

ADMINISTRATIVE PANEL DECISION

Telefonaktiebolaget LM Ericsson v. Aditya Roshni, Web Services Pty
Case No. D2023-2854

1. The Parties

The Complainant is Telefonaktiebolaget LM Ericsson, Sweden, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Aditya Roshni, Web Services Pty, India.

2. The Domain Name and Registrar

The disputed domain name <ericsoon.com> (“Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2023. On July 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 6, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 4, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on August 10, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a Sweden-based company founded in 1876. With over 101,000 employees worldwide, across six continents, the Complainant is a world leading provider of communication technology and services, including software and infrastructure in information and communications technology (ICT) for telecommunications operators, traditional telecommunications and Internet Protocol (IP) networking equipment, mobile and fixed broadband, operations and business support services, cable television, IPTV, video systems, and an extensive services operation.

The Complainant holds registrations for the trademark ERICSSON in various jurisdictions, including India where the Respondent is purportedly based, *i.e.*: India trademark registrations No. 379920, No. 379917 and No. 379919, all registered on August 21, 1981.

The Complainant's trademark portfolio for ERICSSON also includes:

- United States of America trademark registration no. 1313196 registered on January 8, 1985;
- European Union trademark registration no. 000107003 registered on March 23, 1999;
- Australia trademark registration no. 322638, registered on October 3, 1978.

In addition, the Complainant is the registrant of the domain name <ericsson.com>, registered on July 25, 1989. The website under this domain name received 2.5 million individual visits in June 2022 alone, according to a report of SimilarWeb.

The Disputed Domain Name was created on April 10, 2003. As shown by the uncontested evidence submitted with the Complaint, the Disputed Domain Name redirects users to a third party website containing articles about a range of topics unrelated with the Complainant and its business.

The Complainant sent a Cease-and-Desist letter to the Respondent on May 18, 2023, and two further letters on May 25 and June 1, 2023, requesting for a transfer of the Disputed Domain Name. However, the Respondent did not respond to the Complainant's letters.

5. Parties' Contentions

A. Complainant

The Complainant submits and contends that:

- I) The Disputed Domain Name is confusingly similar to the Complainant's registered and well-known ERICSSON mark because it is a purposeful misspelling of its trademark. Indeed, the Disputed Domain Name varies from the Complainant's trademark by two letters (the Respondent has replaced the second "s" with a repeated "o" in the Complainant's ERICSSON mark).
- II) The Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Complainant has not licensed, authorized or permitted the Respondent to register the Disputed Domain Name or otherwise use its trademark. The Respondent is not commonly known by the Disputed Domain Name.

The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name nor is he using it in connection with a *bona fide* offering of goods or services, so as to confer a right or legitimate interest in it in accordance with paragraph 4(c)(i) of the Policy. In this regard, the Complainant submits that

the Disputed Domain Name is so obviously connected with the Complainant that its use by the Respondent with no connection to the Complainant suggest opportunistic bad faith.

In addition, the Complainant contends that:

- the Disputed Domain Name is configured with MX records that would allow it to be used to send emails that Internet users could well assume, incorrectly, were sent by the Complainant. Given the confusing similarity of the Disputed Domain Name to the Complainant's trademark and the absence of any relationship between the Respondent and the Complainant, sending emails using the Disputed Domain name would be neither a *bona fide* use nor a legitimate noncommercial or fair use of the Disputed Domain Name.
- the Disputed Domain Name is being offered for sale in an amount that far exceeds the Respondent's out-of-pocket expenses in registering the Disputed Domain Name, which serves as further evidence of the Respondent's lack of rights and legitimate interests.

Finally, the Complainant argues that it is difficult to ascertain when the Respondent gained possession of the Disputed Domain Name as the registration throughout the years has been masked with the use of a privacy Whois service, which previous UDRP panels have also found to equate to a lack of legitimate interest. The Complainant notes that the original registration of the Disputed Domain Name was April 10, 2003, and regardless of when the Respondent became the registrant of the Disputed Domain Name, this registration date falls significantly after: (i) the Complainant's filing for registration of its ERICSSON trademark in India, Unites States of America, Australia, European Union, (ii) the Complainant's first use in commerce of its trademark in 1876 and (iii) the Complainant's registration of its domain name on July 25, 1989.

III) The Disputed Domain Name was registered and is being used in bad faith. Given the Complainant's worldwide reputation and presence on the Internet, the Respondent knew or should have known of the Complainant's mark ERICSSON when registering the Disputed Domain Name.

Past UDRP Panels have taken typo-squatting itself as evidence of bad faith registration and use. The Respondent is attempting to capitalize on the typing errors committed by the Complainant's customers in trying to locate the Complainant on the Internet. The Respondent selected the Disputed Domain Name to intentionally misappropriate the Complainant's trademark as a way of redirecting Internet users searching for the Complainant to a third party website featuring articles about different topics unrelated to the Complainant and its services.

