

## **ADMINISTRATIVE PANEL DECISION**

Enel S.p.A. v. Ahshshs Ahshshs  
Case No. D2022-2567

### **1. The Parties**

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

The Respondent is Ahshshs Ahshshs, Hong Kong, China.<sup>1</sup>

### **2. The Domain Name and Registrar**

The disputed domain name <enelmy.com> 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 14, 2022. On July 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 15, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 18, 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 amendment to the Complaint on July 18, 2022.

The Center verified that the Complaint together with the amendment to 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 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 11, 2022.

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<sup>1</sup> The disputed domain name was originally registered through a privacy service.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on August 16, 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**

Enel S.p.A. (hereinafter referred to as “Enel” or the “Complainant”) is one of the largest Italian companies in the energy market. It manages the greater part of the Italian electricity and gas distribution network, serving more than 26 million Italian customers. The Complainant is the parent company of the Enel Group, which operates through its subsidiaries in more than 32 countries across four continents and brings energy to around 64 million customers.

Today the Complainant supplies energy worldwide, with an extensive presence in Europe. The Complainant is also one of the largest energy companies in the Americas, with 71 power generation plants of all types with a managed capacity of around 6.03 GW across 18 states in the United States of America and Canada, and in South America up to the central Andes.

The Complainant is the owner of more than 100 domain names containing the trademark ENEL, including <enel.it> and <enel.com>, both of which have been registered in the name of the Complainant since 1996.

The Complainant owns the ENEL mark, which enjoys protection through many registrations thereof worldwide. The Complainant is, *inter alia*, the owner of the European Union Trade Mark registration number 000756338 for the ENEL device trademark, registered on June 25, 1999. The Complainant also owns the European Union Trade Mark registration number 1038136 for the ENEL GREEN POWER device trademark, registered on March 19, 2010.

The disputed domain name was registered on May 23, 2022.

The disputed domain name is currently not active, but it resolved to a page where the trademarks ENEL logo and ENEL GREEN POWER were displayed, and activities of possible investments in the Complainant and fake job offers were reported.

#### **5. Parties' Contentions**

##### **A. Complainant**

The disputed domain name is confusingly similar to the Complainant's trademark. According to the Complaint, the acronym “my” stands for “Malaysia”. The Complainant is active in Malaysia to provide services through ENEL and ENEL GREEN POWER trademarks.

The disputed domain name resolves to a single page where the trademarks ENEL logo and ENEL GREEN POWER are displayed.

The Complainant has neither authorized, nor given its consent to register and use the disputed domain name to the Respondent. The disputed domain name has been registered and is being used for exploiting the reputation of the Complainant's trademarks.

The Complainant also notes that, before any notice to the Respondent of this dispute, there is no evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods and services.

Furthermore, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain, as the disputed domain name points merely to a page where the trademarks ENEL and ENEL GREEN POWER are displayed without any authorization.

The registration of the disputed domain name was carried out in clear bad faith and this can be found in the following circumstances:

- there is no connection between the Respondent and the company name Enel and the trademark ENEL;
- it is also evidence of the Respondent's bad faith that the disputed domain name is not used in good faith for the offering of goods and services to the public, nor is it used for a legitimate noncommercial use without the intention of misleading the Complainant's customers or infringing the registered ENEL trademarks;
- Enel and Enel Green Power are not common or descriptive terms, but they are obviously the trademarks in and to which the Complainant has demonstrated to have rights;
- because of the intensive use made by the Complainant, the Complainant's trademark ENEL is well known;
- the disputed domain name reproduces, without any authorization or approval, the Complainant's registered trademark ENEL, which is the most distinctive component of the disputed domain name.

The disputed domain name is used for a page where unauthorized activities of possible investments in the Complainant and fake job offers are reported, thus exploiting the reputation of the Complainant's trademark ENEL.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements in which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the 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 such domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid ENEL trademark registrations, which precede the registration of the disputed domain name.

The disputed domain name is confusingly similar to the Complainant's trademark since it merely reproduces the ENEL trademark in its entirety with the addition of two letters "my". As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is

sufficient to establish that the domain name is identical or confusingly similar to that trademark.

The Panel finds the first element of the Policy has therefore been met.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks which precede the Respondent's registration of the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. Rather, the disputed domain name is currently not active, but it resolved to a page where the trademarks ENEL logo and ENEL GREEN POWER were displayed, and activities of possible investments in the Complainant and fake job offers were reported. The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

Moreover, the nature of the disputed domain name, which is composed of the Complainant's ENEL trademark and additional letters "my" which could be the country code for "Malaysia", carries a risk of implied affiliation.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel, based on the evidence presented, accepts and agrees with the Complainant's contentions that the disputed domain name was registered and has been used in bad faith.

"Enel" is not a common or descriptive term, but a renowned trademark. The disputed domain name reproduces, without any authorization or approval, the Complainant's registered ENEL trademarks, and this is the only distinctive component of the disputed domain name. The disputed domain name was registered many years after the Complainant's renowned trademarks were registered and used. In addition, the Complainant has registered more than 100 domain names in generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs") worldwide which incorporate the trademark ENEL, hence it is unlikely that the Respondent was not aware of the existence of the Complainant's trademarks when registering the disputed domain name. Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the ENEL trademark and trade name.

The Complainant stated that the disputed domain name led to a page where activities of possible investments in ENEL and fake job offers were reported. The Complainant also stated that in the page that the disputed domain name resolved to the trademarks ENEL logo and ENEL GREEN POWER were displayed. The Respondent has not rebutted these assertions because of its default. Thus, the Panel concludes that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the disputed domain name, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the disputed domain name as prescribed by paragraph 4(b)(iv) of the Policy.

At the time of this decision, the disputed domain name does not resolve to an active website. Under the circumstances of this case, in particular, considering the Complainant's widely-known trademark ENEL, the Panel finds that the passive holding of the disputed domain name does not prevent a finding of bad faith.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied 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 <enelmy.com> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: September 1, 2022