

Decision for dispute CAC-UDRP-105889

Case number CAC-UDRP-105889

Time of filing 2023-11-24 13:16:15

Domain names EON6.VIP

Case administrator

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

Complainant

Organization E.ON SE

Complainant representative

Organization ARISTOS IP Partnerschaft von Rechtsanwälten mbB

Respondent

Organization xuxu

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 is the owner of the following trademark registrations:

- EUTM "ON" word mark No. 002361558 protected for goods and services in Classes 35, 39, 40 of the Nice Classification, with a filing date on 3 September 2001;
- EUTM "e.on" word mark No. 002362416 protected for goods and services in Classes 35, 39, 40 of the Nice Classification, with a filing date on 3 September 2001;
- EUTM "e.on" word mark No. 006296529 designated for goods and services in Classes 07, 36, 37, 40 of the Nice Classification, with a filing date on 20 September 2007.

The Complainant proved its ownership of the listed trademark registrations by the submitted extract from the EUIPO database.

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. 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.

The earlier trademark and company name "e.on" has been used by the Complainant 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 recognized (evidenced by numerous surveys submitted by the Complainant, e.g. Top-50-German-brands; the annual report of the world's Top-50-Utilities; E.ON brand awareness 2021).

Past panels have declared the recognition of the Complainant's trademark, inter alia by the decision in the CAC Case No. 104854, E.ON SE v. Jonas Lagomasino EON ENERGY, where the panel held: "In the present case the Complainant's E.ON and "e.on" marks are very well-known". In the CAC Case No. 105129, E.ON SE v. Joseph Brown 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" (since 2001, 2007 respectively) predate the registration date of the disputed domain name <EON6.VIP>, which was registered on 8 September 2023 according to the Whois information attached to the Complaint.

According to the Registrar, the Respondent is 'lee leetu' of 'xuxu' company. The Respondent's provided address as being at Hong Kong. The Respondent registered the disputed domain name <EON6.VIP> on 8 September 2023 (proven by the Whois information) (hereinafter referred to as "disputed domain name").

PARTIES CONTENTIONS

COMPLAINANT:

A. The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Complainant contends that the disputed domain name <EON6.VIP> is confusingly similar to the Complainant's well-known and distinctive trademark "E.ON". The addition of the number "6" does not create sufficient distance to create an impression of dissimilarity. On the contrary, the first three letters "EON" are shared by the earlier right and dominate the contested domain name. The addition of a number cannot be sufficient to avoid confusing similarity.

The Complainant adds that the use of the mark by the Complainant with a "." between the letters "E" and "ON" does not change this assessment. The separation is neither audible nor is it dominant or distinctive in the earlier marks or the company name. Moreover, the Complainant does not use this separation of the letters in its domain names, such as e.g. <EON.COM> or <EON-ENERGY.NET>, meaning that the use of the letters "EON" in the domain architecture of the Complainant is identical to that of the Respondent. The letters "EON" are used with or without a subsequent descriptive term followed by the gTLD or ccTLD.

The Complainant suggests that the addition of the gTLD ".VIP" 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, paragraph 1.1, "the applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".vip") 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, "E.ON" trademarks and the related domain names.

B. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant claims that the Respondent has not been granted 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 name. 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. By the time the Complainant prepared this Complaint, the disputed domain name did not resolve to an active website, but a phishing-warning blocked the website (proven by the screenshot of the warning page with the disputed domain name. The Respondent has not been using the disputed domain name for any bona fide offering of goods or services and nothing about the disputed domain name suggests a legitimate noncommercial or fair use of it would be possible.

A Google search for "EON 6" pointed more or less straight to the Complainant as it is apparent from the attached results of Google search. The Respondent should have performed a similar search before registering the disputed domain name. It would have been obvious that the Complainant is the owner of numerous trademarks and domains. However, the Respondent still chose to register the disputed domain name.

As the Complainant adds, when Internet users, who search for information about the Complainant and/or about the brand "E.ON" see a phishing-warning, the resulting confusion would lead to a negative impression of the Complainant caused by a dysfunctional website. This in turn would cause serious damage to the Complainant's trademark and will have detrimental effects on the trademarks of the Complainant.

From the Complainant's perspective, the Respondent deliberately chose to incorporate a sign that is confusingly similar to the "E.ON" well-known and distinctive trademark 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.

C. The Complainant contends that the disputed domain name has been registered and is being used in bad faith.

Most of the Complainant's trademark registrations around the world 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 "E.ON" trademark, and the composition of the disputed domain name, i.e. using the Complainant's "E.ON" well-known, distinctive trademark, (without the separator and in the way customary for the Complainant in its substantial number of domain name registrations), in its entirety in combination with the number "6", this can only be seen as a deliberate and calculated attempt to improperly benefit from the Complainant's rights and reputation.

