

## **ADMINISTRATIVE PANEL DECISION**

Telefonaktiebolaget LM Ericsson v. Privacy Service Provided by Withheld for Privacy ehf / Ghost Mew, Hub  
Case No. D2022-3212

### **1. The Parties**

The Complainant is Telefonaktiebolaget LM Ericsson, Sweden, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Ghost Mew, Hub, United States of America (“U.S.”).

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

The Disputed Domain Name <ericssonmx.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same August 31, 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 September 2, 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 September 5, 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 September 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 28, 2022.

The Center appointed Edward C. Chiasson K.C. as the sole panelist in this matter on September 30, 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 was founded in 1876 and is a leading provider of communication technology and services around the world. It offers services, software, and infrastructure in information and communications technology (ICT) for telecommunications operators, traditional telecommunications and Internet Protocol (IP) networking equipment, mobile and fixed broadband, operations and business support services, cable television, IPTV, video systems and an extensive services operation.

In the second quarter of 2022, the Complainant had net sales of SEK 62.5 billion and an operating income of SEK 7.3 billion. The Complainant is listed on Nasdaq Stockholm and on Nasdaq in New York. It employs over 101,000 employees worldwide, across six continents.

From its development of the 500 Switch in 1923, which powered telephone networks at the time, to the very first generation of mobile telephony, under the name NMT (Nordic Mobile Telephony), launched in 1981, the Complainant has been at the forefront of innovation. Other key innovations include the development of the first “smartphone” in 1997, of Bluetooth connectivity in 1998, and research and work on 3G and 4G networks.

The Complainant owns trademark registrations in various jurisdictions. The trademarks relevant to this instant matter are:

TRADEMARK	JURISDICTION/ TM OFFICE	REGISTRATION NUMBER	REGISTRATION DATE	IC
ERICSSON	US / USPTO	1313196	January 18, 1985	9
ERICSSON	US / USPTO	2665187	December 24, 2022	09, 16, 35,36, 37, 38, 41, 42
ERICSSON	MX / IMPI	271466	February 21, 2000	38
ERICSSON	AU / IP Australia	322638	October 3, 1978	9
ERICSSON	EU / EUIPO	107003	March 23, 1999	09, 11, 16, 35, 36, 37, 38, 39, 41, 42
ERICSSON	EU / EUIPO	4822219	December 7, 2006	41, 42

The Complainant maintains a strong internet presence, communicating with its customers through its primary domain name, <ericsson.com>, registered since 1989. SimilarWeb ranks Complainant’s website 19,369th globally and 1,562nd in Sweden. The domain name <ericsson.com> received 2.5 million individual visits in June 2022 alone.

The Complainant has social media profiles. It has 570,179 likes on its Facebook page, 266.7K followers on Twitter, and 32.2K followers on Instagram.

The Disputed Domain Name was registered on October 5, 2021.

According to the evidence submitted with the Complaint, the Respondent is using the Disputed Domain Name to redirect internet users to a website featuring sponsored links to third-party websites, some of which directly compete with the Complainant's business. The website at which the Disputed Domain Name resolves features multiple third-party links for products and services that are related to the Complainant's services, including "Call Center Phone Software" or "Cell Phone for Seniors". Presumably, the Respondent receives pay-per-click ("PPC") fees from the linked websites that are listed at the Disputed Domain Name's website.

In May 2022, the Complainant sent three cease and desist letters to the Respondent to which the Respondent did not reply.

## 5. Parties' Contentions

### A. Complainant

Based on the following facts and authorities, the Complainant asserts that the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant is the owner of the ERICSSON trademark. "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case." (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) at Section 1.2.1)

It is standard practice when comparing a Disputed Domain Name to a complainant's trademarks, not to take extensions in a domain name into account: for example - ".com", ".club", ".nyc". They are considered as a standard registration requirement and are disregarded under the first element confusing similarity test. ([WIPO Overview 3.0](#) at 1.11.1).

The Disputed Domain Name incorporates the complainant's ERICSSON trademark in its entirety while merely adding the geographically descriptive term "mx" (a common two-letter code for "Mexico") to the end. This does not sufficiently differentiate a disputed domain name from a trademark. ([WIPO Overview 3.0](#) at 1.8 "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element").

This specific term is closely linked and associated with the Complainant because it operates in Mexico through five offices across three major cities. ".MX" is the ccTLD for Mexico and the Complainant has maintained a registration for the domain name <ericsson.mx> since July 10, 2009.

The Complainant is spearheading key technological innovations in Mexico, bringing 5G connectivity to Latin America as a whole. By adding this geographically descriptive term to the Complainant's trademark, the Respondent creates the impression that the Disputed Domain Name is connected to the Complainant, its trademark and brand. This enhances the confusing similarity with the Complainant's trademark. (*Halliburton Energy Services, Inc. v. Pedro Morelos Cardio*, WIPO Case No. [D2021-2913](#) ("Regarding the addition of the geographical code "mx" (as an abbreviation for "Mexico"), the Panel notes that it is now well established that the addition of descriptive or geographical terms or letters to a domain name does not prevent a finding of confusing similarity between the disputed domain name and the trademark").

