

ADMINISTRATIVE PANEL DECISION

AB Electrolux v. Domain Administrator, Fundación Privacy Services Ltd
Case No. D2022-2996

1. The Parties

Complainant is AB Electrolux, Sweden, represented by SILKA AB, Sweden.

Respondent is Domain Administrator, Fundación Privacy Services Ltd, Panama.

2. The Domain Name and Registrar

The disputed domain name <elecrolux.com> is registered with Media Elite Holdings Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 12, 2022. On August 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 2022, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on August 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 7, 2022.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on September 22, 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

Complainant is the owner of registrations for the word, and word and device, trademark ELECTROLUX, including on the Principal Register of the United States Patent and Trademark Office (USPTO), word registration number 195691, amended registration dated January 26, 1965 (changing spelling from ELEKTROLUX, with initial registration dating back to March 3, 1925), in international class (IC) 9, covering electronically-driven vacuum cleaners; on the register of the European Union Intellectual Property Office (EUIPO), word registration number 000077925, registration dated September 16, 1998, in ICs 3, 7, 8, 9, 11, 16, 20, 21, 35, and 37, covering a variety of household appliances and related servicing, and; as an International Trademark registered under the Madrid System, word and device registration number 836605, registration dated March 17, 2004, in ICs 3, 7, 8, 9, 11, 12, 21, 25, 35, 37, and 39, covering a variety of household appliances and other machines, related servicing and transport services.

Complainant is a multinational enterprise based in Sweden in the business of designing, manufacturing and distributing household appliances including vacuum cleaners and washing machines. Complainant markets and sells its products around the world, had sales of approximately SEK 126 billion in 2021, and employs more than 50,000 people. Complainant operates commercial websites identified by various ELECTROLUX-formative domain names, including <electrolux.com> (registered on April 30, 1996).

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to that verification, the record of registration for the disputed domain name was created on December 21, 2006. There is no evidence on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since the initial registration date.

According to Complainant, Respondent has used the disputed domain name by redirecting it to "multiple third-party websites". Complainant did not provide screenshots or other concrete evidence of the aforesaid redirection.¹ However, in the process of its routine domain name status check the Center secured a screen capture of a webpage identified as "Onlinescustomersurvey.com" associated with the disputed domain name, and it identified the URL "http://kitchenappliances.com" as the redirection location of the disputed domain name.

5. Parties' Contentions

A. Complainant

Complainant alleges that it owns rights in the trademark ELECTROLUX and that the disputed domain name is identical or confusingly similar to that trademark.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) the disputed domain name is being used to divert Internet users to third-party websites, which is not a *bona fide* offering of goods or services; (2) Respondent is not as licensee of Complainant nor has it otherwise been authorized by Complainant to make use of its trademark in the disputed domain name or otherwise; (3) Respondent is not commonly known by the term ELECTROLUX, and that trademark term is not generic or descriptive; (4) Respondent is not making a legitimate noncommercial or fair use of the disputed domain name which, because it is associated with Complainant's well-known trademark, effectively precludes actual or contemplated good faith use, and; (5) Complainant has made out a *prima facie* case, shifting the burden of proof to Respondent to provide evidence or plausible assertions demonstrating rights or legitimate interests.

¹ Complainant did not explain the absence of concrete evidence to support its allegation of redirection of the disputed domain name by Respondent.

Complainant contends that Respondent registered and is using the disputed domain name in bad faith because: (1) Complainant's trademark is well known and a coined term, and Respondent could not reasonably have been unaware of Complainant's trademark when it registered the disputed domain name; (2) Respondent's use of the disputed domain name to redirect to third-party websites creates a likelihood of confusion with Complainant's trademark, indicating that Respondent acted for commercial gain by creating such likelihood of confusion; (3) use of a privacy shield by Respondent is indicative of bad faith in the circumstances here in which the request for verification does not disclose the "true owner", and; (4) given the well-known character of Complainant's trademark there cannot be any actual or contemplated good faith use of the disputed domain name by Respondent.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, *e.g.*, Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical address provided in its record of registration. Courier delivery of the Written Notice to Respondent could not be completed because of inaccurate address information in the record of registration. There is no indication of problems with the transmission of email to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

A. Identical or Confusingly Similar

Complainant has provided evidence of rights in the trademark ELECTROLUX, including by registration at the USPTO and EUIPO, registration as an International Trademark, and through use in commerce. Respondent has not challenged Complainant's assertion of rights. The Panel determines that Complainant owns rights in the trademark ELECTROLUX.

