Decision for dispute CAC-UDRP-106381

Case number	CAC-UDRP-106381
Time of filing	2024-03-27 14:58:10
Domain names	eon-hungary.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	E.ON SE

Complainant representative

Organization	Lubberger Lehment Rechtsanwälte Partnerschaft mbB

Respondent

Name	Erna Da Silva

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 has demonstrated ownership of rights in the trademark E.ON for the purposes of standing to file a UDRP complaint.

The Complainant is the owner of numerous trademark registrations for E.ON, including the following:

- European Union trademark registration No. 002361558 for E.ON (word mark), filed on September 3, 2001, and registered on December 19, 2002, in classes 35, 39 and 40;

- European Union trademark registration No. 002362416 for e.on (word mark), filed on September 3, 2001, and registered on December 19, 2002, in classes 35, 39 and 40;

- European Union trademark registration No. 006296529 for e.on (word mark), filed on September 20, 2007, and registered on June 27, 2008, in classes 7, 36, 37 and 40;

- International Trademark Registration No. 0876364 for e.on (figurative mark), registered on September 9, 2005, in classes 4, 35, 39 and 40.

FACTUAL BACKGROUND

The Complainant is one of Europe's largest operators of energy networks and energy infrastructure and a provider of innovative customer solutions for approximately 48 million customers.

Founded in Germany in June 2000 and present in over 30 countries including Hungary, the Complainant is also a member of Euro Stoxx 50 stock market index, DAX stock index and of the Dow Jones Global Titans 50 index.

The Complainant promotes its trademark and services in Hungary via its official website at <eon.hu>, registered on October 25, 2018.

The disputed domain name <eon-hungary.com> was registered on January 6, 2024, and currently resolves to an inactive website. According to the screenshots submitted in Annexes to the Complaint (which have not been contested by the Respondent), the disputed domain name resolved prior to the filing of the Complaint to a website featuring the Complainant's trademarks and containing a request for payment of an alleged energy bill.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant contends that the disputed domain name <eon-hungary.com> is identical to the trademark E.ON in which the Complainant has rights as it reproduces the trademark in its entirety with the mere omission of the dot and the addition of a the geographical indicator "hungary" and the generic Top Level Domain ".com".

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name since the Respondent has used it to operate a fake website that appeared to be associated with the Complainant due to the use of the Complainant's trademarks, where users were requested to execute payments of allegedly open energy bills.

The Complainant claims that the Respondent registered and used the disputed domain name in bad faith because: i) the disputed domain name is identical to the Complainant's well-known trademark; ii) the website to which the disputed domain name resolves intentionally creates the impression of an official E.ON website, a circumstance which would demonstrate the Complainant's awareness of the Complainant and its trademark; and iii) the Respondent has been concealing its identity both on the website at the disputed domain name, which does not contain any imprint or other information, and through the use of a privacy service to shield its contact details in the public Whois records.

RESPONDENT

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

1. The Complainant has provided evidence of ownership of valid trademark registrations for E.ON.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark E.ON as it reproduces the trademark in its entirety with the mere omission of the dot, the addition of a hyphen and the geographical indicator "hungary", which are not sufficient to prevent a finding of confusing similarity.

As to the generic Top Level Domain ".com", as established in a number of prior UDRP cases, it is viewed as a standard registration requirement and as such can be disregarded for the purpose of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the trademark E.ON in which the Complainant has established rights for the purpose of paragraph 4(a)(i) of the Policy.

2. With reference to the Respondent's rights or legitimate interests in the disputed domain name, the Panel finds that the Complainant has made a prima facie case and that the Respondent, by not submitting a Response, has failed to provide any element from which a Respondent's right or legitimate interest in the disputed domain name could be inferred.

The Panel notes that, based on the records, the Complainant has not authorized the Respondent to register and use its trademark E.ON. Moreover, there is no evidence that the Respondent might be commonly known by the disputed domain name or a name corresponding to the disputed domain name.

The Panel finds that the Respondent's use does not amount to a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name without intent to misleadingly divert the consumers or to tarnish the Complainant's trademark.

Indeed, according to the records, the disputed domain name was pointed, prior to the filing of the Complaint, to an active website featuring the Complainant's trademarks and requesting users to execute payments of allegedly open energy bills. The Panel finds that users visiting the Respondent's website could have likely been misled into believing that it was operated by the Complainant and may have been induced to provide their credit card details and/or execute payments believing to be dealing with the Complainant. Prior UDRP Panels have held that the use of a domain name for illegal activity, such as impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent.

Moreover, the disputed domain name, combining the core of the Complainant's trademark E.ON with the geographic term "hungary", referred to a country where the Complainant also provides its services, carries a high risk of implied affiliation with the Complainant.

Therefore, the Panel finds that the Complainant has demonstrated that the Respondent has no rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy.

3. As to bad faith at the time of the registration, the Panel finds that, in light of the prior use of E.ON mark as a world-renowned name in the field of energy networks and energy infrastructure, the Respondent was or could have been aware of the Complainant's trademark when it registered the disputed domain name in January 2024.

Moreover, the use of the Complainant's trademarks on the website to which the disputed domain name resolved demonstrates that the Respondent was indeed aware of such trademarks.

Considering the disputed domain name was pointed to a website publishing the Complainant's marks and seeking payments of alleged energy bills, the Respondent clearly intentionally attempted to attract internet users to its website for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of its website, according to paragraph 4(b)(iv) of the Policy.

The disputed domain name is currently not pointed to an active website. As established in a number of prior UDRP cases, the concept of "bad faith use" in paragraph 4(b) of the Policy includes not only positive action but also passive holding. In the present case, considering i) the well-known character of the Complainant's trademark E.ON, ii) the prior use of the disputed domain name made by the Respondent, iii) the Respondent's failure to file a Response, iv) the Respondent's concealing its identity and v) the implausibility of any good faith use to which the disputed domain name may be put, the Panel finds that the current passive holding of the disputed domain name does not prevent a finding of bad faith use.

Therefore, the Panel finds that the Complainant has also demonstrated that Respondent registered and is using the disputed domain name in bad faith according to 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. **eon-hungary.com**: Transferred

PANELLISTS

Name	**Luca Barbero**

DATE OF PANEL DECISION 2024-04-30

Publish the Decision