

## Decision for dispute CAC-UDRP-105882

Case number CAC-UDRP-105882

Time of filing 2023-11-20 14:43:55

Domain names EONBILLING.COM

### Case administrator

Name Olga Dvořáková (Case admin)

### Complainant

Organization E.ON SE

### Complainant representative

Organization ARISTOS IP Partnerschaft von Rechtsanwälten mbB

### Respondent

Organization Fundacion Comercio Electronico

#### 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 has submitted evidence, which the Panel accepts, showing that it is the registered owner of the trademarks bearing "E.ON", inter alia, the following:

- European Union trademark "E.ON" n°002361558, registered on December 19, 2002;
- European Union trademark "e.on" n° 002362416, registered on December 19, 2002;
- European Union trademark "e.on" n° 006296529, registered on June 27, 2008.

Moreover, the Complainant is also the owner of the domain names bearing the sign "E.ON", such as <eon.com>, registered on July 20, 1993.

#### FACTUAL BACKGROUND

The Complainant, E.ON SE, is a European electric utility company based in Essen, Germany. It is one of the world's largest investor owned electric utility service providers, one of Europe's largest operators of energy networks and energy infrastructure and a provider of innovative customer solutions. It operates in over 30 countries and has over 50 million customers. Having been founded in the year 2000, by 2020, the Complainant had 78,126 employees and a revenue of € 60.944 billion.

The Complainant holds several trademark registrations for "E.ON" going back to 2002 and the Complainant also holds the domain names bearing "E.ON" going back to 1993.

On December 23, 2022; the Respondent registered the disputed domain name <eonbilling.com>. The disputed domain name is currently inactive.

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#### PARTIES CONTENTIONS

##### COMPLAINANT:

###### 1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The disputed domain names are confusingly similar to the Complainant's formerly registered distinctive and well-known trademarks, as they bear the Complainant's "E.ON" trademark as a whole with the addition of the descriptive term "billing", which would not prevent a finding of confusing similarity. It was also claimed that "." in the Complainant's trademark is neither audible nor distinctive, therefore, it does not change the similarity assessment. In addition, it was stated that the trademark is used as "eon" in the Complainant's domain names.

The Complainant refers to earlier decision and claims that it is well-established that a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP.

The Complainant asserts that the top level domain ".com" is a standard registration requirement and does not change the overall impression. Since it does not prevent the likelihood of confusion, it will be disregarded, so the domain name remains confusingly similar despite such inclusion.

###### 2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant states that the Respondent is neither affiliated nor authorized by the Complainant in any way and neither license nor authorization has been granted to the Respondent to use the Complainant's trademarks "E.ON".

The Complainant argues that the Respondent is not using the disputed domain name in connection with bona fide offering of goods or services or a legitimate non-commercial or fair use. The disputed domain name is inactive.

In addition, the Complainant states that the Respondent deliberately chose to incorporate a sign that is confusingly similar to the well known, distinctive trademark "E.ON" in the disputed domain name, clearly with the intention of collecting commercial gain by benefiting from the Complainant's renown. 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.

###### 3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant states that "E.ON" is a well-known trademark, as previously held by UDRP panels, and refers to the following cases: CAC-UDRP-104854 on <eonenergy.com>, and CAC-UDRP-105129 on <eon-ruhrgas.com>.

The Complainant asserts that it obvious that the Respondent knew about the Complainant and its trademarks when it registered the disputed domain names. The fact that the Respondent registered the disputed domain names while knowing about the trademarks of the Complainant constitutes bad faith in registering the disputed domain names.

The Complainant alleges that the website under the disputed domain name is currently blocked and cannot be accessed but had previously been blocked by Microsoft Defender as a dangerous website. The Complainant also claims that a negative impression of the Complainant will be caused by a dysfunctional website due to its inactiveness which in turn would cause serious damage to the Complainant's trademarks and will have detrimental effects on the trademarks of the Complainant.

The Complainant claims that the well-known trademark "E.ON" being in its entirety along with the descriptive term "billing" in the disputed domain names is very likely to create a likelihood of confusion among Internet users who seek for products or services of the Complainant.

Accordingly, the Complainant alleges that the disputed domain name was registered and is being used in bad faith.

##### RESPONDENT:

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

1. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
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.

The Panel will therefore deal with each of these requirements in turn.

##### 1. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of "E.ON" trademarks.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's "E.ON" trademark and the addition of the term "billing" is not sufficient to vanish the similarity.

Moreover, the addition of the gTLD ".com" is not enough to abolish the similarity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is one of the official domain names of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

## 2. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint will fail. The burden is on the complainant to demonstrate a prima facie case that the respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complainant and any use of the trademark "E.ON" has to be authorized by the Complainant but there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

## 3. BAD FAITH

The Panel concludes that the Complainant's "E.ON" trademark is of distinctive character and it has a well-known character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the "E.ON" trademark, the Respondent was aware of the Complainant and its trademarks at the time of registration of the disputed domain name (see e.g., *Ebay Inc. v. Wangming*, WIPO Case No. D2006-1107). Referring to *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover, the disputed domain name is currently inactive. Various WIPO panellists are also of the opinion that passive holding does not as such prevent a finding of bad faith. The Panel also takes into account the annex that shows the website was blocked by Microsoft Defender due to being deemed dangerous. All the circumstances of the case must be examined to determine whether the Respondent is acting in bad faith. The cumulative circumstances for an indication of bad faith include the Complainant having a well-known trade mark, no response having been filed, and the inactive status of the disputed domain name, which all happened in this case.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

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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. EONBILLING.COM: Transferred

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## PANELLISTS

Name

Mrs Selma Ünlü

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DATE OF PANEL DECISION 2023-12-21

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Publish the Decision

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