Based on the following facts and authorities, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not given the Respondent permission to use the Complainant's trademarks in any manner, including in domain names.

The Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademarks. The Complainant quotes, "[i]n the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated *bona fide* or legitimate use of the Disputed Domain Name could reasonably be claimed." (*Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The Respondent is not commonly known by the Disputed Domain Names, which evinces a lack of rights or legitimate interests. (*World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#), finding that a respondent, or his/her organization or business, must have been commonly known by the at-issue domain at the time of registration in order to have a legitimate interest in the domain).

Whols information identifies the Respondent as "Redacted for Privacy / Privacy service provided by Withheld for Privacy ehf", which does not resemble the Disputed Domain Name. Where no evidence, including a Whols record for a domain name, suggests that a respondent is commonly known by the domain name, a respondent cannot be regarded as having acquired rights to or legitimate interests in the domain name within the meaning of 4(c)(ii). (*Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#), in which the panel noted "that the Respondent's name is "Bestinfo" and that it can therefore not be "commonly known by the Domain Name" [moncler.com])).

At the time of filing the complaint, the Respondent was using a privacy Whois service, which equates to a lack of legitimate interests. (*Jackson National Life Insurance Company v. Private Whois www.jacksonnationallife.com N4892*, WIPO Case No. [D2011-1855](#), "the Panel concludes that the Respondent possesses no entitlement to use the name or the words in the Complainant's marks and infers [...] from the 'Private Whois' registration that it is not known by such name. There is no evidence of the Respondent ever being commonly known by the name or words now included in the disputed domain name").

The Respondent is using the Disputed Domain Name to redirect internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant's business. For example, the website at which the Disputed Domain Name resolves features multiple third-party links for products and services that are related to the Complainant's services, including "Call Center Phone Software" or "Cell Phone for Seniors". Presumably, the Respondent receives pay-per-click fees from the linked websites that are listed at the Disputed Domain Name's website.

Prior UDRP decisions have held that respondents that monetize domain names using pay-per-click links have not made a *bona fide* offering of goods or services that would give rise to rights or legitimate interests in a disputed domain name. (See [WIPO Overview 3.0](#) at 2.9 ("Panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users"). See also *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#), Respondent is diverting Internet users to websites that advertise goods competitive with those of Complainant, and that those websites do not constitute a fair use because Respondent is using the Disputed Domain Names for commercial gain and is misleadingly diverting consumers to its and its advertiser's websites).

Based on the following facts and authorities, the Complainant asserts that the Disputed Domain Name was registered and is being used in bad faith.

The Complainant and its ERICSSON trademark are known internationally, with trademark registrations across numerous countries. The Complainant has marketed and sold its goods and services using this trademark well before the Respondent registered the Disputed Domain Name on October 5, 2021.

Bad faith can be established by evidence demonstrating that the Respondent has "intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] website...by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web

site or location of a product or service on [the Respondent's] website or location.” (Policy 4(b)(iv)).

In the present case, the Respondent created a likelihood of confusion with the Complainant and its trademarks by registering a domain that merely consists of the Complainant's ERICSSON trademark, combined with the geographical indicator “mx”. The Respondent is using the Disputed Domain Name to confuse unsuspecting internet users looking for the Complainant's services, and to mislead internet users as to the source of the domain name and website. By creating this likelihood of confusion between the Complainant's trademarks and the Disputed Domain Name, leading to misperceptions as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name, the Respondent has demonstrated an intention to increase traffic to the Disputed Domain Name's website for the Respondent's own pecuniary gain.

This is evidenced by the presence of multiple pay-per-click links posted to the Respondent's website, some of which relate to the industry and services provided by the Complainant. Bad faith has been found where a respondent uses a confusingly similar domain name to resolve to a website featuring links to third-party websites that create revenue for the respondent. ([WIPO Overview 3.0](#) at 3.5 (“Particularly with respect to “automatically” generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith”; (*PRL USA Holdings, Inc. v. LucasCobb*, WIPO Case No. [D2006-0162](#), “Respondent's use of the Domain Name to earn referral fees by linking to other websites attracts Internet users to Respondent's site by creating confusion as to source and results in commercial gain to Respondent. Accordingly, the Panel finds that the Domain Name was registered in bad faith”).

The Disputed Domain Name incorporates the Complainant's ERICSSON trademark in its entirety, with the mere addition of the geographical indicator “mx”. There is no plausible good-faith reason or logic for the Respondent to have registered the Disputed Domain Name. It is indicative of an intention to hold the disputed domain name “for some future active use in a way which would be competitive with or otherwise detrimental to the Complainant. (*Jupiters Limited 7v. Aaron Hall*, WPO Case No. [D2000-0574](#)).

Considering these circumstances, any use of the Disputed Domain Name whatsoever, whether actual or theoretical, would have to be in bad faith. “It is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.” (*Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

At the time of filing the complaint, the Respondent used a privacy service to hide its identity. UDRP panels have held this is evidence of bad faith registration and use (*Dr. Ing. H.C. F. Porsche AG v. Domains by Proxy, Inc.*, WIPO Case No. [D2003-0230](#)); see also [WIPO Overview 3.0](#) at 3.6 (“Panels have also viewed a respondent's use of a privacy or proxy service which is known to block or intentionally delay disclosure of the identity of the actual underlying registrant as an indication of bad faith”).

