

ADMINISTRATIVE PANEL DECISION

Enel S.p.A. v. Domain Sales - (Expired domain caught by auction winner) c/o
Dynadot

Case No. D2023-0668

1. The Parties

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

The Respondent is Domain Sales - (Expired domain caught by auction winner) c/o Dynadot, United States of America ("United States").

2. The Domain Names and Registrar

The disputed domain names <enelxwaywaybox.com>, <enelxwaywaymedia.com>, <enelxwaywaypass.com>, <enelxwaywaypole.com>, and <enelxwaywaypump.com> are registered Dynadot, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 14, 2023. On February 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 15, 2023, 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 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 the Respondent of the Complaint, and the proceedings commenced on February 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 9, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on March 20, 2023. 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 a leading Italian company, which is nationally and internationally active in the energy market.

The Complainant owns numerous trademark registrations for ENEL, ENEL X and ENEL X WAY (Annexes 13 and 14 to the Complaint). According to the Complaint, the Complainant is, among others, the registered owner of the European Union Trade Mark Registrations No. 000756338 (registered on June 25, 1999) for ENEL, No. 017548322 (registered on March 27, 2018) for ENEL X, and No. 018657480 (registered on June 18, 2022) for ENEL X WAY, all of them covering protection for various goods and services.

The Complainant further owns and operates a large number of domain names, one of which is <enelxway.com> (Annex 15 to the Complaint).

All of the disputed domain names were registered on December 21, 2022.

The Respondent is reportedly from the United States.

As evidenced by screenshots provided by the Complainant, all disputed domain names resolve to a third-party website which offers the disputed domain names for sale to an amount of USD 4,995 each.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain names.

The Complainant is of the opinion that the disputed domain names are confusingly similar to its ENEL, ENEL X and ENEL X WAY trademarks.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

Finally, the Complainant is convinced that the Respondent has registered and is using the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in ENEL, ENEL X and ENEL X WAY by virtue of various trademark registrations, including in the United States, where the Respondent is reportedly located at (Annexes 13 and 14 to the Complaint).

The Panel further finds that the disputed domain names are confusingly similar to the Complainant's registered trademarks, as they are fully incorporated by the disputed domain names. As stated at section 1.8 of the [WIPO Overview 3.0](#), where a relevant trademark is recognizable within a disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. Here, the mere addition of terms like "box", "media", "pass", "pole" or "pump" does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain names and the Complainant's ENEL, ENEL X and ENEL X WAY trademarks.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain names.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any argument to demonstrate rights or legitimate interests in the disputed domain names according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's trademarks in a confusingly similar way within the disputed domain names.

The Respondent has not submitted any evidence or arguments demonstrating relevant rights or legitimate interests, nor has it rebutted any of the Complainant's contentions. There is also no evidence in the case record that the Respondent is commonly known by the disputed domain names, nor that there are any circumstances or activities that would establish the Respondent's rights or legitimate interests therein.

Taking into consideration the above mentioned screenshots of the websites associated to the inherently misleading disputed domain names, the Panel does not see any basis for assessing a *bona fide* offering of goods or services by the Respondent.

Hence, the Panel concludes that the Respondent does not have a right or legitimate interest in the disputed domain names according to the Policy, paragraph 4(a)(ii) and 4(c).

C. Registered and Used in Bad Faith

The Panel has no doubt that the Respondent has registered and is using the disputed domain names in bad faith.

It is obvious to the Panel that the Respondent has registered the disputed domain names solely for the purpose of selling or otherwise transferring them for a valuable consideration in excess of usual out-of-pocket costs related to domain names. The un rebutted fact that the inherently misleading disputed domain names are offered for sale to a price of USD 4,995 USD demonstrates the Respondent's opportunistic bad faith to utilize the disputed domain names for illegitimate commercial purposes.

The Panel concludes that the disputed domain names were registered and are being used in bad faith. Accordingly, the Complainant has also satisfied the requirements under 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 names, <enelxwaywaybox.com>, <enelxwaywaymedia.com>, <enelxwaywaypass.com>, <enelxwaywaypole.com>, and <enelxwaywaypump.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: April 3, 2023