

Decision for dispute CAC-UDRP-105885

Case number	CAC-UDRP-105885
Time of filing	2023-11-30 12:00:13
Domain names	EONNEXT-ENERGY.LTD

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	E.ON SE
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Complainant representative

Organization	Nicole Gerling (ARISTOS IP Partnerschaft von Rechtsanwälten mbB)
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Respondent

Name	John Gomez
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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 proprietor of numerous trademark registrations around the world including the following:

EUTM 002361558 E.ON, registered on 19/12/2002 in classes 35, 39 and 40;

EUTM 002362416 e.on, registered on 19/12/2002 in classes 35, 39 and 40; and

EUTM 006296529 e.on, registered on 27/06/2008 in classes 07, 36, 37 and 40.

Moreover, the Complainant is proprietor of numerous trademark registrations E.ON Next in the United Kingdom and its subsidiary E.ON Next Energy Limited is using these trademarks and the domain eonnext.com in the energy and gas sector.

FACTUAL BACKGROUND

The E.ON Group is one of Europe's largest operators of energy networks and energy infrastructure and a provider of innovative customer solutions. 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. The company is included in the Euro Stoxx 50 stock market index, the DAX stock index and a member of the Dow Jones Global Titans 50 index. It operates in over 30 countries and has over 50 million customers. Having been

founded in the year 2000, by 2020, E.ON had 78,126 employees and a revenue of € 60.944 billion.

The earlier trademark and company name E.ON has been used by the Complainant E.ON SE intensively and for a substantial period of time. It is therefore an established name in the energy market of the European Union, where it enjoys a consolidated position among the leading brands. Both the Complainant's company name and the trademark E.ON are widely recognised, in recent years having been featured among the TOP 50 German Brands (Ranked No. 19 in 2021), and among the World's 50 Most Valuable Utilities Brands (Ranked No. 13 in 2018). E.ON carries out regular brand awareness surveys and these have established an aided brand awareness of the trademark E.ON of more than 80% in several member states of the European Union such as Germany, Sweden, the Czech Republic, Hungary, and Romania in the time period between November 2017 and June 2020.

The surveys cited were carried out by the German company management consult. Aided brand awareness means that the participants could choose from a list of pre-selected companies. The target group were energy customers in private households and of small and medium-sized enterprises.

In view of these survey results, there can be no doubt about the wellknown character of the mark E.ON. On the contrary, it has been confirmed inter alia by the decision in case CAC-UDRP-104854, <eoneneirgy.com>, where the Panel held: "In the present case the Complainant's E.ON and "e.on" marks are very well-known". In case CAC-UDRP-105129, <eon-ruhrgas.com> the Panel held: "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."

All of the earlier rights in the name E.ON predate the registration date of the disputed domain name EONNEXT-ENERGY.LTD, which was registered on 2023-07-27 according to the WHOIS information.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

I

The disputed domain name EONNEXT-ENERGY.LTD corresponds nearly identical to the company name of the Complainant's UK subsidiary E.ON Next Energy Limited.

It is also confusingly similar to the Complainant's UK trademark registrations E.ON Next and to the well-known and distinctive trademark E.ON. The addition of the generic term "ENERGY" does not alter the overall impression of the domain as being closely linked to the Complainant's company name and trademark E.ON. On the contrary, the direct and unmistakable reference to the Complainant's field of business directly combined with the wellknown name makes a likelihood of confusion unavoidable.

The use of the mark by the Complainant with a "." between the letters "E" and "ON" does not change this risk of confusion. This separation is not pronounced and is not dominant or distinctive in the earlier marks or the company name. Moreover, the Complainant does not use this separation of the letters in its many domain names such as e.g. EON.COM or EONNEXT.COM to name only two of many.

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" (see e.g. WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin).

The addition of the Top Level Domain ".LTD" does not change the overall impression of the designation as being connected to a Complainant's trademark. It cannot prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the related domain names. Instead and according to established UDRP case law as stated e.g. in the WIPO Jurisprudential Overview 3.0, 1.1, "the 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."

Thus, the disputed domain name is confusingly similar to the Complainant's company name, trademarks E.ON and the related domains.

II

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.). The Respondent has not been granted an authorization or license to use the disputed domain name by the Complainant. In fact, the Respondent is unknown to the Complainant. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Respondent therefore has no rights or legitimate interests in respect of the disputed domain names. 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.

Before the Registrar blocked the website on the Complainant's request, it was used for a SCAM-website.

A Google search for "EON Next" pointed straight to the Complainant. Thus, Complainant's rights are obvious. Nevertheless, or, therefore, the Respondent chose to register the disputed domain name.

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

For the foregoing reasons, it must be concluded that the Respondent has no right nor legitimate interest in respect of the disputed Domain Name and has not been using the disputed domain name for any bona fide offering of goods or services.

III

The Complainant's many trademark registrations in the UK and the EU predate the registration of the disputed domain name and the Respondent has in no way been authorized by the Complainant to register the disputed domain name. Considering the renown of the Complainant and its trademark E.ON, and the composition of the disputed domain name, i.e. using the Complainant's well-known, distinctive trademark E.ON, (without the separator and in the way customary for the Complainant in its substantial number of domain name registrations), in its entirety and the company name of the Complainant's subsidiary E.ON Next Energy Ltd., this can only be seen as a deliberate and calculated attempt to improperly benefit from the Complainant's rights and reputation.

Considering that:

- The Respondent obviously knew about the Complainant and its trademark - because there is no other discernible reason for choosing the name;
- The Complainant's trademark E.ON is a distinctive, well-known trademark;
- There has been no indication that there could be credible evidence-backed rationale for registering the disputed domain name;

The disputed domain name must be deemed as registered in bad faith, as stated clearly in the WIPO Overview 3.0, section. 3.1.1.:

"if on the other hand circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, ... (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name,..." and para.3.1.4: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

THE DISPUTED DOMAIN NAME IS BEING USED IN BAD FAITH

The website under the disputed domain name is currently blocked and cannot be accessed but had previously been used for a SCAM website.

The disputed domain name was registered with the sole purpose of creating an association with the Complainant in order to divert traffic from the Complainant while at the same time stopping the Complainant from resuming use of the domain name for commercial purposes.

Consumers reaching an inactive page, will be confused. This will lead to a negative impression of the Complainant caused by a dysfunctional website which in turn would cause serious damage to the Complainant's trademarks and will have detrimental effects on the trademarks of the Complainant. The passive use currently undertaken by the Respondent must therefore also be deemed to be taking place in bad faith.

RESPONDENT:

No 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 trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

This is a case of adding a generic term - in this case its term "energy" - to a well-known trademark, E.ON and E.ON NEXT, and in respect of the well-established practice that the specific top level of a domain name such as ".Ltd" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar, the Panel finds the disputed domain name confusingly similar.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark E.ON and E.ON NEXT and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. The Panel, therefore, finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website.

It is inconceivable to this Panel, that the Respondent will be able to make any good faith use of the disputed domain name. The Panel notes in this connection that passive holding of a domain name does not prevent a finding of bad faith use under 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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademarks are partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The disputed domain name is not being used actively. Therefore the Panel did not find any legitimate use nor rights on the Respondent to the names E.ON or E.ON NEXT.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered. There is no present use of the disputed domain. Passive holding does not prevent a finding of bad faith and it is therefore concluded that the Respondent makes bad faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **EONNEXT-ENERGY.LTD:** Transferred

PANELLISTS

Name	Lars Karnoe
DATE OF PANEL DECISION	2023-12-28
Publish the Decision	