

ADMINISTRATIVE PANEL DECISION

Enel S.p.A. v. Muhammad Raffa Pradipta, Klik Ukhuwah
Case No. D2022-2535

1. The Parties

The Complainant is Enel S.p.A., Italy, represented by Società Italiana Brevetti S.p.A., Italy.

The Respondent is Muhammad Raffa Pradipta, Klik Ukhuwah, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <enelnurhijau.com> (the “Domain Name”) is registered with Mat Bao Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 13, 2022 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 July 15, 2022.

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 July 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 17, 2022.

The Center appointed Gregor Vos as the sole panelist in this matter on August 25, 2022. 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 the parent company of the Enel Group and is one of the largest Italian companies in the energy market, with nearly 70,000 employees. Through its subsidiaries, the Complainant serves 64 million customers worldwide in more than 32 countries. The Complainant has invested in marketing its brand *inter alia* through the electric racing classes Formula E and MotoE and the Italian bicycle race Giro d'Italia.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter jointly referred to as the "Trademarks"):

- European Union registration No. 756338 for  Enel registered on June 25, 1999; and
- Italian registration No. 0000825734 for **Enel** registered on October 4, 2000; and
- International registration No. 1322301 for  enel registered on February 4, 2016, with designation of *inter alia* China, Türkiye and the United States of America; and
- Indonesian registration No. IDM000384656 for  Enel registered on June 14, 2021.

Further, it is undisputed that the Complainant is the holder of *inter alia* the domain names <enel.com> and <enel.it>.

The Domain Name was registered on June 1, 2022 and is currently inactive.

5. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademarks of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is confusingly similar to its Trademarks. The Domain Name incorporates the Trademarks in their entirety with the addition of the term "nurhijau", meaning "it's green" in Malay, which does not prevent a finding of confusing similarity.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received a license or any other form of authorization from the Complainant to use the Trademarks and has no prior rights to the Domain Name or to the sign ENEL or similar signs. The Domain Name is being used by the Respondent to attract clients of the Complainant to the website. Further, the Respondent cannot derive any rights or legitimate interests through the current passive holding of the Domain Name and the Respondent is not making a legitimate noncommercial or fair use of the Domain Name or any demonstrable preparations for the use of the Domain Name.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. In light of the well-known character of the Complainant's Trademarks, it is inconceivable that the Respondent registered the Domain Name without knowledge of the Complainant and its Trademarks. Also, according to the Complainant, the Domain Name is being used in bad faith. The Respondent is unfairly and intentionally taking advantage of the reputation and distinctiveness of the Complainant's Trademarks to attract Internet users to its website by creating a likelihood of confusion with the Complainant's Trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, they must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Domain Name has been registered and is being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name and placed at the beginning of the Domain Name. The addition of the term "nurhijau", which appears to mean "it's green" in Malay,¹ and the generic Top-Level Domain ("gTLD") ".com" does not prevent a finding of confusing similarity with the Trademarks (see sections 1.8 and 1.11 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to

¹ The Complainant has provided a translation result searching for "nur hijau" at "<https://translate.glosbe.com/>".

make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g., [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpres Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) of the Policy is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks long predate the registration date of the Domain Name. In light of the well-known character of the Trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The well-known character of the Trademarks of the Complainant has been confirmed by earlier UDRP panels (see, e.g., *Enel S.p.A. v. G.A.C. - Consulenza Informatica*, WIPO Case No. [D2021-0436](#); and *Enel S.p.A. v. Silvia Tarazano*, WIPO Case No. [D2021-4245](#)).

Further, it is generally accepted by UDRP panels that the non-use of a domain name does not prevent a finding of bad faith (section 3.3 of the [WIPO Overview 3.0](#)). In light of the reputation of the Trademarks, the lack of any rights or legitimate interest in the Domain Name by the Respondent, the Respondent's failure to file any response, and in the absence of any conceivable good-faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks. This is reinforced by the strong reputation of the Complainant's Trademarks, as referenced above.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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 Domain Name <enelnurhijau.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: September 18, 2022