

ADMINISTRATIVE PANEL DECISION

ELECNOR, S.A v. Blessed Office

Case No. D2023-3584

1. The Parties

The Complainant is ELECNOR, S.A, Spain, represented by Clarke, Modet y Cia. S.L., Spain.

The Respondent is Blessed Office, Spain.

2. The Domain Name and Registrar

The disputed domain name <elecnor.cam> registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 25, 2023. On August 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 29, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 30, 2023.

The Center verified that the Complaint together with the amended 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 September 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 28, 2023.

The Center appointed Luis Miguel Beneyto Garcia-Reyes as the sole panelist in this matter on October 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 leading company in the in project development, construction and operation sector.

The Complainant is the owner among others, of the following trademark registrations, that include the term ELECNOR as the only word element:

- United Kingdom (“UK”) registration No. 9496746 ELECNOR (and device) in classes 37,40 and 42, registered on April 4, 2011
- UK registration No. 10572857 ELECNOR (and device) in classes 6, 9, 11, 19, 35, 36, 38, 41 and 45, registered on June 15, 2012
- Spanish registration No. 1159101 ELECNOR (and device) in class 19, registered on May 5, 1989
- Spanish registration No. 1159100 ELECNOR (and device) in class 16, registered on June 5, 1987
- Spanish registration No. 1159106 ELECNOR (and device) in class 42, registered on May 3, 1990
- Spanish registration No. 2822835 ELECNOR (and device) in classes 35 and 39, registered on August 29, 1986
- Spanish registration No. 2868917 ELECNOR (and device) in classes 38 and 40, registered on August 29, 1986
- Spanish registration No. 2957988 ELECNOR (and device) in classes 6, 9, 11, 16, 19, 35, 36, 37, 38, 39, 40, 41, 42 and 45, registered on April 13, 2011
- European Union Trade Mark (“EUTM”) registration No. 9496746 ELECNOR (and device) in classes 37,40 and 42, registered on April 4, 2011
- EUTM registration No. 10572857 ELECNOR (and device) in classes 6, 9, 11, 16, 19, 35, 36, 38, 41 and 45, registered on June 15, 2012
- EUTM registration No. 18631880 (and device) in classes 37,40 and 42, registered on May 11, 2022.

The Complainant sent a cease-and-desist letter to the domain name holder, and several reminders, but the Respondent did not respond.

The website identified by the disputed domain name does currently resolve to an inactive page.

5. Parties’ Contentions

A. Complainant

The Complainant is one of the leading corporations in project development, construction and operation through two major business areas, infrastructure business and concession business and has become one of the most outstanding Spanish business groups and a benchmark in the infrastructure, renewable energy and technology sectors.

The Complainant is the parent company of a group comprised of nearly 80 companies located in Spain and in more than 53 other countries, and is made up of 20,000 employees. In Spain, both the Complainant and its subsidiaries operate directly.

The Complainant is the owner of a high number of trademarks consisting of the term ELECNOR around the world.

The Complainant has been actively using its trademarks not only in Spain, but also in many other countries, since at least 1958.

The disputed domain name incorporates the entirety of the Complainant's Trademark so it can be concluded that the disputed domain name is identical to the Complainant's registered prior Trademark.

The Respondent has no rights or legitimate interests in the disputed domain name as it has never been known by the disputed domain name; it has not acquired trademark rights on the disputed domain name nor it has received any permission from the Complainant to use its name and its trademarks.

The Complainant sent a cease-and-desist letter to the disputed domain name holder, as well as several reminders, but no response was obtained from the Respondent.

The reputation and presence on the Internet of the Complainant make it unlikely that the Respondent did not know the Trademark at the time registering the disputed domain name and it is difficult to imagine that the Respondent proceeded with said registration in a casual manner, and as a consequence it was registered in bad faith.

The Complainant's Trademark is highly distinctive as well as reputed, as it has been recognized by several decisions rendered by WIPO Panelists.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established trademark rights in the term "ELECNOR".

The disputed domain name includes the Complainant's trademark ELECNOR in its entirety. Therefore, the disputed domain name <lecnor.cam> is identical to the Complainant's trademark.

Therefore, the first of the requirements of paragraph 4 of the Policy is established.

B. Rights or Legitimate Interests

The Respondent has not filed a response to the Complaint, so it is not possible to know the Respondent's version of the possible existence of such rights or legitimate interests.

However, having examined the file and all the circumstances and facts contained therein, this Panel finds that:

- In view of the established reputation of the Complainant's ELECNOR trademark, it is not reasonable to believe that the Respondent has any rights or legitimate interests in the disputed domain name, nor to conclude that the Respondent created by chance the term "ELECNOR" in order to be protected as a domain name.

- The Complainant has established a *prima facie* case of the Respondent's lack of rights or legitimate interests.

- The absence of a formal Response to the Complaint means that the Respondent has not been able to rebut, or has decided not to do it, the Complainant's *prima facie* case of lack of rights or legitimate interests.

The Panel therefore finds that the Complainant has also satisfied the second requirement of paragraph 4 of the Policy, by failing to establish or presume in any way the existence of any rights or legitimate interests in favor of the Respondent in connection with the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds that the Complainant has submitted sufficient evidence to conclude that there is indeed bad faith on the part of the Respondent.

This conclusion is reached if we take into account that the Complainant's trademark ELECNOR is internationally well-known. The Respondent, consequently, must have been aware that the disputed domain name registration included a name that was identical to the well-known mark of a third party.

Obviously, the inclusion of the term "ELECNOR" in the disputed domain name cannot therefore be considered to be coincidental.

Additionally, the Respondent's holding of the disputed domain name is undeniably passive. The Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding.

The passive holding of a domain name has been recognised as sufficient evidence of bad faith in a number of UDRP decisions, such as, to give one of many examples, *Accenture Global Services Limited v Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf/ AIDAN CHIEN*, WIPO Case No. [D2021-2684](#).

The Panel thus holds that the third element required under paragraph 4(a) of the Policy is likewise present here.

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 <elecnor.cam> be transferred to the Complainant.

/Luis Miguel Beneyto Garcia-Reyes/
Luis Miguel Beneyto Garcia-Reyes
Sole Panelist
Date: October 30, 2023