The website under the disputed domain name is currently blocked and cannot be accessed as a dangerous website as it is clear from the screenshot of the website under the disputed domain name.

Given the distinctiveness and the renown of the earlier rights, there can be no good faith explanation for registering this combination of the trademark of the Complainant together with a number.

There is no proper address in the Registrar-Information. The Complainant cannot read the Chinese Characters in the Registrar Verification. However, there does not seem to be a correct name and address information. There is also no indication that there exist any rights of the Registrant to the name "Eon". 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 the use of the domain name for commercial purposes or for phishing purposes.

Consumers reaching a potentially dangerous 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 administratively Complaint 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 UDRP).

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 UDRP).

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 UDRP).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "E.ON".

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter referred to as "The WIPO Overview 3.0") in Paragraph 1.2.1 states: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The WIPO Overview 3.0 in Paragraph 1.7 states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin, the panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the panel stated that: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar".

The Complainant has established that it owns numerous "E.ON" EUTM registrations, protected for the classes in connection with energy supply (evidenced by extract from the EUIPO database).

The disputed domain name <EON6.VIP> adds the number "6" to the letters "EON". No further adjustments were made to distinguish it from the Complainant's trademark. The absence of "." is comparable to the Complainant's domain names associated with its trademarks, e.g. <EON.COM>. Therefore, the Complainant's trademark is incorporated in its entirety and clearly recognizable in the disputed domain name.

The addition of the gTLD <.vip> does not change the overall impression of the disputed domain name either.

Therefore, the disputed domain name, as it reproduces the "E.ON" trademark in its entirety, with the simple addition of a number is considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

2. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make a case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (see CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the UDRP, once the complainant has made something credible (prima facie evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the panel stated that "[i]n 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."

In the Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the panel stated that: "where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name".

The Complainant claims that the Respondent is not related in any way to the Complainant and the Complainant has never granted any license nor authorization to the Respondent to use the Complainant's trademark or apply for registration of the disputed domain name.

There is no evidence that would lead to the conclusion that Respondent is known by the disputed domain name. The Respondent is not identified in the Whois information.

Moreover, the disputed domain name resolves to the website with a phishing-warning block (evidenced by the screenshot of the warning page with the disputed domain name). This Panel assumes that such use of the disputed domain name cannot be understood as a bona fide offering of goods or services or legitimate noncommercial fair use of the disputed domain name.

A simple Google search for "EON 6" leads Internet users mostly to the Complainant name and Its domain names associated (proven by the results of Google search).

The Respondent did not reply to the Complaint and so failed to demonstrate Its rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied requirement under Paragraph 4(a)(ii) of the UDRP.

3. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain name in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.1 states: "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, [...]."

The WIPO Overview 3.0 in Paragraph 3.1.4 states: "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 WIPO Overview 3.0 in Paragraph 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."

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the Panel stated: "when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted."

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the Panel stated that: "In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use."

In the Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants, the Panel stated that: "The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(i) and (iii)."

In the present case, the Complainant owns numerous EUTM registrations for "E.ON" verbal element with the priority right since September 2001. The disputed domain name consists of the Complainant's trademark in its entirety. The addition of the number "6" does not change the overall impression.

Therefore, the disputed domain name is confusingly similar to a highly distinctive earlier trademark of the Complainant.

Furthermore, past Panels have decided that the Complainant's trademark "E.ON" is well-known and has obtained a high degree of recognition (see, e.g., the CAC Case No. 104854, E.ON SE v. Jonas Lagomasino EON ENERGY; the CAC Case No. 105129, E.ON SE v. Joseph Brown). A simple Google search for "EON 6" leads Internet users mostly to the Complainant name and Its domain names associated (demonstrated by the results of Google search).

Therefore, this Panel states that the Respondent must have been aware of the Complainant's trademark and its reputation before the registration of the disputed domain name on 8 September 2023.

The Respondent is not identified in the Whois information and so cannot be recognized under the disputed domain name (evidenced by the Whois information).

Finally, the disputed domain name leads Internet users to a blocked website (proven by the screenshot of the warning page with the disputed domain name). No good faith purposes might be connected with the website with phishing-warning.

This Panel agrees with the Complainant that Internet users might be confused about the source of the potentially dangerous page regarding the confusing similarity created by the Respondent. As a result, it might bring a detrimental effect on the Complainant's trademarks and Its reputation.

Following the above-mentioned, the Panel finds that the Complainant has satisfied conditions pursuant to Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. EON6.VIP: Transferred

PANELLISTS

Name	Radim Charvát
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DATE OF PANEL DECISION 2024-01-02

Publish the Decision
