Decision for dispute CAC-UDRP-102954

Case number	CAC-UDRP-102954
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Domain names	eutselat.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	EUTELSAT S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	pl plast

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

EUTELSAT S.A. (the Complainant) is one of the leading operators in the commercial satellite business (www.eutelsat.com).

The Complainant states and provides evidence to support, that it is the owner of several trademarks EUTELSAT, such as the international trademark EUTELSAT n°479499 registered and renewed since June 20, 1983 and the international trademark EUTELSAT n° 777505 registered and renewed since December 31, 2001, predating the date of registration of the disputed domain name <eutselat.com>.

The Complainant also owns several domain names, including the same distinctive wording EUTELSAT, of which the domain name <eutelsat.com>, registered since October 29, 1996.

The disputed domain name <eutselat.com> was registered on December 4, 2019.

The domain name points to an inactive page and has been used in a phishing scheme.

FACTUAL BACKGROUND

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

The Complainant draws Panel attention to previous UDRP decisions:

- WIPO Case No. D2003-0093, Microsoft Corporation v. X-Obx Designs <xobx.com> (“Typographical error variations and misspellings of trademarked terms have long been found to be confusingly similar.”);
- Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel, therefore, finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).”);
- Forum Case No. FA 699652, The Braun Corporation v. Wayne Loney;
- Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy 4(a)(ii).”);
- Forum Case No. 1775963, United Rentals, Inc. v. saskia gaaede / Mr (“Complainant submits that Respondent is intending to impersonate Complainant to contact customers of Complainant, posing as a credit supervisor of Complainant, directing customers to transmit payments to a bank account not controlled by Complainant. See Compl. Append. M. Therefore, the Panel agrees with Complainant and finds that Respondent has does not have rights or legitimate interests in the domain name per Policy 4(c)(i) or (iii)”);
- CAC Case No. 102753, EUTELSAT S.A. v. pl plast <euteslat.com>;
- Forum Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines ("In addition, Respondent’s misspelling of Complainant’s MICROSOFT mark in the <microssoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy 4(a)(iii).");
- WIPO Case No. D2014-1471, Accor v. SANGHO HEO / Contact Privacy Inc. (“The un-opposed allegation of phishing, and the evidence submitted in support of phishing, combined with the likelihood of confusion, is sufficient evidence of bad faith“);
- Forum Case No. 1393436, Qatalyst Partners LP and Qatalyst Partners LLP v. Alyna Devimore / N/A (“the Panel holds that Respondent’s registration and use of the <qatalystpartnerslp.com> domain name as part of the phishing scheme described above is sufficient evidence of bad faith registration and use pursuant to Policy 4(a)(iii)”).

PARTIES' CONTENTIONS:

COMPLAINANT:

• The disputed domain name is confusingly similar to the protected mark

The Complainant states that the disputed domain name <eutselat.com> is confusingly similar to its trademark EUTELSAT while the inversion of the letters “E” and “S” in the trademark EUTELSAT is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods of the Complainant. According to the Complainant, the typosquatting consists of an obvious misspelling of the Complainant’s trademark. Besides, the term “EUTELSAT” has no other signification, except to the Complainant.

Furthermore, Complainant contends that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated.

• Respondent does not have any rights or legitimate interest in the disputed domain name

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name <eutselat.com> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark EUTELSAT, or apply for registration of the disputed domain name by the Complainant.

In addition, the Complainant claims that the disputed domain name is a typosquatted version of the trademark EUTELSAT. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name.

Finally, the Complainant asserts that Respondent uses the disputed domain name to pass itself off as one of the Complainant's executive, in order to receive payment in place of the Complainant. According to the Complainant, using the domain name in this manner is neither a bona fide offering of goods or services under Policy 4 (c)(i), nor a non-commercial or fair use pursuant to Policy 4(c)(iii).

