they are misled into believing that there is some sort of sponsorship, affiliation, or endorsement between the Complainant and Respondent's web site created under the Disputed Domain Name. If the Respondent put a notice disclaiming any association with the Complainant and/or put a link to the Complainant's official website, the confusion would have been lessened.

This dispute is not a clear-cut case. Sincerity reflected in the diligence on the side of the Complainant contrasted with inadvertence on the side of the Respondent tilted the balance in favor of the former. Therefore, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

6. 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 <www.grebanks.com> be transferred to the Complainant.



Chan-Mo Chung
Sole Panelist

Dated: 20 September 2022