

## **ADMINISTRATIVE PANEL DECISION**

Telefonaktiebolaget LM Ericsson v. Domain Administrator, Fundacion Privacy Services LTD

Case No. D2022-4035

### **1. The Parties**

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

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

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

The disputed domain name <ericsson.com> (“the Disputed Domain Name”) 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 October 27, 2022. On October 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 27, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on October 28, 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 October 28, 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 October 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2022.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on November 28, 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, Telefonaktiebolaget LM Ericsson, is a Sweden-based company founded in 1876, and is a leading provider of communication technology and services around the world. According to the Complainant, in the second quarter of 2022, it has achieved net sales of SEK 62.5 billion and an operating income of SEK 7.3 billion. The Complainant employs over 101,000 employees worldwide, across six continents.

The Complainant's trademark ERICSSON has been registered for goods and services in many classes in a variety of countries under a number of trademark registrations, including but not limited to the United States of America Registrations No. 1313196 and No. 2665187 registered on January 8, 1895 and December 24, 2002 respectively; Australia Registration No. 322638 registered on October 3, 1978; European Union Registrations No. 000107003 and No. 004822219 registered on March 23, 1999 and December 7, 2006 respectively.

Additionally, the Complainant is the registrant of the domain name <ericsson.com> registered on July 25, 1989, which features the trademark ERICSSON. The website under this domain name received 2.5 million individual visits in June 2022 alone, according to a report of SimilarWeb.

The Disputed Domain Name was created on March 3, 2006. As of the date of this Decision, the Disputed Domain Name resolves to a parking page containing sponsored links to various third parties' contents, including those showing the trademark ERICSSON and relating to the communication technology industry.

The Complainant sent a Cease and Desist letter to the Respondent on July 29, 2022 and two further letters on August 5 and 12, 2022, requesting for a transfer of the Disputed Domain Name. However, the Respondent did not respond to the Complainant's letters.

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

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

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

(i) the Disputed Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

First, the Complainant submits that the Complainant is the owner of the ERICSSON trademark across various jurisdictions.

Second, the Complainant contends that the extension of the Disputed Domain Name is disregarded when comparing the Disputed Domain Name with the Complainant's trademark under standard practice.

Third, the Complainant argues that the Disputed Domain Name is a purposeful misspelling of the Complainant's ERICSSON trademark and must be considered confusingly similar to the Complainant's trademark. More specifically, the Disputed Domain Name varies from the Complainant's trademark by only two letters, namely by repeating the letter "r" and omitting one of the repeated letter "s". This is a prototypical example of typosquatting and a deliberate misspelling of a trademark registered as a domain name and, which is intended to confuse Internet users.

Finally, the Complainant argues that the Disputed Domain Name must be considered confusingly similar to the Complainant's ERICSSON trademark in both sight and sound.

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant submits that it has not given the Respondent permission to use the Complainant's trademark in any manner, including in domain names. Further, the Respondent is not sponsored by or affiliated with the Complainant in any way.

Second, the Complainant argues that the Respondent is not commonly known by the Disputed Domain Name, due to the following reasons:

- the Whois information identifies the Respondent as "Domain Administrator, Fundacion Privacy Services LTD", which does not resemble the Disputed Domain Name in any manner.

- At the time of filing the Complaint, the Respondent was using a privacy Whois service, which previous panels have also found to equate to a lack of legitimate interest.

Third, the Complainant contends that 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. Further, the Respondent receives pay-per-click (PPC) fees from the linked websites that are listed at the Disputed Domain Name's website. Therefore, the Respondent is not using the Disputed Domain Name to provide a *bona fide* offering of goods.

In addition, the Complainant contends the Disputed Domain Name is being offered for sale in an amount that far exceeds the Respondent's out-of-pocket expenses in registering the Disputed Domain Name, which serves as further evidence of the Respondent's lack of rights and legitimate interests.

Finally, the Complainant argues that the Disputed Domain Name was only transitioned to the current Registrant – the Respondent in the subject case, between January 2 and February 27, 2018, which is significantly later than the Complainant's filing for registration of its ERICSSON trademark with the USPTO, IP Australia, EUIPO, the Complainant's first use in commerce of its trademark in 1876 and the Complainant's registration of its domain name <ericsson.com> on July 24, 1989.

(iii) the Disputed Domain Name was registered and is being used in bad faith

First, the Complainant contends that it 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 since 1876, which is well before the Respondent gained control of the Disputed Domain Name in 2018.

Second, the Complainant argues that the Respondent has created the Disputed Domain Name that is confusingly similar to the Complainant's trademark and its domain name <ericsson.com>. This suggests that the Respondent not only was aware of the Complainant, but also specifically targeted the Complainant when registering the Disputed Domain Name. The trademark ERICSSON is closely associated with the Complainant to the extent that the Respondent's use of this mark, or any minor variation of it, strongly implies bad faith.

