

## Decision for dispute CAC-UDRP-105242

Case number CAC-UDRP-105242

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Domain names emeria-europe.com

### Case administrator

Name Olga Dvořáková (Case admin)

### Complainant

Organization EMERIA

### Complainant representative

Organization ATOUT PI LAPLACE

### Respondent

Organization emeria europe

#### 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

Complainant states that it is the owner of, and the Panel has confirmed, Int'l Reg. No. 1,677,921 for EMERIA (registered March 22, 2022) for use in connection with, inter alia, "real estate agencies" and "real estate affairs," as well as additional international and French registrations (the "EMERIA Trademark").

#### FACTUAL BACKGROUND

Complainant states that it is "a French company, [and the] world's leading provider in real estate services, providing services to both individuals and businesses"; that it "assists residential and commercial customers at each stage of their property journey with competitive and comprehensive service offerings"; that it "provide[s] end-to-end assistance, from managing individual apartments and building areas jointly owned by apartment owners through our lease management and joint property management business lines, respectively, to providing renting, brokerage and digital and ancillary services such as insurance brokerage, technical diagnostics, and distribution and energy brokerage offerings through our other business lines"; that it "is the leader in France, operating under the FONCIA brand through a unique network of over 500 branches"; that it "also hold[s] leading positions in Switzerland, Germany and the UK and have strong presence in Belgium, Luxembourg, the Netherlands and Portugal where the company operates under various brands through a network of over 200 branches"; and that it "represents 17,000 employees in 8 countries, over 700 branches that corresponds to €1.5bn revenue."

The Disputed Domain Name was created on January 26, 2023, and is not being used in connection with an active website (Complainant also states that it “really fears that the domain name be used in phishing purposes as [it has] had to file many complaints recently against [other] domain names” containing the EMERIA Trademark).

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the Disputed Domain Name is confusingly similar to the EMERIA Trademark because it “incorporates in whole the Complainant’s trademarks for EMERIA,” “[i]t is well accepted that the hyphen is not relevant in the confusing similarity test”, and “the geographical term ‘EUROPE’ after the hyphen has no impact on the distinctive part ‘EMERIA’” because “ [i]t is well established that, where the relevant trademark is recognizable within the domain name, the addition of geographical terms would not be sufficient to prevent a finding of confusing similarity.”

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, “the complainants have never given any authorization to anyone to make any use or apply for registration of the disputed domain name <emeria-europe.com> and have no affiliation at all with the Respondent”; although the Disputed Domain Name “direct[s] to an inactive page, w]hat reinforces our conviction is that such inactive page does not constitute a bona fide offer but rather a way to activate in the future MX email servers to send fraudulent emails to third parties in view of money bribing”; and “[t]he respondent has usurped the name of a company in the complainant’s group.”

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, the Disputed Domain Name “reproduce[s] the entirety of the Complainant’s marks and company name for EMERIA,” which “confirms that Respondent was aware of Complainant and its trademarks and that it/he/she/they registered the disputed domain name based on the attractiveness of Complainant’s trademarks”; “[a]ccording to the registrar verification the domain name is wrongly filed in the name on EMERIA europe and the owner is not an employee of EMERIA europe”; “Respondent is passively holding the disputed domain name”; and “the association of the trademark EMERIA with the term ‘Europe’ reinforces the confusion as the disputed domain name might be regarded in concerned professionals’ mind as originating from / linked to the Complainant.”

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#### PARTIES CONTENTIONS

Complainant’s contentions are summarized above.

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 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).

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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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registration cited by Complainant, it is apparent that Complainant has rights in and to the EMERIA Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the EMERIA Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “emeria-europe”) because “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.11.1.

Here, the Disputed Domain Name contains the EMERIA Trademark in its entirety, plus a hyphen and the geographical word “Europe.” As set forth in section 1.8 of WIPO Overview 3.0: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because, inter alia, “the complainants have never given any authorization to anyone to make any use or apply for registration of the disputed domain name <emeria-europe.com> and have no affiliation at all with the Respondent”; although the Disputed Domain Name “direct[s] to an inactive page[. . .] what reinforces our conviction is that such inactive page does not constitute a bona fide offer but rather a way to activate in the future MX email servers to send fraudulent emails to third parties in view of money bribing”; and “[t]he respondent has usurped the name of a company in the complainant’s group.”

WIPO Overview 3.0, section 2.1, states: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location.

WIPO Overview 3.0, section 3.3, states:

“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.”

Here, the EMERIA Trademark appears to be distinctive and appears to have some degree of reputation given that it is protected by multiple international registrations and in France and that it is used by a company that operates 700 branches in eight countries.

Further, Respondent did not submit a response or provide any evidence of actual or contemplated good-faith use. The Whois record for the Disputed Domain Name submitted with the original complaint does not identify the registrant. And Respondent’s use of the name “EMERIA EUROPE” as the registrant organization – as disclosed by the registrar after the filing of the complaint – without any explanation by Respondent is at the very least suspicious. See, e.g., *De’Longhi Appliances S.r.l v. Delonghi Delong, Delonghi*, WIPO Case No. D2019-0077 (finding that respondent’s name as listed in the Whois record “is not a believable name” where it contained Complainant’s trademark).

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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. **emeria-europe.com**: Transferred
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## **PANELLISTS**

<b>Name</b>	<b>Douglas Isenberg</b>
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DATE OF PANEL DECISION **2023-04-08**

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**Publish the Decision**

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