



Asian Domain Name Dispute Resolution Centre

(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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|                          |                             |
|--------------------------|-----------------------------|
| Case No.                 | HK-18010128                 |
| Complainant:             | Educational Testing Service |
| Respondent:              | ChangXing Bao               |
| Disputed Domain Name(s): | <etsqtc.top>                |

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**1. The Parties and Contested Domain Name**

The Complainant is Educational Testing Service, of Rosedale Road, Princeton, New Jersey 08541, U.S.A.

The Respondent is ChangXing Bao, of Qi Jie Xiang Li Xin Zhuang 64Hao, Yuen Yang Xian He Nan Sheng 453500 CN.

The domain name at issue is <etsqtc.top>, registered by Respondent with Jiangsu Bangning Science & Technology Co. Ltd.

**2. Procedural History**

On 29<sup>th</sup> June 2018, the Complainant filed a complaint with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("the Centre") and chose to have the dispute considered and decided by a single-member panel in accordance with the Uniform Policy for Domain Name Dispute Resolution, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules).

On the same day, the Centre, by way of email, sent a request to the Registrar of the Disputed Domain Name, **Jiangsu Bangning Technology Co Ltd ("the Registrar")**, at [abuse@55hl.com](mailto:abuse@55hl.com), for verification in connection with the Disputed Domain Name. On 5<sup>th</sup> July 2018, the Registrar verified the following:-

- (i) They are the registrar of the Disputed Domain Name.
- (ii) The registrant of the Disputed Domain Name is the Respondent **ChangXing Bao**.
- (iii) The creation date of the Disputed Domain Name is 10<sup>th</sup> May 2017;
- (iv) The Disputed Domain Name status is as follows:
  - Client Updated Prohibited

A handwritten signature in black ink, appearing to be "Ames", written over a horizontal line.

- Client Transfer Prohibited
- Client Delete Prohibited

On 6<sup>th</sup> July 2018, the Centre issued a Written Notice of Complaint (both in Chinese and English) to the Respondent informing the Respondent that the proceedings officially commenced and requested the Respondent to submit a Response (in Form R and its Annexures, if any) within 20 days (i.e. on or before 26<sup>th</sup> July 2018) and forwarded the Complaint and its Attachments to the Respondent.

On 27<sup>th</sup> July 2018, the Centre issued a Notification of Respondent in Default and confirmed that the Respondent did not submit a Response with the Centre, within the required time limit.

On the same day, the Centre, by way of email, informed the Complainant that the language of the proceedings should be Chinese pursuant to Article 11(a) of the Rules. On 31<sup>st</sup> July 2018, the Complainant, by way of email, applied to change the language of the proceedings.


On 6<sup>th</sup> August 2018, the Centre appointed Dr. Lewis Luk JP as the sole panelist for this case. The Panel considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence.

On 16<sup>th</sup> August 2018, the panelist issued the Administrative Panel Order No. 1 (“**the Panel Order**”) that the language of the proceedings be changed from Chinese to English. The date for delivery of Panel’s decision remained unchanged.

### 3. Factual background

#### The Complainant

The Complaint, Educational Testing Service (hereinafter referred to as “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 annually including the TOEFL, TOEIC, GRE Tests in more than 180 countries, and at over 10,000 locations worldwide. The Complainant is the owner of over 100 “ETS”-inclusive trademarks around the world, including USA and China. The Complainant’s registered trademarks in China are listed as follows:

| Registration No. | Mark                                                                                | Class | Date of Registration | Expiry Date   | Status     |
|------------------|-------------------------------------------------------------------------------------|-------|----------------------|---------------|------------|
| 176267           |  | 16    | 30 April 1983        | 29 April 2023 | Registered |



|          |                                                                                    |    |                  |                  |            |
|----------|------------------------------------------------------------------------------------|----|------------------|------------------|------------|
| 771628   |   | 41 | 14 November 1994 | 13 November 2024 | Registered |
| 3024962  |   | 16 | 7 April 2003     | 6 April 2023     | Registered |
| 3024963  |   | 9  | 14 January 2004  | 13 January 2024  | Registered |
| 3024964  |   | 42 | 28 January 2004  | 27 January 2024  | Registered |
| 3024965  |   | 41 | 14 April 2003    | 13 April 2023    | Registered |
| 3162516  |   | 41 | 21 August 2003   | 20 August 2023   | Registered |
| G1069280 | ETS                                                                                | 9  | 8 February 2011  | 8 February 2021  | Registered |
| G1069809 |  | 9  | 8 February 2011  | 8 February 2021  | Registered |

(collectively “the Complainant’s Trademarks”).