Further, performing an Internet search for "ericsson", it will return multiple links referencing the Complainant and its business. Thus, the Respondent was or should have been aware of the Complainant's trademarks prior to registering the Disputed Domain Name.

Also, the Disputed Domain Name is a typosquatted version of the Complainant's ERICSSON trademark and has intentionally been designed to closely mimic the Complainant's trademark and the domain name <ericsson.com>. This shows the Respondent's attempt to capitalize on typing errors committed by the

Complainant's customers in trying to locate the Complainant on the internet, which is evidence of bad faith registration and use of the Disputed Domain Name.

Third, the Complainant contends that by registering the Disputed Domain Name merely consisting of a misspelling of the Complainant's ERICSSON trademark, the Respondent creates a likelihood of confusion with the Complainant and its trademarks, which demonstrates that 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 Disputed Domain Name and the website thereunder. These show the Respondent's nefarious intent to capitalize on the fame and goodwill of the Complainant's trademarks in order to increase traffic to the Disputed Domain Name's website for the Respondent's own pecuniary gain by the multiple PPC links on the Respondent's website. These are evidence of bad faith on the part of the Respondent.

In addition, since the Disputed Domain Name merely comprises a misspelling of the Complainant's ERICSSON trademark, there is no plausible good-faith reason or logic for the Respondent to register the Disputed Domain Name. Rather, it is indicative of the Complainant's 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.

Forth, the Complainant argues that the Respondent is currently offering to sell the Disputed Domain Name, which constitutes bad faith because the Respondent has demonstrated an intent to sell, rent, or otherwise transfer the Disputed Domain Name for valuable consideration in excess of his out-of-pocket expenses.

Finally, the Complainant lists out other evidence on the Respondent's bad faith as follows:

- the Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity.
- the Respondent has ignored the Complainant's attempts to resolve this dispute outside of this administrative proceeding.
- the Respondent has previously been involved in some previous UDRP cases in which domain names have been transferred away from the Respondent. Also, the Respondent currently holds registrations for several other domain names that misappropriate the trademarks of well-known brands and businesses. These facts demonstrate that the Respondent is engaging in a pattern of cybersquatting/typosquatting.

With the said arguments, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Procedural Issues**

#### **(I) Delay in bringing the Complaint**

The Panel finds that the Disputed Domain Name was created on March 3, 2006, but the Complaint was not filed with the Center until October 27, 2022. In considering this delay of 16 years in challenging the Respondent's registration of the Disputed Domain Name, the Panel is of the same view as UDRP decisions mentioned in section 4.17 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") that "[p]anels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits". However, similar to a previous decision, the Panel has taken

into account this delay when considering the second and third element requiring the Complainant to establish that the Respondent lacks rights or legitimate interests and that the Respondent registered and used the Disputed Domain Name in bad faith (see, e.g., *CeltonManx Limited v. Pham Dinh Nhut*, WIPO Case No. [D2014-0109](#)).

## **(II) The Respondent's Failure to Respond**

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

### **B. Identical or Confusingly Similar**

The Complainant is required to establish the two following elements: (1) that it has trademark rights, and, if so, (2) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel finds that the Complainant has evidenced that it has rights in and to the trademarks ERICSSON, which were registered in a number of countries before the registration of the Disputed Domain Name. In addition, it is evidenced that the Complainant has widely used the ERICSSON trademarks in the sector of communication technology.

Second, the Disputed Domain Name almost comprises the Complainant's ERICSSON trademarks in entirety, in which the Complainant has exclusive rights. The Disputed Domain Name is slightly different from the ERICSSON trademarks by just two letters, particularly, the repetition of the letter "r" and omission of one of the repeated letter "s". In this regard, in accordance with section 1.9 of [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Thus, the said small difference does not prevent a finding of confusing similarity between the Disputed Domain Name and the ERICSSON trademarks. In the Panel's view, "erricson" is confusingly similar to the Complainant's ERICSSON trademark.

This is a typical case of a deliberate misspelling of a trademark (so-called "typosquatting"), by omitting, adding, or substituting the order of letters of a trademark, where numerous UDRP panels in the past have found confusing similarity to be present, see, *inter alia* *Airlinen Ltd v. Deyan Dimitrov, Laundryheap, VenturePoint Ltd*, WIPO Case No. [D2019-2542](#); *Mirova v. WhoisGuard Protected, WhoisGuard, Inc. / Brian Tranter*, WIPO Case No. [D2020-0142](#).

Finally, the Panel finds, similarly to other UDRP panels, that the addition of the generic Top-Level Domain ("gTLD") ".com" to the Disputed Domain Name does not constitute an element as to avoid confusing similarity for the Policy purposes (see, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#); *The Coca-Cola Company v. David Jurkiewicz*, WIPO Case No. [DME2010-0008](#); *Telecom Personal, S.A., v. NAMEZERO.COM, Inc.*, WIPO Case No. [D2001-0015](#); *F. Hoffmann La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Based on the foregoing findings, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's ERICSSON trademarks, and paragraph 4(a)(i) of the Policy is established.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

“(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.”

