Decision for dispute CAC-UDRP-101288

Case number	**CAC-UDRP-101288**
Time of filing	**2017-12-28 09:50:59**
Domain names	**lekker.energy**

Case administrator

Name	**Aneta Jelenová (Case admin)**

Complainant

Organization	**lekker Energie GmbH**

Complainant representative

Organization	**Lubberger Lehment**

Respondent

Organization	**REDTREE Multimedia GmbH**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

1. EUTM (word mark) „lekker Energie“, EUIPO 009505471, Registration Date: 26/04/11, Status: active;

2. National German TM (work mark) „lekker Energie“, DPMA 302010033315, Registration Date: 16/08/10, Status: active.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

1. Identification of Rights

Lekker Energie GmbH is the owner of the following trademarks: EUTM 009505471 „lekker Energie“ and German TM No. 302010033315 „lekker Energie“. Details and official printouts of these Lekker Energie GmbH’s registrations were enclosed as annexes to the Complaint.

2. Factual Background

a) The Complainant
The Lekker Energie GmbH as Complainant is one of the leading German energie suppliers. Since 2003 the Complainant provides environmentally friendly power to private and commercial customers. The Complainant is a 100% subsidiary of the SWK Stadtwerke Krefeld AG, which is one of the biggest municipal utilities. The SWK Stadtwerke Krefeld AG and the Complainant together supply energy to more than half a million customers.

b) The Respondent
The Respondent, Mr. Lino Remmler, is the responsible director of the Redtree GmbH, the owner of the disputed domain name <lekker.energy>, registered on 20 December 2016. The Redtree GmbH is a German advertising agency, specialised in digital advertising.

The purpose of the Respondent's use of the domain name <lekker.energy> is commercial. The Respondent's site is currently deactivated, but it was active to at least beginning of December 2017.

In its overall impression, the site falsely appears to be an authorized consumer portal of the Complainant. As can be seen in the first screenshot the headline of the landing page is „lekker Energie (Nuon) Verbraucherportal". „Verbraucherportal" means „consumer portal". „Nuon" was the former name of the Complainant. The second headline „lekker Energie Erfahrungen – Bewertungen – Meinungen" means „lekker Energie Experiences – Valuations – Opinions". As also can be seen in the screenshots, all subpages which can be reached via the tabs „lekker Energie Forum", „lekker Energie Erfahrungen – Bewertungen – Meinungen", „lekker Energie Bewertungen" und „Gruppen" are without any relevant content.

The only functioning link is behind the tabs „Vergleichsportale", Preisvergleich Gas" und „Preisvergleich Strom" (= „comparison portals", „price comparion gas", „price comparison electricity"). All these buttons lead to the third party energy tariffs comparison page www.deine-versorger.de (meaning www.your-supplier.de).

It is obvious that the purpose of the website is to attract consumers, who expect the official website of the Complainant at the URL www.lekker.energy. These consumers, who search information about the energy and gas tariffs of the Complainaint, will certainly click at the tabs „Vergleichsportale", Preisvergleich Gas" und „Preisvergleich Strom" and then will be forwarded to the linked third party price comparison site.

It is therefore clear from the content of the site that the domain name <lekker.energy> is exclusively used as a reference to the services of the Complainant in order to attract consumers to the website of the Respondent. Therefore, the contested domain <lekker.energy> is used for the purpose of commercial promotion of the linked comparison portal www.deine-versorger.de. It is evident that the Respondent is commissioned by the ownership of this site and/or receives a revenue for linking to this page.

3. Legal Background
a)
The disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy:

The disputed domain name <lekker.energy> incorporates the Complainant's trademarks „lekker Energie" in its entirety and differs only in the end, where the trademark of the Complainant containts the letters "ie", whereas the opposed domain name features the letter "y". Insofar the both words are almost identical as they only differ in two letters. German consumers will not recognise this difference, especially since the difference is situated in the less prominent end of the word. The average consumer will also not notice the point between the second level domain "lekker" and the top level domain ending .energy. The signs under comparison are therefore similar to a high degree.

