Decision for dispute CAC-UDRP-106499

Case number	CAC-UDRP-106499
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Domain names	eon-php.org

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	E.ON SE

Complainant representative

Organization	Lubberger Lehment Rechtsanwälte Partnerschaft mbB

Respondent

Name	Bob Smith

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <eon-php.org> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- EU trade mark registration no. 002361558, filed on 3 September 2001, for the word mark E.ON, in classes 35, 39, and 40 of the Nice Classification;
- EU trade mark registration no. 002362416, filed on 3 September 2001, for the word mark e.on, in classes 35, 39, and 40 of the Nice Classification; and
- EU trade mark registration no. 0876364, filed on 9 September 2005, for the figurative mark e.on, in classes 4, 35, 39, and 40 of the Nice Classification.

(Collectively or individually referred to as 'the Complainant's trade mark', 'the Complainant's trade mark E.ON', or 'the trade mark E.ON').

The disputed domain name was registered on 23 April 2024. At the time of writing of this decision, it does not resolve to an active website (for present purposes, 'the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant is part of E.ON Group, one of Europe's largest operators of energy networks and energy infrastructure, which provides services to c. 48 million customers. The Complainant and its trade mark are widely known in the European Union and beyond.

The Complainant seeks to obtain the transfer of the disputed domain name <eon-php.org> on the grounds set out in section A.2 below.

B. Respondent's Factual Allegations

The Respondent has defaulted in this UDRP administrative proceeding and has therefore made no factual allegations.

PARTIES CONTENTIONS

A. Complainant

A.1 The disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights

The disputed domain name <eon-php.org> is identical to the Complainant's trade mark E.ON, the only differences being the omission of the dot in 'eon' and the addition of the generic element 'php', both of which are however irrelevant in assessing identity or confusing similarity under paragraph 4(a)(i) of the UDRP Policy. Furthermore, generic Top-Level Domains ('TLDs'), in this case <.org>, are typically disregarded by UDRP panels under this UDRP Policy ground because of their sole technical function.

A.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Respondent lacks rights or legitimate interests in respect of the disputed domain name. In particular, the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. Instead, the Respondent uses the disputed domain name to operate a scam, fraudulent website displaying the Complainant's trade mark and a photograph of the Complainant's headquarter. In addition, the Respondent's website invites customers to submit their personal data for an alleged account with the Complainant. This in and of itself cannot confer rights or legitimate interests to the Respondent.

A.3 The Respondent registered and is using the disputed domain name in bad faith

The disputed domain name is identical to the Complainant's well known trade mark E.ON. The Respondent's website intentionally creates the impression of affiliation with the Complainant, which proves that the Respondent was aware of the Complainant at the time of registering the disputed domain name. The Respondent's behaviour would therefore fall within the remit of paragraph 4(b)(iv) of the UDRP Policy).

B. Respondent

The Respondent has defaulted in this UDRP administrative proceeding and has therefore failed to advance any substantive case on the merits.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP Policy).

PROCEDURAL FACTORS

1. Procedural Order No. 1

The Panel transmitted to the Parties the Procedural Order No. 1 ('PO1') on 24 May 2024, whereby the Panel requested the Complainant to provide documentary evidence of trade mark rights in E.ON by 29 May 2024.

2. Complainant's response to PO1

On 24 May 2024, the Complainant submitted into evidence screenshots from the EUIPO website referencing the particulars of the Complainant's trade mark registrations.

On the same date, the Panel (i) acknowledged receipt of the Complainant's response to PO1 and (ii) informed the Parties that it would proceed to a decision on the merits of the case.

3. Miscellaneous

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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint based on the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant must establish to succeed:

> i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
>
> 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 are being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP administrative proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has UDRP-relevant rights in the registered trade mark E.ON since at least 2001.

The disputed domain name <eon-php.org>, registered in 2024, contains the Complainant's trade mark E.ON in its entirety and – connected by a dash – the joint keyboard letters 'php'. These adjacent letters, however, have no material impact on the recognisability of the Complainant's trade mark in the disputed domain name string. Furthermore, the TLDs typically have no bearing on the test.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

Furthermore, there is no evidence establishing, before any notice of the present UDRP administrative proceeding, the Respondent’s use, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services. On the contrary, there is evidence on record which points to direction of the Respondent's website likely being connected with a fraudulent activity, which is plainly not bona fide.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

There are various factors which support a finding of bad faith in the present matter. First, the Complainant's trade mark predates the

registration of the disputed domain name by over two decades. Second, the disputed domain name bears the trade mark E.ON in its string, coupled with the joint keyboard letters 'php' which are immaterial to affect the recognisability of the Complainant's trade mark. Therefore, the Panel has no hesitation in finding that the Respondent registered the disputed domain name with knowledge of, and intention to target, the Complainant.

With respect to the use in bad faith, the Complainant submits that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

> '(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 the respondent’s website or location'.

The disputed domain name does not currently resolve to an active website. Nevertheless, the Panel has considered the available record and found compelling evidence that the Respondent would have attempted to gain reputational advantage from the Complainant, by redirecting Internet users for a likely fraudulent purpose, quite possibly with the intention to unduly collect sensitive data from the Complainant's (existing and potential) customers. The Respondent's behaviour would consequently fall within the remit of paragraph 4(b)(iv) of the UDRP Policy.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **eon-php.org**: Transferred

PANELLISTS

Name	**Yana Zhou**

DATE OF PANEL DECISION 2024-05-28

Publish the Decision