

Decision for dispute CAC-UDRP-105881

Case number	CAC-UDRP-105881
Time of filing	2023-10-18 11:30:07
Domain names	EON-AVACON-VERTRIEB.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	E.ON SE
Organization	AVACON AG

Complainant representative

Organization	ARISTOS IP Partnerschaft von Rechtsanwälten mbB
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Respondent

Organization	Zhaotao
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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 E.ON SE is the registered owner of several trademarks for "E.ON", amongst others European Union Trademark Registration n. 002361558 E.ON (word) registered on December 19, 2002 for services in classes 35, 39 and 40. The Complainant AVACON AG is the registered owner of many trademark for AVACON, e.g. German trademark registration no. 39910928 AVACON (word) registered on June 10, 1999 for goods and services in classes 9, 16, 35, 36, 37, 39, 40, 41 and 42.

FACTUAL BACKGROUND

It results from the Complainants' undisputed allegations that E.ON SE is an European electric utility company based in Germany, belonging to E.ON Group which is one of Europe's largest operators of energy networks and energy infrastructure and a provider of innovative customer solutions and AVACON AG is one of the largest regional energy supply companies in Germany, which is also part of the E.ON Group of companies. Together, the Complainants operated a joint venture, named E.ON AVACON Vertrieb GmbH, which was merged into another company of the Group, E.ON Energie Deutschland GmbH, in 2013.

The Complainants further contend that trademark E.ON be distinctive and well-known.

The Complainants use the domain names <eon.com> and <avacon.com> to connect to their websites respectively.

The disputed domain name < eon-avacon-vertrieb.com > was registered on May 7, 2023 and did not resolve to an active website.

PARTIES CONTENTIONS

The Complainants contend 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 Complainants have, 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 Complainants have, 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).

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.

As noted above, the Complaint was filed by two Complainants E.ON SE and AVACON AG. As set forth in section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”): “In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.” Both E.ON SE and AVACON AG belong to the E.ON Group. Together, they operated a joint venture, named E.ON AVACON Vertrieb GmbH, which was merged into another company of the Group, E.ON Energie Deutschland GmbH, in 2013. Therefore, the Panel finds that the Complainants have a specific common grievance against the Respondent and accept the joint Complaint.

PRINCIPAL REASONS FOR THE DECISION

1. Pursuant to paragraph 4(a)(i) of the Policy, the complainant must establish rights in a trademark or service mark and secondly establish that the domain name is identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainants are the registered owners of trademark registrations for E.ON and AVACON as indicated in the Factual Background of this Decision.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant’s trademark where at least a dominant feature of the relevant mark is recognizable in the domain name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) at section 1.7. This Panel shares this view and notes that the disputed domain name incorporates the dominant feature of the Complainant’s trademark E.ON, which is clearly recognizable in the disputed domain name.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant’s trademark where the disputed

domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7. This Panel shares this view and notes that the Complainant's registered trademark AVACON is fully included in the disputed domain name.

In addition, these are followed by the German term "vertrieb" (distribution in English), which is related to the Complainants' business activity. The addition of the term "vertrieb" (and hyphen) and the omission of the sign "." (that is part of the Complainant's trademark E.ON, while not a dominant element) do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademarks since the Complainants' trademarks are clearly recognizable in the disputed domain name (see WIPO Overview 3.0 at section 1.8).

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain name is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to trademarks in which the Complainants have rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the complainant must secondly establish that the respondent has no rights or legitimate interests in respect of the domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainants have made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainants have no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademarks E.ON and AVACON, e.g. by registering the disputed domain name comprising the said trademarks (almost) entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contain the dominant feature of the registered and well-known trademark E.ON, and that more likely than not, the trademark E.ON is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainants. The Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainants' reputation by registering domain name almost fully containing the Complainant's trademark with the intent to attract Internet users for commercial gain.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainants have therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the complainant must thirdly establish that the domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the domain name's registration and use in bad faith.

The Panel shares the view of other UDRP panels and finds that the Complainant's trademark E.ON is well-known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name consisted of the Complainant's trademark when registered the disputed domain name. Registration of the disputed domain name in awareness of the reputed E.ON mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith, see WIPO Overview 3.0, section 3.1.4.

The disputed domain name does not resolve to active website. In this regard, the Panel notes that the passive holding does not preclude a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003). In fact, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) the Complainant's trademark E.ON is well-known; (2) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use; and (3) the implausibility of any good faith use to which the disputed domain name may be put (see WIPO Overview 3.0 at section 3.3).

In the light of the above, the Panel finds that the disputed domain name has been registered and is used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

Accepted

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

1. EON-AVACON-VERTRIEB.COM: Transferred
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PANELLISTS

Name	Dr. Federica Togo
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DATE OF PANEL DECISION 2023-11-24

Publish the Decision