Furthermore, the signs are pronounced identically, because the "ie" at the end of the word "energie" sounds similar to the "y" at the end of "energy". Finally, the German-speaking consumers can easily translate the English word "Energy" to the German word "Energie". Therefore most of the consumers do not exactly know if the trademark of the Complainant is "Lekker Energy" or "Lekker Energie".

b)
The Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy:

The Respondent is not the owner of the „lekker Energie“ trademark.

The Complainant has not authorized the Respondent to use the trademark or a highly similar domain name and therefore he has no prior rights in the disputed domain.

The Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the “lekker energie” trademark or to register the disputed domain name containing an almost identical version of the Complainant’s trademark.
The Complainant registered and began using the “lekker Energie” trademark well before the disputed domain name was registered.

The website contains links to a third party price comparison site, which advertises energy tariffs of other companies than the Complainant. By attracting consumers which were misleaded by the disputed domain name the Respondent is generating income via this website and has commercial intentions. Therefore the site has an negative impact on the commercial activity of the Complainant.

c)
The disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy:

The Respondent registered and uses the disputed domain name in bad faith. According to paragraph 4(b)(iii) of the Policy, a panel may find both registration and use in bad faith if there is evidence that by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online locations, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website or of a product or service on it.

The Respondent registered the domain name with knowledge of the Complainant's trademark and to attract internet users to his website by way of a highly similar version of the Complainant's trademark and the Respondent's purpose in attracting these internet users to his website was commercial.

The Respondent knew the Complainant and the Complainant’s trademark „lekker energie“ because he describes the Complainant and their services on the first site of his page. It is therefore excluded that the Respondent was ignorant of the Complainant’s brand when he registered the disputed domain name. The Respondent is obviously trying to benefit from the trademark of the Complainant. Furthermore, the Respondent’s site links to a price comparison portal that could have an impact on the commercial activity of the Complainant.

Regarding the fact the domain is currently deactived, reference is made to the decision in CAC Case No.101459, where the Panel notes that the undeveloped use of the website at the domain name which incorporates the Complainant’s trademarks in its entirety indicates that the Respondent possibly registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademarks of the Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, as per para 4 (b)(iv) of the Policy.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that the disputed domain name is confusingly similar to the Complainant's "lekker Energie" trademark since the disputed domain name incorporates the trademark in its entirety, merely substituting the letters "ie" by "y", thereby translating the German Term "Energie" into the English term "energy". Still, the Complainant's trademark is easily recognizable within the disputed domain name. Since the applicable Top Level Domain .energy obviously forms a significant part of the Complainant's trademark, the Panel in the case at hand has considered the disputed domain name in its entirety for purposes of assessing confusing similarity (within the meaning of paragraph 4(a)(i) of the Policy).

Moreover, the Complainant contends, and the Respondent has not objected thereto, that the Respondent so far has neither made use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name, nor is the Respondent commonly known thereunder. The Complainant has provided evidence that at some point before the filing of this complaint back in December 2017, the disputed domain name redirected to a website at "www.lekker.energy" which falsely appeared to be an authorized consumer portal of the Complainant headed "lekker Energie (Nuon) Verbraucherportal" (while "Nuon" was the Complainant's former name). This website further linked to a third party energy tariffs comparison page at "www.deine-versorger.de" (in English: "www.your-supplier.de"). The Panel, therefore, finds that the Respondent's use of the disputed domain name is or was simply a pretext for commercial gain and is also misleading as to the source or sponsorship of the Respondent's website. Accordingly, the Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy).

Finally, the Panel also concludes that the disputed domain name was registered and is being used by the Respondent in bad faith. Resolving the disputed domain name, which is confusingly similar to the Complainant's "lekker Energie" trademark, to a third party commercial website that is clearly competing with the Complainant's business, is a clear indication that the disputed domain name was registered and is used by the Respondent intentionally to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's "lekker Energie" trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website. Such circumstances shall be evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraphs 4(b)(iii) and 4(a)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **LEKKER.ENERGY**: Transferred

PANELLISTS

Name	**Stephanie G. Hartung, LL.M.**

DATE OF PANEL DECISION 2018-01-31

Publish the Decision