The Respondent ignored three cease and desist letters sent by the Complainant. UDPR panels have held that failure to respond to a cease-and-desist letter properly may be considered a factor in finding bad faith registration and use of a domain name. (*Encyclopedia Britannica v. Zuccarini*, WIPO Case No. [D2000-0330](#), failure to positively respond to a demand letter provides “strong support for a determination of ‘bad faith’ registration and use”); (*RRF Financial, Inc., v. Chen*, WIPO Case No. [D2001-1242](#), finding bad faith where “The Complainant alleges that it sent numerous cease and desist letters to [r]espondent without receiving a response”).

Based on of the facts set forth above, it is more likely than not that the Respondent knew of and targeted the Complainant's trademark and should be found to have registered and used the Disputed Domain Name in bad faith (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy*

*Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#), “the Panel makes its finding regarding bad faith registration by asking whether it is more likely than not from the record of the evidence in the proceeding that Respondent had the ELECTRIC FOOTBALL trademark in mind when registering the Domain Name”).

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has provided clear evidence that it has rights in the trademark ERICSSON.

The Disputed Domain Name merely adds the term “mx” and the generic Top-Level Domain (“gTLD”) “.com” to the Complainant’s mark. The Complainant’s ERICSSON trademark is recognizable in the Disputed Domain Name. The addition of “mx” does not prevent a finding of confusing similarity. (Sections 1.7 and 1.8 of the [WIPO Overview 3.0](#)). The gTLD is irrelevant for purposes of the first element. (Section 1.11.1 of the [WIPO Overview 3.0](#)).

The Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights. The Panel concludes that the Complainant has established the requirements of Policy paragraph 4(a)(i).

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

The Complainant did not authorize the Respondent to use its name and mark. The Respondent has not been identified and is commonly known with the Complainant’s name and mark. The Respondent has advanced no explanation for using the Complainant’s name and mark or any legitimate interests or rights in the Complainant’s name and mark.

The registration and use of the Disputed Domain Name took place well after the Complainant had begun using and promoting the ERICSSON Marks in association with its services.

The Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant’s trademark. “In the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed.” (*Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The Complaint asserts that it is a fair inference that the Respondent receives pay-for-click fees, that is, it is monetizing its use of the confusingly similar Disputed Domain Name. The Respondent has not rebutted this inference. This is not a *bona fide* offering of goods or services that would give rise to rights or legitimate interests in a disputed domain name. See section 2.9 of the [WIPO Overview 3.0](#), which states that pay-per-click links do not represent a *bona fide* offering where such links competes with or capitalize on the reputation and goodwill of a complainant’s mark or otherwise mislead Internet users.

Given the Complainant’s services in Mexico, as well as its general history of notoriety in Latin America, the composition of the Disputed Domain Name is such to carry a risk of implied affiliation that cannot constitute fair use. (Section 2.5.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Complainant has made a *prima facie* case showing that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name, which has not been rebutted by the Respondent. The Panel concludes that the Complainant has established the requirements of Policy,

paragraph 4(a)(ii).

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

The Complaint and its ERICSSON trademark were well known and established when the Respondent registered the Disputed Domain Name. It merely adds the term “mx” and the gTLD “.com”. Prior panels have held that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. (Section 3.3. of the [WIPO Overview 3.0](#)). Given the Complainant’s operations in Latin America, and especially Mexico, the addition of the geographic acronym “mx” further reinforces the finding that the Respondent purposefully targeted the Complainant and sought to mislead unsuspecting Internet users presuming an association or affiliation of the disputed domain name to the Complainant.

The Respondent ignored three cease and desist letters sent by the Complainant. The Complainant asserts that UDPR panels have held that failure to respond to a cease-and-desist letter properly may be considered a factor in finding bad faith registration and use of a domain name. In addition, in the present proceeding, the Respondent provided no explanation for its conduct.

Failure to respond to cease and desist letters or to participate in a domain dispute process is not itself bad faith. The failure to respond and to provide any explanation for conduct that infers bad faith is a proper basis on which to find bad faith.

Through the use of the Disputed Domain Name, the Respondent is diverting Internet users to websites that advertise goods competitive with those of the Complainant. That use constitutes bad faith because the Respondent is using the confusingly similar Disputed Domain Names for commercial gain and is misleadingly diverting consumers to its and its advertisers’ websites through a false sense of association with the Complainant that is implied by the Disputed Domain Name itself.

The Panel finds that the Respondent has registered and is using the Disputed Domain Name in bad faith. The Panel concludes that the Complainant has established the requirements of Policy, paragraph 4(a)(iii).

### **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, <ericssonmx.com> be transferred to the Complainant.

*/Edward C. Chiasson K.C./*

**Edward C. Chiasson K.C.**

Sole Panelist

Date: October 12, 2022.