

Decision for dispute CAC-UDRP-105890

Case number CAC-UDRP-105890

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Domain names eoneergy.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization E.ON SE

Complainant representative

Organization ARISTOS IP Partnerschaft von Rechtsanwälten mbB

Respondent

Organization Juanita Co.

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 relies on its several registered trademarks, in territories around the world, including the following:

Mark	Territory	Registration No.	Application Date	Registration Date	Classes
E.ON	EUTM	002361558	03/09/2001	19/12/2002	35, 39, 40
e.on	EUTM	002362416	03/09/2001	19/12/2002	35, 39, 40
e.on	EUTM	006296529	20/09/2007	27/06/2008	07, 36, 37, 40

Further, the Complainant operates its business using its domain name <eon.com>.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Key aspects of the Complainant's contentions are summarized below.

Complainant's Background

The Complainant 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.

Registration of the disputed domain name

On March 27, 2021, the Respondent using the name "Quan Zhongjun", of the organization "Juanita Co." - located in Zhengzhou HeNan, China - registered the disputed domain name <eoneergy.com>.

First UDRP Element - disputed domain name is Confusingly Similar to the Complainant's Trademark

The Complainant asserts that the disputed domain name is confusingly similar to its E.ON trademarks because addition of the misspelled generic term "EERGY" for "energy" therein does not alter the overall impression of the domain as being closely linked to the Complainant's company name and trademark E.ON.

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 EON-ENERGY.NET to name only two of many.

Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark

Second UDRP Element – The Respondent has no Rights or Legitimate Interests in the disputed domain name

The Complainant asserts that the Respondent is not commonly known as the disputed domain name.

Further, the Respondent is unknown to the Complainant and has not been granted an authorization or license to use the disputed domain names by the Complainant. The Respondent is unknown to the Complainant. The Respondent is not affiliated with nor authorized by the Complainant in any way.

The Complainant claims there is no evidence of demonstrable preparations to use nor actual use of the disputed domain name in connection with a bona fide offering of goods or services. Rather, the disputed domain name resolves to a pay per click site containing links to gas providers, gas price comparisons and sales sites. These links lead consumers to further websites on the subjects concerned, which, while they may also include further links to E.ON websites, always point first to competitor websites. Use of this type cannot be construed as constituting legitimate interests of the Respondent.

The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Quite the opposite is the case. The Respondent has clearly chosen the domain name with the very intent to make commercial gain by misleadingly diverting consumers. In doing so, the trademark and company name of the Complainant is being tarnished.

Third UDRP Element – The disputed domain name was Registered and is Being Used in Bad Faith

The Complainant and the Respondent have never had any previous business or other relationships, nor has the Complainant ever granted the Respondent any rights to use the E.ON trademark in any way at all. This includes use in the disputed domain name.

The Complainant has not found that the Respondent is commonly known by the disputed domain name or has any other legitimate interest in that name. A Google search for "eon eergy" pointed straight to "eon energy" and thus the Complainant and its business activities.

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 to collect commercial gain by benefiting from the Complainant's renown.

The above summarized facts and arguments asserted by the Complainant are not contested by the Respondent because no

Response was filed.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

NO ADMINISTRATIVELY COMPLIANT 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).

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).

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.

PRINCIPAL REASONS FOR THE DECISION

LANGUAGE OF PROCEEDING

According to Rule 11 in the Rules for Uniform Domain Name Dispute Resolution Policy, (the "Rules") "...the language of the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain name, and that the language of the registration agreement is English.

As neither party has asked to deviate from the English language as per the registration agreements, the Panel finds that this proceeding may be properly conducted in English.

PRINCIPAL REASONS FOR THE DECISION

THREE ELEMENTS THE COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

- (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 in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusions concerning the satisfaction of the

three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term E.ON in numerous classes and territories around the world. Such trademark rights were created and registered more than a decade prior to March 27, 2021, the creation date of the disputed domain name. A nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainant possesses rights in its E.ON trademark such that it has standing under the Policy.

UDRP panels have held that where the disputed domain name is a common, obvious, or intentional misspelling of a trademark it may be considered to be confusingly similar. In the present case, the disputed domain name consists of the E.ON trademark reproduced in its entirety other than the elimination of the "." between the "e" and "o". The Panel finds the disputed domain name to be confusingly similar to the Complainant's trademark E.ON under a side by-side analysis because it includes all the same letters, and except for the omission of the ".", and otherwise follows the same orthographic and phonetic pattern. Further, the inclusion of the misspelled generic term "EERGY" for "energy" in the disputed domain name is apparently in reference to Complainant's field of business and bolsters the likelihood confusion especially due to its similarity to the domain <eon-energy.net>, owned by the Complainant's subsidiary.

