Decision for dispute CAC-UDRP-106086

Case number	CAC-UDRP-106086
Time of filing	2023-12-21 12:01:13
Domain names	eonnergy.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	E.ON SE

Complainant representative

Organization	ARISTOS IP Partnerschaft von Rechtsanwälten mbB

Respondent

Name	Jack Li

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 proprietor of numerous trademark registrations 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.

FACTUAL BACKGROUND

The Complainant is a European electric utility company based in Essen, Germany. Its E.ON and “e.on” marks are very well-known.

The disputed domain name <eonnergy.com> was registered on October 13, 2023. It resolves to a pay per click site containing links to energy providers and companies offering solar panels.

PARTIES CONTENTIONS

The Complainant contends 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 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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at paragraph 4.3; see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire, FA 157287 (Forum June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint”).

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 <eonnergy.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.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way to its business. The Respondent is unknown to the Complainant, is not affiliated with the Complainant in any way and is not commonly known by the disputed domain name. Neither licence nor authorization has been granted to the Respondent to make any use of the disputed domain name.

The Panel notes that the disputed domain name <eonnergy.com> was registered by the Respondent on October 13, 2023, long after the Complainant has shown that its E.ON mark had become very well-known. It resolves to an active website with pay-per-click links to energy providers and companies offering solar panels. These circumstances, together with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD, FA1906001849706 (Forum July 17, 2019). The Respondent has made no attempt to do so.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has established this element.

As to the third element, paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, including:

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location.

The circumstances set out above in relation to the second element and the typosquatted nature of the disputed domain name <eonnergy.com> satisfy the Panel that the Respondent was fully aware of the Complainant's very well-known E.ON mark when the Respondent registered the disputed domain name and that the Respondent did so in bad faith. Further, that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source of the Respondent's website and of the goods or services promoted on that website. This demonstrates registration and use in bad faith to attract users for commercial gain under Policy paragraph 4(b)(iv).

Accordingly, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith. The Complainant has established this element.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **eonnergy.com**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2024-01-16

Publish the Decision