Finally, the Complainant contends that the following circumstances are also indicative of the Respondent's bad faith registration and use of the Disputed Domain Name:

- the Disputed Domain Name has active MX records, which could potentially be used for phishing purposes;
- the Respondent has previously been involved in five UDRP cases (*Automobili Lamborghini S.p.A. v. Aditya Roshni, Web Services Pty*, WIPO Case No. [D2022-2438](#); *Equifax Inc. v. Domains By Proxy, LLC / Aditya Roshni, Web Services Pty*, WIPO Case No. [D2022-1877](#); *DEUTZ AG v. Registration Private, Domains By Proxy, LLC / Aditya Roshni, Web Services Pty*, WIPO Case No. [D2016-0106](#); *Bayerische Motoren Werke AG v. Aditya Roshni, Web Services Pty*, WIPO Case No. [D2015-1110](#); *Volkswagen AG v. PrivacyProtect.org / Aditya Roshni, Web Services Pty*, WIPO Case No. [D2014-0058](#));
- the Respondent currently holds registrations for several other domain names that misappropriate the trademarks of well-known brands, engaging in a pattern of cybersquatting/typo squatting;
- the Respondent at the time of initial filing of the Complaint had employed a privacy service to hide his identity;

- the Respondent had failed to respond to the Complainant's cease and desist letters.

Based on the above, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 is being used in bad faith.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

A. Procedural Issue

Delay in bringing the Complaint

The Disputed Domain Name was created on April 10, 2003, but the Complaint was not filed with the Center until July 5, 2023. The period between the creation date of the Disputed Domain Name and the filing of the Complaint is obviously significant.

UDRP Panels have recognized that the Policy contains no limitation period for making a claim and "mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits" (see section 4.17 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In line with the above, the Panel has not drawn a negative inference from the delay in the filing of the Complainant.

B. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark ERICSSON based on the evidence submitted in the Complaint. As reported in section 4 above, the Complainant's filing for registration of its ERICSSON trademark far predates the registration date of the Disputed Domain Name (April 10, 2003), and the same goes for the Complainant's first use in commerce of its ERICSSON trademark (in 1876) and for the Complainant's registration of its domain name <ericsson.com> (on July 25, 1989).

As recorded in section 1.11.1 of the [WIPO Overview 3.0](#), the generic Top-Level Domain (“gTLD”) such as “.com” is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. Therefore, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name, *i.e.*, “ericsoon”. The threshold test for confusing similarity typically involves a side-by-side comparison of the Disputed Domain Name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name (see section 1.7 of the [WIPO Overview 3.0](#)).

The Disputed Domain Name consists of a misspelling of the Complainant’s trademark, from which the Disputed Domain Name varies only by one letter, *i.e.*: the Respondent has replaced the second “s” in the Complainant’s ERICSSON mark with a repeated “o” (*i.e.*: ericsoon). There is a consensus view among UDRP Panels that a domain name, which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the Disputed Domain Name. “This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark” (see section 1.9 of the [WIPO Overview 3.0](#)).

In the Panel’s view, the replacement of the second “s” with a repeated “o” in Disputed Domain Name <ericsoon.com> is to be considered as a common or obvious misspelling of the ERICSSON trademark. Furthermore, the misspelled term “ericsoon” constitutes the only and therefore dominant element of the Disputed Domain Name’s second level domain.

Accordingly, the Panel finds that Disputed Domain Name is confusingly similar to a mark in which the Complainant has rights. Therefore, the Complainant has established paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- (iii) it is making a legitimate noncommercial 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 Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, based on the following: (a) the Complainant holds prior rights in the globally registered and well-known ERICSSON mark, (b) the Respondent has not been authorized to use the Complainant’s trademark in any way, and is not commonly known by the Disputed Domain Name, (c) the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name nor is he using it in connection with a *bona fide* offering of goods or services.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Here, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. By not submitting a response, the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain name under paragraph 4(c) of the Policy.

According to the evidence submitted by the Complainant, which has not been challenged by the Respondent, the Disputed Domain Name is being used to redirect Internet users to a third-party website containing articles about topics unrelated with the Complainant and its business. In the Panel's view, the misspelling employed by the Respondent indicates an intention to confuse Internet users seeking or expecting the Complainant, and it is irrelevant that Internet users, having seen the content of the website may realize that it is unconnected with the Complainant.

Based on the above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and used in bad faith. Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent intentionally is using the domain name in an attempt 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 its website or location.

Considering the fact that the ERICSSON mark is well known internationally (as recognized by prior UDRP decisions - see among others, *Telefonaktiebolaget LM Ericsson v. Leon Popa / Registration Private / Domains By Proxy, LLC*, WIPO Case No. [D2016-0923](#); *Telefonaktiebolaget LM Ericsson v. Andrea Mariotti*, WIPO Case No. [DRO2010-0008](#), and cases cited therein), the Panel finds that it would be inconceivable that the Respondent might have registered the Disputed Domain Name without knowing of it. This leads to a finding of registration in bad faith.

The Disputed Domain Name is a typo-squatted version of the Complainant's ERICSSON mark. As recorded in section 3.1.4 of the [WIPO Overview 3.0](#), "[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". Typo-squatting has been held under the Policy to be evidence of bad faith registration and use (see *Lexar Media Inc. v. Michael Huang*, WIPO Case No. [D2004-1039](#); *Longs Drug Store California, Inc. v. Shep Dog*, WIPO Case No. [D2004-1069](#)).

In the Panel's view, the circumstances of the case indicate that the Disputed Domain Name has intentionally been designed to closely mimic the Complainant's trademark and primary domain name <ericsson.com>, with the intent of creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of the Respondent's website and services, and to take advantage of the traffic generated by typing errors committed by Internet users seeking the Complainant.

Based on all the above, the Panel finds that the Complainant has established also paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <ericsoon.com> be transferred to the Complainant.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: August 24, 2023