

Decision for dispute CAC-UDRP-105800

Case number	CAC-UDRP-105800
Time of filing	2023-09-29 11:56:35
Domain names	eonelectricpower.com

Case administrator

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

Organization	E.ON SE
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Complainant representative

Organization	ARISTOS IP Partnerschaft von Rechtsanwälten mbB
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Respondent

Name	Zerena Sanchez
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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 owns the following trademarks:

- US federal trademark registration “E.ON”, registered on April 23, 2019, for “*Industrial fuel firing installations, namely, heating furnaces for power stations*” in class 11 and for “*Public relations; marketing; market research; operation of telephone call centers for others in the field of business and trade information and advice; employment agencies; personnel recruitment; personnel placement and recruitment services; temporary personnel services; procurement services, namely, procurement of contracts for others for the purchase of energy and energy transportation*” in class 35 (Serial Number 87081562, Registration Number 5730659);
- US federal trademark registration “e.on”, registered on July 7, 2009, for “*Building construction; construction in the field of energy, gas, environmental and air conditioning technology and process engineering; installation, assembly, maintenance and repair of power stations, gas generators, pipelines and installations for generating electrical energy from renewable energy sources, in particular from wind energy, solar energy, and installations for generating gas from valuable materials, in particular from renewable raw materials; installation of equipment used in the transmission and distribution of electricity, gas and water*” in class 37 and “*Generating energy, in particular electrical energy, and steam; generating electrical energy and steam from renewable energy sources, in particular from wind energy, solar energy, generating gas from valuable materials, in particular renewable raw materials; generating of bio natural gas*” in class 40 (Serial Number 79058313, Registration Number 3651406);
- EUTM no. 006296529 “e.on”, registered on June 27, 2008, for numerous goods and services in classes 07, 36, 37, and 40;
- EUTM 002361558 “E.ON”, registered on December 19, 2002, for numerous services in classes 35, 39, and 40;
- German trademark registration no. 39982704, registered on May 22, 2000, for various goods and services in classes 04, 35, 36,

37, 38, and 39.

The Complainant also owns, among other domain names, the domain name <eon.com> which the Complainant uses for its main corporate website.

The Respondent has registered the disputed domain name on June 10, 2023, so that the Complainant's trademark registrations clearly predate the disputed domain names registration date.

FACTUAL BACKGROUND

The Complainant is a European electric utility company based in Essen, Germany. Its E.ON Group of companies is one of the world's largest investor-owned electric utility service providers, and one of Europe's largest operators of energy networks and energy infrastructure with approximately 50 million customers in more than 30 countries. The Complainant's company under the "E.ON" brand was created in 2000 through the merger of two existing German utility companies, VEBA and VIAG.

The disputed domain name is used for a website which states – among other things – the following:

"Who We Are

Dedication. Reliability. Value.

E-ON Electric has proudly offered home services for residential and commercial properties since 2000. We work with you to plan every step of the process and ensure that your satisfaction is met. With a team of experts and a variety of professional services available, you can be sure your house will be taken care of.

From the smallest to the largest task, we believe your home deserves top-priority service that is efficient and reliable. This is why we started E-ON Electric, to deliver quality professional services that you can trust."

The website also advertises a "Home Visit" or "Consultation" and provides a contact form. The entire website is in English language.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name <EONELECTRICPOWER.COM> is confusingly similar to the Complainant's well-known and distinctive trademark "E.ON", with the added generic term "ELECTRIC POWER" which refers to the Complainant's own field of business even increasing this confusing similarity. The omitted "." between the trademark elements "E" and "ON" is regarded as irrelevant because this separating dot is usually not pronounced and is not dominant or distinctive in the Complainant's trademark "E.ON". Moreover, the Complainant itself also does not use this separating dot in some of its own domain names such as <eon.com>.

The Complainant further contends that the Respondent does not have any rights or legitimate interest in the disputed domain name. The Complainant and the Respondent never had any business or other relationships, and the Complainant has never granted the Respondent any rights to use the "E.ON" trademark (or the disputed domain name) in any way. The Complainant has not found any indications that the Respondent is commonly known by the disputed domain name or has any other legitimate interest in that name.

The Complainant further argues that a Google search performed by the Complainant for "eon electric power" pointed straight to the Complainant and its business activities. The Complainant argues that the Respondent should have performed a similar search before registering the disputed domain name, as it would then have been obvious that the Complainant is the owner of numerous associated trademarks and domains in many countries around the world.

The Complainant sees the Respondent's website statement "E-ON Electric has proudly offered home services for residential and commercial properties since 2000" as a clear attempt to abuse the Complainant's history and reputation because 2000 is the year in which the name "E.ON" was adopted by the Complainant. The Complainant argues that the confusingly similar domain name and the content of the website pointing to a date of historic importance to the Complainant clearly show that the Respondent was fully aware not only of the Complainant's trademark, but also of the nature of the business conducted by the Complainant under this trademark when the Respondent registered and started to use the disputed domain name.

