

ADMINISTRATIVE PANEL DECISION

ELECNOR, S.A. v. isabel rojo

Case No. D2023-4675

1. The Parties

The Complainant is ELECNOR, S.A., Spain, represented by Clarke, Modet & Co., Spain.

The Respondent is isabel rojo, Spain.

2. The Domain Name and Registrar

The disputed domain name <grupoelecnore.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 10, 2023. On November 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 16, 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 November 20, 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 November 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 26, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on January 4, 2024. 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 Spanish corporation founded in 1958 that currently belongs to a group comprised of nearly 80 companies. The Complainant and its group operates in infrastructure, renewable energy and technology sectors with more than 20,000 employees in 53 countries.

The Complainant operates under the trademarks ELEC NOR and GRUPO ELEC NOR and owns numerous trademark registrations for these brands, including:

- European Union Trademark No. 010572683, GRUPO ELEC NOR (figurative), registered on June 15, 2012, in classes 9, 11, 19, 35, 37, 38, 39, 40, and 42;
- Spanish Trademark Registration No. 2868917 ELEC NOR (figurative), registered on March 23, 2009, in classes 38 and 40; and
- Spanish Trademark Registration No. 2822835 ELEC NOR (figurative), registered on April 15, 2008, in classes 35 and 39.

The aforementioned trademark registrations will collectively be referred to as the “ELEC NOR marks”, and, individually, as the “GRUPO ELEC NOR mark” or the “ELEC NOR mark”, respectively.

Prior decisions under the Policy have recognized the international reputation of the ELEC NOR mark.¹

The Complainant and its group further owns various domain names comprising the ELEC NOR marks, including <grupoelecnor.com> (registered on April 26, 2016), which resolves to the Complainant’s corporate website.²

The disputed domain name was registered on August 30, 2023, and it is apparently inactive resolving to an Internet browser error message. According to the evidence provided by the Complainant, the disputed domain name has been used to send fraudulent email communications impersonating the Complainant and used to redirect to the Complainant’s website.

5. Parties’ Contentions

A. The Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademarks. The disputed domain name is almost identical to its GRUPO ELEC NOR mark adding a letter “e” at the end of the mark, which may constitute a common, obvious, or intentional misspelling of this trademark. The Respondent has no rights or legitimate interests in the disputed domain name, as there is no

¹See, e.g., *Elecnor, SA v. Zlova Wa*, WIPO Case No. [D2023-2627](#); and *ELEC NOR, S.A v. Blessed Office*, WIPO Case No. [D2023-3584](#).

²Other domain names owned by the Complainant’s group cited in the Complaint are: <elecnor-group.com>, <elecnorgroups.com>, <groupelecnor.com>, <elecnorgroup.com>, <elecnorgroup.es>, <grupo-elecnor.net>, <grupoelecnor.net>, <grupoelecnor.pt>, <grupo-elecnor.com>, <grupoelecnor.com>, <grupoelecnor.eu>, <grupoelecnor.es>, <elecnor.uy>, <elecnor.mx>, <elecnor.me>, <elecnor.ga>, <elecnor.eu>, <elecnor.de>, <elecnor.ec>, <elecnor.cl>, <elecnor.es>, <elecnor.com>, <elecnor.net>, and <elecnor.org>.

relationship between the Parties, the Respondent has never been known by the disputed domain name, and has never been authorized to use the Complainant's trademarks. The disputed domain name was redirected to the Complainant's official website and it is used to impersonate the Complainant in fraudulent email correspondence with its suppliers. The Complainant provides a copy of an email addressed to one of its suppliers where the disputed domain name is used impersonating the Complainant and including the GRUPO ELECNOR mark.

The Respondent acted in bad faith in the registration and use of the disputed domain name to impersonate the Complainant in an email fraud scheme. The Respondent was aware of the Complainant and has deliberately and intentionally caused damage to the image of its brands; in addition to the potential fraudulent payment scam and economic losses.

B. The Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy, namely the ELECNOR marks. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the GRUPO ELECNOR mark and the ELECNOR mark are reproduced within the disputed domain name adding a letter "e" at the end of the term "elecno". The ELECNOR marks are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to these marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel further finds that the addition of a letter "e" at the end of the term "elecno" within the disputed domain name constitute a common, obvious, or intentional misspelling. [WIPO Overview 3.0](#), section 1.9.

Therefore, based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a strong *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that the disputed domain name is apparently inactive, and, according to the Complainant's allegations, it was previously redirected to the Complainant's official website at the domain name <grupoelecnor.com>, which only differs from the disputed domain name on the letter "e" added at the end of the term "elecnor" in the disputed domain name. The Panel finds this additional letter constitutes a common, obvious or intentional misspelling of the Complainant's marks or a *typosquatting* case that points to an intention on the part of the Respondent to generate confusion or affiliation with the Complainant, its trademarks and its official website.

The Panel further finds that the inclusion of the ELECNOR marks with an additional letter "e" in the disputed domain name creates a risk of implied affiliation that impede to conceive any legitimate use of the disputed domain name.

Furthermore, according to the evidence provided by the Complainant the disputed domain name has been used to impersonate the Complainant in a fraud email scam, which can never confer rights or legitimate interests under the Policy. Panels have held that the use of a domain name for illegal activity here, impersonation/passing off, potential phishing, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, therefore, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the ELECNOR mark is well-known in Spain and internationally, and has a strong presence over the Internet.

The Panel further notes that the Respondent is located in Spain, and, specifically, in Madrid, where the Complainant is also located and has its principal base of operations.

The Panel further notes that, at the time of drafting this decision, the disputed domain name is apparently inactive, however, according to the evidence provided by the Complainant, it previously redirected to the Complainant's official website, and it has been used to send fraudulent email communications to its suppliers impersonating the Complainant and including in these emails the Complainant's name and the GRUPO ELECNOR mark.

Panels have held that the use of a domain name for illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Furthermore, the current non-use of the disputed domain name, does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. *Typosquatting* itself is evidence of relevant bad faith registration and use. Here the *typosquatting* is compounded by use of the disputed domain name in a fraudulent email scam. The fraudulent email provided as evidence by the Complainant contains the Complainant's name and the GRUPO ELECNOR mark with the same graphic representation registered and used by the Complainant. These circumstances show the Respondent is well aware of the Complainant and its business and has registered and used the disputed domain name unlawfully to cause confusion on the Internet for commercial gain, which constitutes bad faith under the Policy.

Therefore, based on the available record, the Panel finds that the Complainant has established the third element 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 <grupoelecnore.com> be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: January 18, 2023