

Decision for dispute CAC-UDRP-105129

Case number	CAC-UDRP-105129
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Time of filing	2023-01-16 10:34:10
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Domain names	eon-ruhrgas.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	E.ON SE
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Complainant representative

Organization	ARISTOS IP Partnerschaft von Rechtsanwälten mbB
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Respondent

Name	Joseph Brown
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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 an extensive portfolio of trade mark registrations consisting of or incorporating the names e.on/E.ON, Ruhrgas and E.ON Ruhrgas, including the following:

e.on/E.ON

EU trade mark “e.on”, registration No 006296529, first registered on 27 June 2008 in international classes 07, 36, 37 and 40; EU trade mark “E.ON”, registration No 002361558, first registered on 19 December 2002 in international classes 35, 39, 40; German national trade mark “e.on”, registration No DE 39982704, first registered on 22 May 2000 in international classes 04, 35, 36, 37, 38; and US national trade mark “E.ON”, registration No 3197817, first registered on 16 January 2007 in international classes 01, 04, 35, 36, 37, 38, 39, 40.

Ruhrgas

German national trade mark “RUHRGAS”, registration No DE 302013025661, first registered on 21 May 2013 in international classes 16, 25 and 41.

E.ON Ruhrgas

International trade mark “E.ON RUHRGAS”, registration No 908343, first registered on 20 October 2006 in international classes 04, 16, 35, 37, 38, 39, 40, 41 and 42; and international trade mark “E.ON RUHRGAS” (word and device), registration No 925902, first

registered on 13 December 2006 in international classes 04, 16, 35, 37, 38, 39, 40, 41 and 42.

These trade mark registrations all predate the registration of the disputed domain name.

Furthermore, the Complainant also own numerous domain names consisting of or comprising the trade mark “E.ON”, including the domain name <EON.COM>, registered on 20 July 1993, which connects to the Complainant’s official website.

FACTUAL BACKGROUND

The Complainant, E.ON SE, is a European utility company based in Essen, Germany. The E.ON Group is one of Europe's largest operators of energy networks and energy infrastructure, with 50 million customers in more than 30 countries. E.ON was created in 2000 through the merger of the existing companies VEBA and VIAG.

The company E.ON RUHRGAS AG was founded in 1926 under the name RUHRGAS AG and was the largest gas supply company in Germany. In March 2003, the company became a wholly owned subsidiary of E.ON and was renamed E.ON RUHRGAS AG. It operated under this name until its conversion to E.ON Global Commodities SE in 2013, generating turnover of more than 1 billion Euros annually. Although the E.ON RUHRGAS company name is no longer in use, the E.ON name is used extensively and all of the E.ON, RUHRGAS and E.ON RUHRGAS trademarks are still validly registered by the Complainant.

The disputed domain name <eon-ruhrgas.com> was registered on 1 November 2017. At the time of the complaint and of this decision, the disputed domain name resolved to a website at <http://www.hotels-salzburg.org/de/eon-ruhrgascom>, which at the top impersonates E.ON Ruhrgas AG under the heading “E.ON Ruhrgas AG – Start”, and then below sets out a list of hotels in Salzburg, Austria, in what appears to be a pay-per-click arrangement.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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 trade mark 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

With regard to the first UDRP element, the Panel finds that the disputed domain name <eon- ruhrgas.com> is confusingly similar to the

Complainant's trade marks e.on/E.ON, Ruhrgas and E.ON Ruhrgas. Indeed, the disputed domain name incorporates the Complainant's trade marks in their entirety but omits the "." separating the "E" and "ON" elements from the Complainant's e.on/E.ON trade marks. The Panel follows in this respect the view established by numerous other decisions that a domain name which wholly incorporates a complainant's registered trade mark may be sufficient to establish confusing similarity for purposes of the UDRP (for example, WIPO Case No D2003-0888, Dr. Ing. h.c. F. Porsche AG -v- Vasiliy Terkin <porsche-autoparts.com>). Furthermore, the omission of the "." from the disputed domain name is not sufficient to alter the overall impression of the designation as being connected with the Complainant's trade marks, and does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trade marks and associated domain names. To the contrary, the disputed domain name rather adds to the likelihood of confusion because the omission of the "." from the disputed domain name mimics the Complainant's naming convention for its own domain names, including the domain name <EON.COM>, which also omits the ".".

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. The Panel follows in this regard the view established by numerous other decisions that use of a domain to host a parked page comprising pay-per-click links does not represent a bona fide offering of goods or services where such links compete with or capitalise on the reputation and goodwill of the complainant's trade mark, or otherwise mislead Internet users (see, for example, Forum Case No FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees); and WIPO Case No D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.")). The Panel accepts the Complainant's submission, supported by evidence, showing that the E.ON brand has a high degree of recognition, has been listed among the 20 most valuable brands in Germany in 2021, and as one of the fifty most valuable utility companies in 2018; and that the E.ON trade mark is well known in numerous European countries as indicated in the Brand Awareness Tracker for 2021. In the circumstances, the Panel accepts that the webpage accessed through the disputed domain name does take unfair advantage of the Complainant's trade marks for the purpose of directing traffic to that webpage for commercial gain, and also misleads Internet users because the top of the page seeks to impersonate E.ON Ruhrgas AG. The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade marks or to apply for or use the disputed domain name. Finally, the Whois information does not suggest that the Respondent is commonly known by the disputed domain name <eon-ruhrgas.com>. Against this background, and absent any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trade marks, and that it registered the disputed domain name in full knowledge of the Complainant's trade marks. Indeed, if the Respondent had carried out a Google search for the term "EON-Ruhrgas", the search results would have yielded immediate results related to the Complainant, its websites, and its connected business and services. Indeed, it is likely that the disputed domain name would not have been registered if it were not for the Complainant's trade mark (see, for example, WIPO Case No D2004-0673 Ferrari Spa -v- American Entertainment Group Inc). Furthermore, the website related to the disputed domain name resolved to a parking page with pay-per-click links. Based on the decisions of other panels in similar cases, the Panel regards this as an attempt by the Respondent to attract Internet users for commercial gain to its own website based on the Complainant's trade marks, and as further evidence of bad faith (see, for example, WIPO Case No D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.")). Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using 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. **eon-ruhrgas.com**: Transferred

PANELLISTS

Name	Gregor Kleinknecht LLM MCI Arb
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DATE OF PANEL DECISION 2020-02-20

Publish the Decision