The Panel finds that the Complainant has made a *prima facie* evidence on that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not refute the Complainant’s contentions.

The consensus of previous UDRP decisions is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating his rights or legitimate interests in the disputed domain name (see e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Julian Barnes v. Old Barn Studios Limited*, WIPO Case No. [D2001-0121](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted providing arguments or evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant’s asserted facts, that no license, permission or authorization in any kind to use the Complainant’s trademarks has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction related to either ERICSSON trademarks or the Disputed Domain Name. Thus, the Panel finds that the Respondent has no rights in the trademarks ERICSSON.

According to the submitted evidence of the Complainant and the Panel’s findings that the Disputed Domain Name resolves to a parked page with PPC links that redirect Internet users to other online locations. In this regard, section 2.9 of the [WIPO Overview 3.0](#) holds 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”.

In this present case, the Panel finds that some of PPC links in question display the Complainant’s trademark ERICSSON, refer to topics relating to the Complainant’s business and redirect Internet users to websites of the Complainant’s competitors. Hence, in light of foregoing viewpoint and similarly to a number of well-established prior UDRP decisions, the Panel upholds that operating PPC parking page using a distinctive trademark and providing connection to goods and/or services competitive with the trademark owner, does not establish *bona fide* offering of goods or services (see, e.g., *Virgin Enterprises Limited v. LINYANXIAO aka lin yanxiao*, WIPO Case No. [D2016-2302](#); *Merck Sharp & Dohme Corp. v. Domain Administrator, PrivacyGuardian.org / George Ring, DN Capital Inc.*, WIPO Case No. [D2017-0302](#); *Archer-Daniels-Midland Company v. Wang De Bing*, WIPO Case No. [D2017-0363](#)).

Regarding paragraph 4(c)(ii) of the Policy, the Panel finds that there is no evidence showing that the Respondent has been commonly known by the Disputed Domain Name. Further, there is also no evidence showing that the Respondent operates any *bona fide* business or organization under the Disputed Domain Name. Therefore, it is not evidenced that the Respondent is identified by “erricson” or that the Respondent has any right in it.

Regarding paragraph 4(c)(iii) of the Policy, the Panel finds that there is no evidence that the Respondent is making any noncommercial or fair use of the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the second element under paragraph 4(a)(ii) of the Policy is established.

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

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The above four circumstances are not exhaustive and bad faith may be found by the Panel alternatively. The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The Panel has considered the Complainant's assertions and evidence with regard to the Respondent's registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant's ERICSSON trademarks have been registered in a variety of jurisdictions around the world and gained certain reputation in the sector of communication technology through the extensive use by the Complainant. The Complainant's ERICSSON trademarks predate the registration of the Disputed Domain Name.

The Disputed Domain Name almost comprises the ERICSSON trademarks in its entirety, the only differences between them are just two letters, particularly, the repetition of the letter “r” and omission of one of the repeated letter “s” of the Complainant's trademarks. Given the extensive use of the ERICSSON trademarks for communication technology products/services by the Complainant, which occurs in numerous countries, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity. Also, in consideration of the use of the Disputed Domain Name (a parked page with some PPC links displaying the Complainant's trademarks, referring to topics relating to the Complainant's business and redirecting Internet users to websites of the Complainant's competitors), the Panel is of the view that the Respondent obviously knew of the Complainant and its ERICSSON trademarks before the registration of the Disputed Domain Name, and the Panel considers such registration is an attempt by the Respondent as to take advantage of the Complainant's goodwill.

On the date of this Decision, the Panel accesses the Disputed Domain Name and finds that it is still resolving to PPC parking page, where some of the PPC links are displaying the Complainant's ERICSSON trademark and redirecting Internet users to websites of the Complainant's competitors. These facts, in the Panel's view, are evidence of bad faith use.

With all these facts and findings, the Panel finds that by using the Disputed Domain Name in this manner, the Respondent has intentionally attempted to attract Internet users to its websites and earn income from such links on a PPC basis by creating a likelihood of confusion with the Complainant's ERICSSON trademarks as to the source, sponsorship, affiliation or endorsement of its website, for commercial gain.

Taking into account all of the above, the Panel finds that the Disputed Domain Name was registered and is being used by the Respondent in bad faith under paragraph 4(b) of the Policy, and the third element under paragraph 4(a) of the Policy is established.

## **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 <ericson.com> be transferred to the Complainant.

*/Pham Nghiem Xuan Bac/*

**Pham Nghiem Xuan Bac**

Sole Panelist

Date: December 12, 2022