Decision for dispute CAC-UDRP-106498

Case number	CAC-UDRP-106498
Time of filing	2024-05-02 10:14:16
Domain names	eon-hungary.net

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	E.ON SE

Complainant representative

Organization	Lubberger Lehment Rechtsanwälte Partnerschaft mbB

Respondent

Name	Alvin Wells

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

In this proceeding the Complainant relies on the following trademark registrations:

- European Union trademark registration No.002361558 “E.ON” (word), registration date is December 19, 2002;
- European Union trademark registration No.002362416 “e.on” (word), registration date is December 19, 2002; and
- European Union trademark registration No.006296529 “e.on” (word), registration date is June 27, 2008.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant claims that it is one of Europe's largest operators of energy networks and energy infrastructure and a provider of innovative customer solutions for approx. 48 million customers. The Complainant is a member of Euro Stoxx 50 stock market index, DAX stock index and of the Dow Jones Global Titans 50 index.

The Complainant alleges that its trademarks cited above are, by virtue of long and intensive use, well-known to significant parts of the public in the EU and beyond. They are associated exclusively with the Complainant. The sign “E.ON” also enjoys protection as a company name.

The disputed domain name was registered on March 28, 2024 and according to the Complainant it resolves to a website with fraudulent content.

The Respondent intends to create the impression of an official website. The website not only copies the look and feel of the official Complainant’s page but also uses the “E.ON” trademark. The website contains a request for payment of an alleged energy bill. By clicking on “Pay now” customers are forwarded to another page where payment by credit card can be executed. The website creates the impression that customers are carrying out payment to an official E.ON account. The Complainant claims that the disputed domain name is identical to its trademark. The disputed domain name reproduces the “e.on” trademark in its entirety, only omitting the dot.

The Complainant refers to previous UDRP decisions and claims that the addition of a purely generic element to a trademark in a domain name – such as “Hungary” in the present case – is irrelevant in assessing confusing similarity or identity.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent is not making a legitimate non-commercial or fair use of the domain name. The Respondent uses the disputed domain name to operate a fake website. Customers of the Complainant are directed to this website to execute payments of alleged energy bills. It is well established that the use of a domain name for fraudulent activity can never confer rights or legitimate interests on a respondent.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant claims that the disputed domain name is identical to the Complainant’s well-known trademark.

The website intentionally creates the impression of an official “E.ON” web page which confirms Respondent’s awareness of the Complainant and its trademarks. The disputed domain has been registered only recently.

Besides, the Respondent is concealing his identity and uses a privacy service. The Complainant alleges that customers of the Complainant have received fraudulent emails asking them to visit the website at the disputed domain name and pay the bills. Such emails are being sent by an unknown person under the name of "E.ON Customer Service". The Complainant has nothing to do with either the sending of these emails or the above website. These are criminal offences to the detriment of the Complainant and its consumers. The fraudulent activities seem to follow a pattern. The Complainant refers to an earlier UDRP dispute over the <eon-hungary.com> with similar facts, **CAC Case No. 106381**.

Therefore, the Complainant claims the disputed domain name was registered and being used in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are summarized in the Factual Background section 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.

The Complainant did not provide any evidence of its trademark registrations cited in the complaint.

The Panel issued a procedural order No. 1 on May 24, 2024 and requested the Complainant to provide proof of trademark registrations.

The Complainant complied with the procedural order and provided extracts from the EUIPO Trademark Register confirming its trademark rights on May 24, 2024.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or confusingly similar

The Complainant provides evidence of the EU trademark registrations in respect of the "E.ON" marks.
As confirmed by the "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" ("WIPO Overview 3.0"): "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" (see sec. 1.2.1). Therefore, the Complainant proved it has trademark rights.

The disputed domain name fully incorporates the Complainant's mark with the addition of a geographical term "Hungary".

As stated in WIPO Overview 3.0: "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 sec. 1.8).

The Complainant's word trademark "E.ON" is fully incorporated in the disputed domain name and is clearly recognizable within the disputed domain name. The addition of "Hungary" does not affect confusing similarity as this term can be seen as descriptive of Complainant's activities since the Complainant has presence in Hungary (as verified by the Panel in accordance with Rule 10).

