Decision for dispute CAC-UDRP-106990

Case number	CAC-UDRP-106990
Time of filing	2024-10-24 08:27:31
Domain names	boycott-eonnext.com

Case administrator

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

Complainant

Organization	E.ON SE

Complainant representative

Organization	Lubberger Lehment Rechtsanwälte Partnerschaft mbB

Respondent

Organization	IceNetworks Ltd.

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

Complainant owns a number of trademarks, inter alia the following word mark registrations:

EUTM 002361558 E.ON, registered on 19 December 2002 in classes 35, 39 and 40;

EUTM 002362416 e.on, registered on 19 December 2002 in classes 35, 39 and 40; and

EUTM 006296529 e.on, registered on 27 June 2008 in classes 07, 36, 37 and 40;

and the figurative mark EUTM 0876364 e.on, registered on 9 September 2005 in classes 4, 35, 39, 40.

The sign “E.ON NEXT” is protected as EU trademark inter alia by EUTM 018213115, registered on 20 March 2020.

FACTUAL BACKGROUND

The Complainant states that it recently became aware of the disputed domain name <boycott-eonnext.com>. The domain was registered on 7 August 2023. The domain resolves to a website which consists of a crossed-out Eon Next logo and the text “Boycott E.ON Energy”, followed by “Launch has been postponed.”. Wayback machine research provided by Complainant indicates that there

likely has not been any substantially different content on the website since the domain was registered. A screenshot dated 21 August 2023, shortly after registration, shows that the content was identical, except for the text that read “Launching soon…”. Another screenshot of 18 June 2024 shows the same content, again with a modified text “Launch has been postponed”.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has not, 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). Complainant starts with the dubious assertion that "[t]he domain name boycott-eonnext.com is – in legal terms – identical to the protected sign “E.ON NEXT”. Complainant continues:

It is well-established by UDPR [sic] panel decisions that a domain name consisting of a trade mark and a negative or pejorative term is considered confusingly similar to a complainant’s trade mark for the purpose of satisfying standing under the first element (WIPO Overview 3.0 at sections 1.8 and 1.13, also see WIPO Case No. D2000-0662 Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale; WIPO Case No. D2016-1465 De Beers Intangibles Limited v. Domain Admin, Whois Privacy Corp, regarding domain <debeers.feedback>; CAC-UDRP-103287 regarding domain <boycottrolandgarros.com>).

The disputed domain name is certainly not "identical" to the E.ON NEXT mark since those letters are preceded by the word "boycott" and a hyphen. The <boycottrolandgarros.com> case is further discussed below. The panel in that case did find for the complainant in that case, on materially different facts, without much discussion of this element of the Policy. In any event, this Panel need not decide on this point in this case, because the Complaint fails on both other elements of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has not, 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). The crux of Complainant's argument on this point is:

The domain <boycott-eonnext.com> has not been registered and used for a criticism site. The domain was never used for expression of opinion, criticism or similar. The screenshots saved by Wayback show that a website has only been announced since registration of the domain in 2023. In August 2023, an alleged launch was announced. In June 2024, the launch was allegedly postponed, and this is also the current status of the website. Taking this history into account, it is obvious that the Respondent never intended to set up a real criticism site in order to practise freedom of speech.

The disputed domain name was registered just 16 months ago. It would be reasonable to plan to launch a website within a year, and it very well could be reasonable for that launch to be delayed by four months or more. Meanwhile, it clearly has been used for the expression; namely, that Respondent encourages a boycott of Complainant.

Complainant also argues that "it is apparent that the domain was only registered to generate traffic and thus to increase the value of the domain, but not to host a criticism page with content that is legally protected." But there is no evidence that the disputed domain name receives material traffic. And the content on the Respondent's website clearly is legally protected. It is not like the content in the <boycottrolandgarros.com> case, in which that domain name resolved "to a parking page with commercial links, some of which are related to other well-known international tournaments." This Respondent's entirely non-commercial website clearly and only calls for the boycott of Complainant, which is a legitimate interest whether Complainant likes it or not.

BAD FAITH

The Complainant has not, 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). Complainant provides just one paragraph in support of its argument on this most crucial element of the Policy, to wit:

The Respondent has registered and is using the domain in bad faith. The domain name is identical to the Complainant’s well-known trademark. Bearing this in mind, there can be no doubt that the disputed domain name was registered with knowledge of the Complainant’s corporate group, trademark and reputation. The conclusion that the Respondent has registered and is using the disputed domain name in bad faith follows from the clear reasons above for finding that the Respondent does not have rights or a legitimate interest in the disputed domain name. In addition, research on the Respondent reveals that the Respondent has been involved in multiple UDRP proceedings as domain owner for cases that could clearly be labelled as domain grabbing (WIPO

ADMINISTRATIVE PANEL DECISION, Carrefour v. IceNetworks Ltd Case No. D2018-2819; WIPO ADMINISTRATIVE PANEL DECISION, dYdX Foundation v. awddwa awdadad, IceNetworks Ltd., Case No. D2024-1783; WIPO ADMINISTRATIVE PANEL DECISION, Eli Lilly and Company v. Not disclosed Not disclosed, IceNetworks Ltd., Case No. D2024-1698).

The Panel has already found the disputed domain name is not "identical" to the Complainant's mark. And the Panel acknowledges that Respondent was and is aware of Complainant, at least enough to register a domain name and maintain a web page encouraging a boycott of Complainant. But that is far from sufficient proof of bad faith under the Policy. As found above, Respondent has a legitimate interest in encouraging a boycott of Complainant, for any reason or no reason. Complainant provides no evidence of bad faith, other than citation to three prior UDRP cases decided against Respondent, which are not argued to be related in any way to this case.

The Policy is designed only to adjudicate clear-cut cases of cybersquatting. This case does not come close.

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

Respondent has a legitimate interest in encouraging a boycott of Complainant, for any reason or no reason. Complainant provides very minimal evidence of bad faith. The Policy is designed only to adjudicate clear-cut cases of cybersquatting. This case does not come close.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **boycott-eonnext.com** : Remaining with the Respondent

PANELLISTS

Name	**Mike Rodenbaugh**

DATE OF PANEL DECISION 2024-11-21

Publish the Decision