The Complainant argues that considering the renown of the Complainant and its trademark "E.ON", and the composition of the disputed domain name (using the Complainant's well-known and distinctive trademark, without the separating "." and thus in the same way as it is customary for the Complainant's own domain names such as <eon.com>) with the generic term "electric power", which is closely related to the Complainant and its business activities, this can only be seen as a deliberate and calculated attempt to improperly benefit from the Complainant's rights and reputation. The Complainant derives the Respondent's bad faith from the following three factors (quote):

- "The Respondent obviously knew about the Complainant and its trademark - because there is no other discernible reason for

choosing the name;

- *The Complainant's trademark E.ON is a distinctive, well-known trademark;*
- *There has been no indication that there could be credible evidence-backed rationale for registering the Disputed Domain Name".*

The Complainant finally argues that the Respondent has used an identity protection service to conceal its identity when registering the disputed domain name.

RESPONDENT:

The Respondent's entire response in the present proceedings consists of the following statement:

"We are a small family owned electrical business based in San Diego, CA that recently decided to build a basic website to capture appointments and list services. We are not attempting to portray ourself as the any other business or capture any demand from this other website that is not even based in the states. In addition, our website is still under construction and as far as I know has not even been published. We are not operating under bad faith as this company has stated and many other websites appear when eon electric is googled."

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

Given the cumulative nature of the Policy's three factors for a successful complaint there is no need to discuss and decide whether the Respondent has rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). As the Respondent has not acted in bad faith (see below), whether or not the Respondent has rights or legitimate interests in respect of the disputed domain name is not relevant to determine the outcome of the case.

BAD FAITH

The Complainant has not shown that 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

The Panel accepts that the disputed domain name <EONELECTRICPOWER.COM> is confusingly similar to the Complainant's "E.ON" trademarks. The reasons for this finding are summarized above at the beginning of Complainant's contentions, which the Panel finds fully convincing.

The Panel is not convinced, however, that the Respondent has registered and/or used the disputed domain name in bad faith, neither as it is described in paragraph 4(b)(iv) of the Policy as a typical example for bad faith nor under a general assessment of bad faith pursuant to paragraph 4(a)(iii) of the Policy.

This is based on the following considerations:

1. The Panel accepts that the Complainant's trademark is (very) well known in Germany and other European countries. The "Brand Awareness" evidence submitted by the Complainant shows this for Germany, the UK, Sweden, Italy, the Czech Republic, Hungary, and Romania, but not for the US (or any other North American country) where the Respondent is located.

2. Except for its two trademark registrations the Complainant has not provided any details on its business activities in the US (if any) which could result in US residents like the Respondent becoming aware of the Complainant's brand.
3. The submitted "BrandFinance" report shows that the Complainant's brand was among the world's (and not only Europe's) most valuable utility brands. Being among the world's most valuable brands, however, does not say anything on the specific countries in which this brand value has been created, and thereby in which specific countries the respective brand may or may not be known to the public.
4. The results of a Google search for "eon electric power" is not conclusive because it was performed in Germany (as can be seen from the German language user interface). It is generally known that Google search results depend on many factors, including the user's language and location (and potentially also the prior search history, which is not discussed in the Complainant's submission). The Respondent has argued that "*many other websites appear when eon electric is googled*" (thereby implicitly saying: ...by the Respondent while being located in the US), and the Panel has no reason to doubt this statement.
5. As the Respondent operates an electrical business the Panel can well imagine that the letter "E" in the disputed domain name was chosen as an abbreviation of "electricity" and the letters "ON" were chosen to create the association of "switching something on", which is a typical thing to do for electric appliances. This is not to say that this actually is (or was) the reason why the Respondent selected the disputed domain name – but the Panel disagrees with the Complainant's statement that "*there is no other discernible reason for choosing the name*".
6. The Complainant's argument that the Respondent's reference to the year 2000 allegedly is a clear attempt to abuse the Complainant's history and reputation because this is the year in which the name "E.ON" was adopted by the Complainant is completely unconvincing. I am myself based in Germany and very well aware of the Complainant's "E.ON" brand, but I would in no way associate a reference to the year 2000 with the Complainant's launch of this brand. It is clear that this "founding event" is even less known in the US where the Respondent is located.
7. In summary, there is no evidence that the Respondent was aware of the Complainant's "E.ON" trademark when choosing the disputed domain name.
8. The Complainant's final argument that the Respondent has used an identity protection service to "*conceal its identity*" when registering the disputed domain name is not convincing because the domain name industry has – not least because of the European General Data Protection Regulation – developed a general trend to no longer disclose the domain name owners' names and contact details in freely accessible databases.

It is possible that the Respondent's use of the disputed domain name to operate its website could be regarded as an infringement of the Complainant's US trademark registrations cited above under the United States' national trademark laws. The assessment of such a potential trademark infringement, however, would be for the US courts to deal with and is nothing that could be resolved in these UDRP proceedings.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **eonelectricpower.com**: Remaining with the Respondent

PANELLISTS

Name **Thomas Schafft**

DATE OF PANEL DECISION **2023-10-26**

Publish the Decision