Decision for dispute CAC-UDRP-105893

Case number	CAC-UDRP-105893
Time of filing	2023-12-20 13:54:09
Domain names	ecoeonenergy.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	E.ON SE

Complainant representative

Organization	ARISTOS IP Partnerschaft von Rechtsanwälten mbB

Respondent

Organization	shen zhen shi ai di si dian zi ji xie she bei you xian gong si

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 owner of numerous trademark registrations around the world including the following:

1. EUTM 002361558 E.ON, registered on 19/12/2002 in classes 35, 39 and 40;
2. EUTM 002362416 e.on, registered on 19/12/2002 in classes 35, 39 and 40; and
3. EUTM 006296529 e.on, registered on 27/06/2008 in classes 07, 36, 37 and 40 .

FACTUAL BACKGROUND

FACTS PROVIDED BY THE COMPLAINANT:

The Complainant 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, the Complainant had 78,126 employees and a revenue of € 60.944 billion.

The Complainant is the owner of the trademarks E.ON®.

The disputed domain name <**ecoeonenergy.com**> (hereinafter, the “Disputed Domain Name”) was registered on 18/10/2023 by (kun qi wang) based in China and it resolves to a pay per click site containing links to electricity and gas providers, gas price comparisons and sales sites.

According to Complainant’s non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name and he is not related in any way to the Complainant’s business.

For the purpose of this case, 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.

Respondent did not reply to the Complaint.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Similarity

The Complainant confirms that the Disputed Domain Name <**ecoeonenergy.com**> is confusingly similar to its trademark E.ON®, company names and registered domain names.

The Complainant states that the simple combination of a trademark or trademarks with a nondistinctive generic term such as “eco" and "energy", which is descriptive of the very area of business of the Complainant, i.e. electrical power from renewable resources, cannot make the Disputed Domain Name sufficiently different from the earlier rights to avoid a likelihood of confusion.

Furthermore, the Complainant contends that top-level suffix in the domain names (i.e. in this case ".com") is disregarded in the comparison.

Second element: Rights or legitimate interest

The Complainant contends that the Respondent is not commonly known by the Disputed Domain Name. Further, the Complainant assets that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and he is not related or affiliated in any way with the Complainant. In addition, the Complainant asserts that neither license nor authorization has been granted to the Respondent to use the disputed domain name by the Complainant.

Moreover, the Complainant also claims that the Disputed Domain Name resolves to a pay per click site containing links to electricity and 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.

In accordance with Complainant, the Respondent has clearly chosen the Disputed 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. Therefore, the Respondent has no rights or legitimate interests on the Disputed Domain Name.

Third element: Bad faith

The Complainant contends that given the distinctiveness and the renown of the earlier rights and the mark E.ON®, there can be no good faith explanation for registering this combination of the trademark of the Complainant together with a generic term as a domain name. The Respondent must have had actual knowledge of the Complainant's brand before and at the time of the registration of the Disputed Domain Name.

Following Complainant´s argument, 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 Disputed Domain Name for commercial purposes. In view of the foregoing, any good faith use of the domain names is hard to imagine. The Respondent must therefore also be deemed to have registered and be making use of the Disputed Domain Name in bad faith.

RESPONDENT

Respondent did not reply to the Complaint.

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

- THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE TRADEMARK EO.N® OF THE COMPLAINANT.

The Uniform Domain Name Dispute Resolution Policy (the Policy) in its Paragraph 4(a)(i) indicates the obligation of Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

The Complainant has submitted evidence showing the ownership of different European Trademarks, including the EUTM 002361558 E.ON, registered on 19/12/2002 in classes 35, 39 and 40.

From the Panel's perspective, the Disputed Domain Name <**ecoeonenergy.com**> incorporates the trademark E.ON in its entirety, omitting the dot and includes two generic words: "ECO" and "ENERGY". In this sense, UDRP panels agree that where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. (see paragraph 1.8. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition 3.0 ("WIPO Jurisprudential Overview 3.0.).

Lastly, the addition of the Top-Level Domain Name ".com" in a domain is considered as a standard registration requirement and, therefore, it should be disregarded under the first element confusing similarity test (see paragraph 1.11 of WIPO Jurisprudential Overview 3.0).

Therefore, 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 Complainant's mark.

