

## Decision for dispute CAC-UDRP-104854

Case number CAC-UDRP-104854

Time of filing 2022-09-30 12:01:07

Domain names eoneneirgy.com

### Case administrator

Organization Denisa Bilík (CAC) (Case admin)

### Complainant

Organization E.ON SE

### Complainant representative

Organization ARISTOS IP Partnerschaft von Rechtsanwälten mbB

### Respondent

Name Jonas Lagomasino EON ENERGY

#### OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

#### IDENTIFICATION OF RIGHTS

The Complainant owns the EUIPO trademark registrations "e.on", EUTM n° 006296529 and "E.ON", EUTM n° 002361558 and the German PTO trademark registration "e.on", DE n° 39982704.

#### FACTUAL BACKGROUND

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

The Complainant, E.ON SE, is a European electric utility company based in Essen, Germany. The E.ON Group of companies runs one of the world's largest investor-owned electric utility service providers. The Complainant invested more than 500 million US Dollars in a 440-megawatt windfarm in Texas and publicised this in August of 2019 as the largest investment of the Complainant in the United States at the time.

The Complainant is the owner of the well-known trademark "E.ON" and has registered an extensive portfolio of trademarks, including:

- EUTM 006296529 "e.on" registered by the EUIPO on 27/06/2008 in classes 07, 36, 37 and 40;
- EUTM 002361558 "E.ON" registered by the EUIPO on 19/12/2002 in classes 35, 39, 40; and

- DE 39982704 “e.on” registered by the German PTO on 22/05/2022 in classes 04, 35, 36, 37, 38.

The Complainant also owns numerous domain names consisting of the trademark “EON” including <eon.com> and, through its subsidiary E.ON UK Ltd, <eon-energy.net>.

The disputed domain name <eonenergy.com> was registered on April 20, 2022. It does not resolve to an active website.

The Complainant and the Respondent have never had any previous business or other relationships, nor has the Complainant ever granted the Respondent any rights to use the E.ON trademark.

There is no evidence of any kind of establishment related to the Complainant under the address of Respondent, which leads to a trailer home in Texas with no links whatsoever to the Complainant.

The Complainant has not found any evidence pointing to the fact that the Respondent could be commonly known by the disputed domain name or has any other legitimate interest in that name. A Google search for “eonenergy” pointed straight to the Complainant and its business activities.

It is more than unlikely that Respondent was unaware of Complainant’s prior rights in the trademark E.ON at the time of registering the disputed domain name, given the well-known character of the Complainant’s name. The Respondent has been using the disputed domain name to resolve to an inactive website and has been using a privacy shield to conceal its identity.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name to be 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (3) the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at paragraph 4.3; see also *eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (Forum June 26, 2003) ("Because Complainant did not produce clear evidence to support its subjective allegations [ . . . ] the Panel finds it appropriate to dismiss the Complaint").

As to the first element, the Complainant has shown that it has rights in the E.ON mark and that the mark is very well-known. The Panel finds the disputed domain name <eoneneirgy.com> to be confusingly similar to the Complainant's trademark E.ON because it incorporates the mark in its entirety, omitting only the dot, and merely adds a misspelling of the generic word "energy". These differences do nothing to distinguish the disputed domain name from the mark. The inconsequential top-level domain ".com" may be ignored. The Complainant has established this element.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way to its business. The Respondent is not affiliated with the Complainant in any way. Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark E.ON, nor to apply for registration of the disputed domain name. Furthermore, the disputed domain name does not resolve to an active website.

The Panel accepts the Complainant's submission that the mere use of the term EON ENERGY by the Respondent in the registration form as the name of its organization cannot be construed as evidence of entitlement or other legitimate interest in the name.

Otherwise, it would be easy for infringers to establish a fictitious right in a name simply by using it in the process of registration.

The Panel notes that the disputed domain name <eoneneirgy.com> was registered by the Respondent on April 20, 2022, long after the Complainant has shown that its E.ON mark had become very well-known and several years after the 2019 publicity given to the Complainant's investment of more than 500 million US Dollars in a 440-megawatt windfarm in Texas, where, according to the Registrar, the Respondent is located. The disputed domain name does not resolve to an active website. These circumstances, together with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See *JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD*, FA1906001849706 (Forum July 17, 2019). The Respondent has made no attempt to do so.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has established this element.

As to the third element, the circumstances set out above in relation to the second element and the typosquatted nature of the disputed domain name <eoneneirgy.com> satisfy the Panel that the Respondent was fully aware of the Complainant's very well-known E.ON mark when the Respondent registered the disputed domain name and that the Respondent did so in bad faith.

Section 3.3 of the WIPO Jurisprudential Overview 3.0 provides:

"From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In the present case the Complainant's E.ON and "e.on" marks are very well-known and the Respondent's <eoneneirgy.com> domain name is a deliberate misspelling of the Complainant's marks, clearly intended to take advantage of the goodwill and reputation of those marks. This typosquatting alone demonstrates bad faith registration. Further, the Respondent has failed to contest any of the Complainant's assertions and has not provided any evidence of actual or contemplated good-faith use. The Respondent concealed its identity when registering the disputed domain name. Finally, there is no plausible good faith use to which the disputed domain name may be put.

Under these circumstances the Panel finds that the Respondent registered and is using the disputed domain name in bad faith. The Complainant has established this element.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. eoneneirgy.com: Transferred

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## PANELLISTS

Name	Alan Limbury
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DATE OF PANEL DECISION 2022-11-08

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Publish the Decision

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