Decision for dispute CAC-UDRP-106891

Case number	CAC-UDRP-106891
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Domain names	eon-de.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	E.ON SE

Complainant representative

Organization	Lubberger Lehment Rechtsanwälte Partnerschaft mbB

Respondent

Name	Michael Hannart

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 December 19, 2002 in classes 35, 39 and 40;
2. EUTM 002362416 e.on, registered on December 19, 2002 in classes 35, 39 and 40; and
3. EUTM 006296529 e.on, registered on June 27, 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 member of Euro Stoxx 50 stock market index, the DAX stock index and a member of the Dow Jones Global Titans 50 index.

The Complainant is the owner of the trademarks E.ON®. The disputed domain name <eon-de.com> (hereinafter, the “Disputed Domain Name”) was registered on June 20th, 2024 by Michael Hannart based in Belgium and it resolves to an inactive website.

According to Complainant’s non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name.

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.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Similarity

The Complainant states that the Disputed Domain Name <eon-de.com> is identical to the protected sign E.ON®.

The Complainant states that the addition of a purely generic element to a trademark in a domain name – such as “de” in the present case – is irrelevant in assessing confusing similarity or identity under para. 4(a)(i) of the Policy and thus typically ignored. Furthermore, the Complainant indicates that “de” is commonly understood as hint to “Germany” (Deutschland). Further, also the TLD “.com” is to be ignored for the purpose of assessing the confusing similarity, because it only plays a technical function.

Second element: Rights or legitimate interest

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Moreover, the Complainant also claims that the Disputed Domain Name resolves to an inactive website and the Disputed Domain Name has only been registered to approach third parties under an e-mail address that creates the impression to be an official E.ON account.

In accordance with Complainant, the use of the Disputed Domain Name for fraud and illegal activity can never confer rights or legitimate interests on a Respondent. The Complainant confirms that these principles must apply in the same way for this Disputed Domain Name that has been registered for the sole reason to use e-mail accounts associated with the Disputed Domain Name for fraudulent purposes.

Third element: Bad faith

The Complainant contends that the Disputed Domain Name is identical to the Complainant’s well-known trademark. The e-mail “markus.bunten@eon-de.com” intentionally creates the impression of an official E.ON e-mail, which is prove that the Respondent is aware of the Complainant and their trademarks. In this sense, the Complainant also states that the Disputed Domain Name was only recently created in 2024. On top of all that, the Respondent is concealing its identity, by not giving any identity in the Whois and by sending out e-mails in the name of the Complainant.

RESPONDENT

Respondent did not reply to the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name e 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

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under Policy 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 ON® 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 December 12, 2002 at classes 35, 39 and 40.

From the Panel's perspective, the Disputed Domain Name <eon-de.com> incorporates the trademark E.ON in its entirety, including a hyphen and the letters "DE" – which are commonly understood as an abbreviation of the country Germany – mainly due to the existence of the ccTLD ".de" which is applicable for Germany. 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).

In this regard, Paragraph 4 (c) provides with circumstances which could prove rights or legitimate interest in the Disputed Domain Name on behalf of the Respondent such as:

(i) before any notice to Respondent of the dispute, Respondent is using or provides with demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) The Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent did not reply to the Complaint despite the efforts made by the Center to notify the Respondent about the Complaint. In this regard, the Complainant has confirmed in the Complaint that the Disputed Domain Name is not connected to the Respondent or authorized by the Complainant in any way.

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 "Michael Hannart"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 indicates that the Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name. In this sense, the Complainant states that the Respondent is not using the Disputed Domain Name for an active website which means that the Disputed Domain Name is hold passively, however, the Complainant did not include the evidence supporting this argument. The Panel decided to use its General Powers described at article 10 of the Rules for Uniform Domain Name Dispute Resolution Policy to confirm whether the Disputed Domain Name does not have any active use. In this sense, the Panel was able to confirm that the Disputed Domain Name is indeed inactive. Different Panels have confirmed that the lack of content at the Disputed Domain Name can be considered as a finding that Respondent does not have bona fide offering of goods and services (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants). In this sense, it is

important to mention that Complainant did not include any evidence regarding the current use of the website connected with the Disputed Domain Name.

Furthermore, the Complainant asserts that the Respondent has set up different email-addresses (e.g. markus.bunten@eon-de.com) to create the impression to be an official E.ON account and provided the respective evidence. From this evidence, it is clear that the Respondent created the email addresses with the only purpose of impersonate the Complainant and continue the fraudulent activities previously initiated under the domain name <de-eon.com> which was part of the CAC UDRP Dispute Nr. 106652. Past 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 paragraph 2.13.1 of WIPO Jurisprudential Overview 3.0).

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 Disputed Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in the Disputed 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 Disputed 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 Complainant did not submit for this specific case evidence showing neither the distinctiveness of its trademark nor a strong reputation in the energy industry. Nevertheless, the Complainant made references to the UDRP Case 106652 where the Panel confirmed that Complainant's trademark "e.on" is highly distinctive and well-established. Here, it is important to remind to Complainant's legal representatives about the legal obligation to provide with sufficient evidence for each and every single UDRP case. For this specific case, the Panel has decided to take into account the information provided by the previous Panel and, therefore, the Panel confirms that the trademark E.ON® is distinctive and it has a strong reputation in the energy industry at the European Union. 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 June 20th, 2024 and the Complainant's trademarks were registered long before the registration of the Disputed Domain Name.

Furthermore, this Panel has been able to confirm that the Disputed Domain Name is currently not in use. It is well established at different UDRP panel resolutions that the lack of use of a domain name does not prevent from finding bad faith (e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. 2000-0003).

Furthermore and from the evidence presented by the Complainant, it can be inferred that the Disputed Domain Name was set up to create the impression to be an official E.ON account by sending emails connected to a purportedly fraudulent scheme stated with a domain name which was part of a previous UDRP case.

These factors make the Panel believe that the Disputed Domain Name was registered 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.

One additional argument presented by the Complaint relates to the fact that the Respondent was concealing its identity by neither providing an imprint on the website not revealing its name in the Whois, but rather using a privacy service. Here again the Complainant did not include any specific evidence – however, the Panel decided to use its general powers articulated in paragraphs 10 and 12 of the UDRP Rules to conduct a limited online search regarding the "whois" linked to the Disputed Domain Name. The search confirmed that the Disputed Domain Name was registered using a Privacy service.

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 Dame was set up for the purpose of impersonating the Complainant, the Panel draws the inference that the Disputed Domain Name was

registered and 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. **eon-de.com**: Transferred

PANELLISTS

Name	**Victor Garcia Padilla**

DATE OF PANEL DECISION 2024-12-23

Publish the Decision