- 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 by UDRP panels, 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 paragraph 2.1 of WIPO Jurisprudential Overview 3.0).

The Complainant indicates that the Respondent is not affiliated nor authorized in any way to use the trademark E.ON®. Furthermore, the Complainant argues that it has not granted a license or authorization to the Respondent to make any use of the trademark E.ON®.

From the information provided by Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the Disputed Domain Name. The Respondent's name " (kun qi wang)" provided in the Registrar's verification is all what it links the Disputed Domain Name with the Respondent. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the Disputed Domain Name.

The Complainant also mentioned that the Disputed Domain Name resolves to a pay per click site containing links to electricity and gas providers, gas price comparisons and sales sites. The evidence provided by the Complainant shows not only the use of generic

links in German language such as “STROM UND GAS ANMELDEN” but also of links connected with potential Complainant´s competitors such as MONTANA Energie.

Past Panels have found that 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. Furthermore, past Panels have found that the use of a domain name to host a page comprising pay per click links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host pay per click links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant’s (or its competitor’s) trademark (see paragraph 2.9. of WIPO Overview 3.0.).

The Complainant has provided with trademark registrations under the term E.ON®. In this regard and absent of Respondent’s reply, the Panel is of the opinion that the Respondent is trading off the Complainant’s trademark by using it linked to a website with pay per click advertisement regardless of whether the links are related to generic words in German language such as “STROM UND GAS ANMELDEN”.

The fact that Respondent did not reply to the Complaint gives an additional indication that Respondent lacks rights or legitimate interest since Respondent did not provide with evidence of the types specified in paragraph 4 (c) of the Policy, or of any circumstances, giving rise to rights or legitimate interests in the Disputed Domain Name.

Therefore, the Panel 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.

- **THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH IN ACCORDANCE WITH THE POLICY.**

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the Disputed Domain Name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed 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 Respondent has engaged in a pattern of such conduct; or

(iii) The Respondent has registered the Disputed 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.

The evidence submitted by Complainant confirms that its trademark E.ON® is distinctive and it has a strong reputation in the energy industry at the European Union. In this vein, the Complainant referred to different UDRP cases by which the Panels confirmed the well know character of the E.ON® trademarks (e.g. CAC Case No. 104854 and CAC Case No. 105129). Furthermore, the Complainant provided with the results of different reports where the Complainant´s company name and the trademark E.ON® have been widely recognized, e.g. TOP 50 German Brands 2021 and World´s 50 Most Valuable Utilities Brands 2015 – 2018. Absent of Respondent’s reply, the Panel finds that Respondent, prior to the registration of the Disputed Domain Name was aware of Complainant’s trademark, in particular since the Disputed Domain Name was registered on 18/10/2023 and the Complainant’s trademarks were registered long before the registration of the Disputed Domain Name.

Furthermore, the Complainant provided with evidence showing that the Disputed Domain Name is currently used to host a pay per click website with generic links to electricity and gas providers, gas price comparisons and sales sites. In fact, some of the links related to Complainant´s competitors such as MONTANA Energie. It is well established at different UDRP Panel resolutions that the Respondent cannot disclaim responsibility for content appearing on the website associated with its domain name. (see Question 3.5. of the WIPO Overview 3.0.).

From the Panel’s perspective, the below mentioned elements demonstrate that the Respondent acquired the Disputed Domain Name with the intention 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.

This conclusion is also supported by the following UDRP Cases:

UDRP Case Nr. D2015-0299 Volkswagen Aktiengesellschaft vs Robert Brodi where the Panel established the following:

“The Panel is aware that it is very common for parking pages to throw up results relating to competitors of the entity named in the

domain name rather than simply advertisements relating to the entity itself.”

CAC Case Nr. 105890 E.ON SE vs Jack Li where the Panel found out the following:

“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."

In light of the evidence presented to the Panel, including: a) the likelihood of confusion between the Disputed Domain Name and the Complainant’s E.ON® trademarks, b) the lack of reply to this Complaint by Respondent, c) the fact that the disputed domain name is being used for a pay per click website using generic and competitor´s links, the Panel draws the inference that the Disputed Domain Name was registered is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ecoeonenergy.com**: Transferred

PANELLISTS

Name	**Victor Garcia Padilla**

DATE OF PANEL DECISION 2024-01-22

Publish the Decision