• The disputed domain name has been registered and is being used in bad faith

According to the Complainant, the Respondent has registered the disputed domain name and is using it in bad faith. The Complainant contends that the disputed domain name <eutselat.com> is confusingly similar to its well-known trademark EUTELSAT. The Complainant further states that the Respondent has used the domain name in a phishing scheme, attempting to pass off as one of the Complainant's executive. Thus, the Respondent necessarily knew about the Complainant and its affiliates. Additionally, the Respondent in this case has already registered domain names comprising the Complainant's trademark and used them for phishing:
- CAC Case No. 102753, EUTELSAT S.A. v. pl plast <euteslat.com>.

The Complainant claims it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks, which evidences bad faith.

Furthermore, the Complainant states the misspelling of the trademark EUTELSAT was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

Finally, the Respondent has used the domain name in a phishing scheme. Indeed, the Respondent attempted to pass of as one of the Complainant's executive. Therefore, the Complainant states that the Responded used the disputed domain name in bad faith, as it is well-established that using a domain name for purposes of phishing or other fraudulent activity constitutes solid evidence of bad faith use.

PARTIES CONTENTIONS

RESPONDENT:

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 UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the “Policy”) provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent’s domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

2. that respondent has no rights or legitimate interests in respect of the domain name; and

3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The disputed domain <eutselat.com> was registered on December 4th, 2019 and incorporated the Complainant’s distinctive trademark EUTELSAT. The Complainant has provided evidence and proved to be the owner of several trademarks EUTELSAT. Essentially, the Respondent has inverted the letters “E” and “S” in the trademark EUTELSAT. The inversion of letters is qualified as a typosquatting which consists of an obvious misspelling of the Complainant’s trademark and does not suffice to escape the finding that the disputed domain name is confusingly similar to the trademark.

Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the Complainant’s trademark. For instance, WIPO Case No. D2003-0093, Microsoft Corporation v. X-Obx Designs <xobx.com> (“Typographical error variations and misspellings of trademarked terms have long been found to be confusingly similar.”)

Moreover, the Respondent appropriated the trademark "EUTELSAT" by adding the new gTLD. “COM” which, according to the Panel, does not create any distinctiveness to the disputed domain name.The addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to Complainant’s trademark and does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain name.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark EUTELSAT.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the term “EUTELSAT” as part of its domain name. The Respondent is not in any way connected with the Complainant nor is it authorized to register the disputed domain name or use its intellectual property rights for its operations. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark EUTELSAT.

In a present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

The Panel finds that the disputed domain name <eutselat.com> is confusingly similar to the Complainant's well-known trademark EUTELSAT. The Complainant's use and registration of the trademark EUTELSAT largely precede the registration date of the disputed domain name. The Respondent has used the disputed domain name in a phishing scheme, attempting to pass off as one of the Complainant's executive. Thus, the Respondent necessarily knew about the Complainant and its affiliates at the time of registration of the disputed domain name. It is thus reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Moreover, the Respondent in this case has already registered domain names comprising the Complainant's trademark and used them for phishing. Please see, for instance, CAC Case No. 102753, EUTELSAT S.A. v. pl plast <euteslat.com>.

The Respondent has inverted the letters "E" and "S" in the trademark EUTELSAT. The inversion of letters is qualified as a typosquatting which consists an obvious misspelling of the Complainant's trademark. The Panel believes that the misspelling of the trademark EUTELSAT was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

Moreover, the Respondent has used the disputed domain name in a phishing scheme. Indeed, the Respondent attempted to pass of as one of the Complainant's executive, in order to receive payment in place of the Complainant. The Panel believes that the Responded used the disputed domain name in bad faith, as it is well-established that using a domain name for purposes of phishing or other fraudulent activity constitutes solid evidence of bad faith use.

Finally, the fact that a complainant's trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (see section 3.3, WIPO Overview 3.0).

In the present case, the Panel is of the opinion that the Complainant's EUTELSAT trademark is distinctive and well-known, which makes it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

For all reasons stated above, the Panel is satisfied that the Complainant has proven the third element of the Policy that is that the Respondent's registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **EUTSELAT.COM**: Transferred

PANELLISTS

Name	**Mgr. Barbora Donathová, LL.M.**

DATE OF PANEL DECISION 2020-04-12

Publish the Decision