The disputed domain name directly and fully incorporates Complainant's trademark, with the exception of dropping the letter "t" between the "c" and "r" in "electrolux". Complainant's trademark is a distinctive coined term, and Respondent's registration of a minor typographical variation does not prevent a finding of confusing similarity. The Panel determines that the disputed domain name is confusingly similar to Complainant's trademark.

The Panel determines that Complainant has established rights in the trademark ELECTROLUX, and that the disputed domain name is confusingly similar to that trademark.

B. Rights or Legitimate Interests

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has not replied to the Complaint and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Complainant has alleged that Respondent used the disputed domain name to redirect Internet users to third-party websites. Complainant did not provide evidence of such redirection. Complainant's mere allegation without supporting evidence would not suffice to establish Respondent's use. In this proceeding, however, the Center in its routine domain name status check assembled evidence supporting Respondent's redirection of the disputed domain name, including to a URL using a typographical variation of common terms that might ordinarily be associated with Complainant's trademark, *i.e.*, "http://kitchenappliac.es.com".

This Panel's determination regarding Respondent's lack of rights or legitimate interests does not hinge on whether Respondent used, or did not use, the disputed domain name to redirect Internet users to third-party websites. If Respondent used Complainant's trademark to redirect Internet users to third-party websites, as asserted by Complainant and indicated in the case file before the Panel, this would not establish legitimate noncommercial or fair use, nor use of the disputed domain name in connection with a *bona fide* offering of goods or services, absent some further legitimizing evidence and explanation from Respondent.

Even if Respondent has not used the disputed domain name, that "non-use" does not establish rights or legitimate interests in the circumstances here either. Complainant's trademark is distinctive and well known. Respondent has not offered any explanation as to how it might have acquired rights or legitimate interests in that trademark, and the Panel will not speculate about that.

Respondent's actions do not otherwise manifest rights or legitimate interests in the disputed domain name. Moreover, the typographical nature of the disputed domain name itself support a finding that Respondent lacks rights or legitimate interests, since the composition suggests Respondent's bad faith intent to mislead Internet users who do not notice the deceptive misspelling in the disputed domain name.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include that, "(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online 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 [the

respondent's] website or location".

Respondent registered the disputed domain name more than 15 years ago, and Complainant has only now initiated this proceeding. The delay does not preclude a finding of bad faith registration and use. There is no doctrine of laches associated with the Policy.² Moreover, Complainant's trademark rights were well-established long before Respondent registered the disputed domain name. Respondent's registration of a minor typographical variation of Complainant's distinctive trademark in the disputed domain name indicates awareness by Respondent of Complainant and its trademark, indicative of an intention to take advantage of Complainant and the goodwill associated with its trademark. Such registration supports a finding of bad faith registration by Respondent.

Assuming that Respondent used the disputed domain name to redirect Internet users to third-party websites, such use would evidence intent to attract Internet users to those online locations by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement by Complainant of those websites. Such use by Respondent is primarily supported by evidence assembled by the Center. This was not the result of an effort by the Center to support Complainant's pleading, but part of the Center's routine check of domain name status.

Even if the Panel rejected as unsupported Complainant's allegation of use by Respondent, in the circumstances of this proceeding it nevertheless would consider Respondent's non-use, or passive use, of the disputed domain name to evidence bad faith. The disputed domain name is a minor typographical variation of Complainant's distinctive and well-known trademark. Respondent is identified only as a Domain Administrator of a privacy service, even with registration details provided by the Registrar, and at a physical address that could not be reached by the courier service used by the Center. Despite there being no indication of problems with the transmission of email to Respondent, Respondent had the opportunity but failed to provide an explanation for registering the disputed domain name nearly identical to Complainant's distinctive coined trademark. The Panel considers these established elements sufficient to constitute bad faith use by Respondent within the meaning of paragraph 4(b) of the Policy.

The Panel determines that Complainant has established that Respondent registered and is using the disputed domain name in bad faith within the meaning 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, <elecrolux.com>, be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: October 3, 2022

² See, e.g., *Tom Cruise v. Network Operations Center / Alberta Hot Rods*, WIPO Case No. [D2006-0560](#).