The form of the disputed domain name in this instant proceeding comprising a variant of the Complainant's mark followed by a misspelling of the relevant term "energy" is directly comparable to the UDRP dispute concerning the domain name <eoneneirgy.com> CAC-UDRP-104854 in which the Complainant prevailed ("As to the first element, the Complainant has shown that it has rights in the E.ON mark and that the mark is very well-known. The Panel finds the disputed domain name <eoneneirgy.com> to be confusingly similar to the Complainant's trademark E.ON because it incorporates the mark in its entirety, omitting only the dot, and merely adds a misspelling of the generic word "energy". These differences do nothing to distinguish the disputed domain name from the mark. The inconsequential top-level domain ".com" may be ignored. The Complainant has established this element.")

The TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Accordingly, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

(B) THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it; see, for example, WIPO Overview 3.0, section 2.1 ("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."). However, the burden of proof still remains with the complainant to make out its prima facie case on a balance of probabilities. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

Paragraph 4(a)(ii) of the Policy contemplates an examination of the available facts to determine whether a respondent has rights or legitimate interest in the domain name. Paragraph 4(c) sets out a list of circumstances through which a respondent may demonstrate that it does have such rights or interests.

The first circumstance, under Paragraph 4(c)(i), is where "before any notice to you of the dispute, your use of, or 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". The use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. Here, according to screenshot evidence submitted by the Complainant, the disputed domain name resolves to a pay per click site containing links to gas providers, gas price comparisons and sales sites which point to competitor websites. As such, the disputed domain name includes links with capitalize on the Complainants E.ON mark. Accordingly, the Panel finds no evidence of a bona fide offering of goods or services or demonstrable preparations to use per Policy 4(c)(i) and Respondent does not have rights or legitimate interests with respect of the domain name thereunder.

The second circumstance, under Paragraph 4(c)(ii), concerns cases where the respondent is commonly known by the domain name. Here, according to the registrar verification, the Respondent name is "name "Quan Zhongjun", of the organization "Juanita Co." and has no similarity or connection to the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name. As such, this second circumstance of legitimate rights or interests under the Policy is not applicable to the Respondent.

Regarding the third circumstance, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a

legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's E.ON trademark. According to the screenshot as submitted showing the disputed domain name resolves to a page of pay-per-click links, and as such none of the accepted categories of fair use - such as news reporting, commentary, political speech, education etc - are found to apply. Thus the Panel concludes there is no legitimate non-commercial or fair use on the part of the Respondent.

Lastly, the Complaint confirms that the Respondent is not licensed, nor has any relationship with or authority to represent the Complainant in any way.

Accordingly, the Complainant has sufficiently made out its prima-facie case on the second element of the Policy. Thus, the burden of proof is shifted to the Respondent to rebut the Complainant's case. Here, because the Respondent has not participated in these proceedings, there is no such rebuttal to consider, and the Complainant prevails.

The Panel therefore concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The third element requires the Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g. Hallmark Licensing, LLC v. EWebMall, Inc., WIPO Case No. D2015-2202 ("The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

Further, Paragraph 4(b) of the Policy sets out a non-exhaustive list of four circumstances, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

- (i) circumstances indicating that the respondent has registered or 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 respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent 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 respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy for the reasons as set out below.

The Complainant's E.ON trademark is distinctive and enjoys considerable reputation within the energy sector. Such reputation is shown by the substantial size and reach of the Complainant's business - in 2020 the Complainant's revenue was 60.994 billion euros, with a headcount of some 79,126 employees and operations in over 30 countries. Previous UDRP panels have confirmed the notoriety of the Complainant, see for example, CAC-UDRP-104854, <eonenergy.com> ("In the present case the Complainant's E.ON and "e.on" marks are very well-known and the Respondent's <eonenergy.com> domain name is a deliberate misspelling of the Complainant's marks, clearly intended to take advantage of the goodwill and reputation of those marks. This typosquatting alone demonstrates bad faith registration."), and CAC-UDRP-105129, <eon-ruhrigas.com> ("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."). The same logic applies in this instant case. Accordingly, the Panel finds that because of the well-established status of the Complainant, it is more probable than not that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trademarks and thus they registered the disputed domain name with the Complainant in mind. The fact that the disputed domain name comprises the Complainant's E.ON mark, merely with the absence of the "." along with the addition of "energy" a misspelling of the relevant term "energy" makes the Panel's finding of targeting by the Respondent even more compelling.

According to the screenshots submitted in evidence, the disputed domain name is being used for pay-per-click links which point to competitor websites. Such use shows there is an attempt by the Respondent to attract Internet users for commercial gain to its own website based on the Complainant's trade marks, and further supports a finding of bad faith.

As a final point, the Panel may draw a negative inference from the Respondent's silence through these proceedings.

In light of the above analysis, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and are being used in bad faith, and thus has satisfied the requirements under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **eoneergy.com**: Transferred
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PANELLISTS

Name	Claire Kowarsky
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DATE OF PANEL DECISION **2024-01-04**

Publish the Decision