The Respondent

The Respondent registered the Disputed Domain Name on 10<sup>th</sup> May 2018.

#### 4. Parties’ Contentions

##### A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. *The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights*

The Complainant registered its tradename “ETS” in China as early as in 1983 while the Respondent created the Disputed Domain Name on 10<sup>th</sup> May 2018. The Complainant submitted that the Disputed Domain Name incorporates the Complainant’s Trademarks and the trade name of the Complainant “ETS” in its entirety as its first three characters. More attention will be placed on the frontal part of the domain name. Further, the term “etsqtc” does not carry any specific meaning. Hence, the most distinctive element of the Dispute Domain Name is the letters “ets” at the front which is identical to the Complainant’s “ETS” marks, thus it is likely that confusion will be caused on the part of the public and that the disputed domain name is “identical or confusingly similar” to the Complainant’s Trademarks or trade name “ETS”.





ii. ***The Respondent has no rights or legitimate interests in respect of the domain name***

The Complainant confirms that there is no relationship between the Complainant and the Respondent and that the Respondent is not never duly authorized by the Complainant to (i) use any of the Complainant's Trademarks; and (ii) register a domain name or part of a domain name on the Complainant's behalf. The Complainant adduced evidence that the Complainant's Trademarks was first registered in 1983. The Complainant and the Complainant's Trademarks enjoy a high degree of fame and reputation in China. The Complainant also submitted that the Respondent should have knowledge about the Complainant and the Complainant's Trademarks. The Respondent does not have any legitimate interest in the Disputed Domain Name.

iii. ***The Disputed Domain Names(s) has/have been registered and is/are being used in bad faith***

The Complainant submitted that despite the constructive or even actual knowledge on the part of the Respondent of the existence of the Complainant in China, the Respondent has registered the Disputed Domain Name which incorporates an element similar to the Complainant's marks and has used the Disputed Domain Name to host a Chinese pornographic website where erotic pictures are displayed. The Complainant further submitted that it would be logical to infer that the target audience of such pornographic website is the Chinese.

The Complainant has invested substantially in China and has attained a high degree of fame and reputation in respect of education services in China. As such, reputation is of prime importance. The reputation of the Complainant will be severely damaged if the general public is misled into believing that there is some sort of relationship between the Complainant and the Disputed Domain Name. There is no reason for the Respondent to adopt a domain name which is highly similar to the Complainant's Trademarks as an introductory website to a Chinese pornographic website other than to free ride on the fame and reputation of the Complainant and to attract, for commercial gain, Internet users to the Respondent's web site.

B. Respondent

The Respondent did not submit a Response.

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



The Panel finds the Complainant's Trademarks duly registered in China and USA are all valid and effective. The Panel finds that the Disputed Domain Name "etsqtc", contains the Complainant's Trademarks "ets" in its entirety. The remaining part of the Disputed Domain Name "qtc" may refer to specific meaning relating to the Complainant's business such as "qualification testing center" which can be ignored when considering the similarity of the Trademark and the Disputed Domain Name. Hence the Panel finds the Disputed Domain Name is identical or confusingly similar to the Complainant's Trademarks and it is very likely to cause confusion to the public. The Complainant has fulfilled the first condition.

#### **B) Rights and Legitimate Interests**

The Panel accepts the confirmation by the Complainant that it has no connection with the Respondent, nor has licensed or authorized the Respondent to use the Complainant's Trademarks in its Disputed Domain Name or to register any domain name on behalf of the Complainant. The Respondent did not provide any evidence on his rights and legitimate interests in the Disputed Domain Name. Hence the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant has fulfilled the second condition.

#### **C) Bad Faith**

The Panel finds that the Complainant enjoys high degree of reputation in respect of the education services in both USA and China. The Panel also finds that the Respondent, being a Chinese (bearing a Chinese name, with an address, telephone number and fax number all registered in China) should have constructive or actual knowledge of the existence of the Complainant in China. The Respondent has hosted a Chinese pornographic website under the Disputed Domain Name bearing the Complainant's Trademarks as the first three characters. The Panel agrees that it is very likely for such Chinese pornographic website pop up when the general public perform an internet search for key words such as "ets" or directly key in "ets" at the address bar. By doing so, the Respondent not only attempts to free ride on the fame and reputation of the Complainant and to attract, for commercial gain, Internet users to the Respondent's web site, but also to cause damage to the Complainant's reputation in China.

The Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith. The Complainant has fulfilled the third condition.

#### **6. Decision**

The Panel orders that the Disputed Domain Name <etsqtc.top> be transferred to the Complainant.



Panelist: Dr. Lewis Luk JP

Dated: 17<sup>th</sup> August 2018