The gTLD ".net" is to be disregarded under the confusing similarity test as it does nothing to eliminate confusion.

The Panel finds that while the disputed domain name is not identical, it is clearly confusingly similar to the Complainant's trademark.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and

(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see **"Julian Barnes v. Old Barn Studios", WIPO Case No. D2001-0121** and sec. 2.1 of WIPO Overview 3.0.

The disputed domain name was registered on March 28, 2024. It does not resolve to any active page on the date of this decision however the Complainant provided evidence that it previously resolved to a website that requested payments with content in Hungarian and Complainant's "E.ON" logo was placed on the website.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows the Panel to draw such inferences as it considers appropriate, see paragraph 14(b) of the Rules and **CAC Case No. 101284**: "A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable inferences may be drawn from the information provided by the complainant".

The Complainant has made a prima facie case of Respondent's lack of rights or legitimate interests.

The Respondent is not known by the disputed domain name and is identified as an individual from Lativa with no apparent connection to the Complainant's business, the disputed domain name or any name corresponding to the disputed domain name. The Complainant has not granted any permission to use its trademarks registered many years prior to the registration of the disputed domain name to the Respondent and the Complainant is not doing any business with the Respondent.

The evidence provided by the Complainant indicates that the website was used to request payments (possibly from customers of the Complainant) and contained Complainant's logo. Such use amounts to impersonation and also indicates possible fraud.

As noted by WIPO Overview 3.0: "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, **phishing**, distributing malware, unauthorized account access/hacking, **impersonation/passing off**, or other types of fraud) can never confer rights or legitimate interests on a respondent" (see sec. 2.13.1). Besides, under sec. 2.5 of WIPO Overview: "Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry".

Here, the disputed domain name contains the Complainant's trademark plus "Hungary", a geographical element relating to the Complainant's activity and, in the Panel's view, falsely suggests affiliation with the Complainant, also taking into account content that was once placed on the website. Previous UDRP panel in **CAC Case No. 106381** (<eon-hungary.com>) came to the same conclusion.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith. These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element. It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see sec. 3.1 of WIPO Overview 3.0). Targeting with an intent to take an unfair advantage is important in establishing bad faith under the UDRP.

The Panel is concerned that the Complainant provided a very thin record, namely the complaint contains only two (2) annexes both are screenshots of the previous versions of the website by the disputed domain name. Evidence of trademark registrations was provided after the Panel issued a procedural order. The Complainant did not provide any other evidence of its claims, e.g. information about the Complainant and its business, alleged fame and reputation of its trademarks and copies of fraudulent emails associated with the disputed domain name allegedly sent to Complainant's customers.

The Panel warns the Complainant (its counsel) that such deficiencies may result in denial of UDRP complaints in future depending on facts and circumstances of a particular dispute.

However, these deficiencies are not fatal to the Complainant in this dispute.

The Panel finds that, despite shortcomings in the evidence, the disputed domain name was registered and is being used in bad faith based on the following:

1. The nature of the disputed domain name – confusingly similar to Complainant's trademark (the mark plus a geographical term) and the timing of the registration of the disputed domain name – March 28, 2024, many years after the Complainant obtained protection for its trademarks in the EU. The nature of the disputed domain name creates a high risk of implied affiliation and indicates that the Respondent was aware of the Complainant and its trademark when he registered the disputed domain name.
2. Use of the disputed domain name for possible fraudulent activities and evidence of targeting with an intent to take an unfair advantage. As highlighted in WIPO Overview 3.0, sec. 3.1.4: "given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith". While Complainant's evidence is not particularly strong, the Panel is prepared to accept the allegations of the Complainant taking into account provided screenshots of the website by the disputed domain name, Panel's own research conducted in accordance with Rule 10 (discovered information about the Complainant and its trademarks) and reference to a previous UDRP case with very similar facts, **see CAC Case No.106381**: "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…" and "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".
3. Based on the above, the Panel finds that Respondent's behavior falls within par. 4 b (iv) of UDRP and the Respondent by using the disputed domain name has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement and that the Respondent targeted the Complainant with an attempt to take unfair advantage of the Complainant's mark.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **eon-hungary.net**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2024-05-27

Publish the Decision