

ADMINISTRATIVE PANEL DECISION

Exelon Corporation v. Dave Dice
Case No. D2023-1937

1. The Parties

The Complainant is Exelon Corporation, United States of America (“United States” or “U.S.”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Dave Dice, Canada.

2. The Domain Name and Registrar

The disputed domain name <exelontradelink.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 April 28, 2023. On May 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same May 1, 2023, 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 (Redacted For Privacy, Privacy service provided by Withheld for Privacy ehf et al.) and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 2, 2023 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 May 5, 2023.

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 May 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2023.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on June 6, 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 was established in 2000, and operates in the field of energy generation, sales, transmission, and delivery in the United States and Canada. It employs 18,000 people and had revenue of USD 19 billion in 2022.

The Complainant is the owner of the trademark EXELON, registered in several countries, including in the United States under No. 2409546 as of November 28, 2000.

The disputed domain name was registered on December 16, 2022. It does not currently resolve to an active website, but previously resolved to a website impersonating the Complainant.

5. Parties' Contentions

A. Complainant

The disputed domain name includes the Complainant's trademark in its entirety, combined with the generic term "tradelink". The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not authorized the Respondent to use its trademark or the disputed domain name. The Respondent is not commonly known by the disputed domain name.

The disputed domain name used to resolve to a website featuring the Complainant's logo and including a login page to fool Internet users into entering their personal information. This website was taken down after the Complainant approached the Respondent. Such use fails to constitute *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Complainant's trademark is well-known and has been used well before the disputed domain name was registered. By registering a domain name fully incorporating the Complainant's trademark, the Respondent has demonstrated a knowledge of the Complainant and its trademark.

The disputed domain name is not currently in use, but it previously resolved to a website impersonating the Complainant. Passively holding a domain name can also constitute bad faith registration and use pursuant to the Policy. The disputed domain name can only be taken as intending to cause confusion among Internet users as to the source of the disputed domain name and there is no plausible good faith reason or logic for the Respondent's registration of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which

the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

Furthermore, “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. The nature of such additional term(s) may however bear on assessment of the second and third elements”. See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain name is confusingly similar to the Complainant’s trademark as it includes the Complainant’s trademark in its entirety combined with the term “tradelink”. This does not prevent confusing similarity between the Complainant’s trademark and the disputed domain name.

This means that the disputed domain name is confusingly similar with the Complainant’s trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent’s rights or legitimate interests in a disputed domain name the burden of proof shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant’s trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel’s findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that 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:

“(i) circumstances indicating that [the respondent has] registered or has 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 [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or competitor; or

(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.”

Considering that the Complainant has been using and registering its trademark for many years before the disputed domain name was registered, the Respondent must have been aware of the Complainant and its trademark when registering the disputed domain name. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. This is particularly so with domain names incorporating the mark plus a descriptive term, as in this case. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain name does not resolve to active websites and does not appear to have been put to any active use. See *e.g.*, *Accenture Global Services Limited v. Domain eRegistration*, WIPO Case No. [D2018-1994](#). This, however, does not prevent the finding of bad faith under the doctrine of passive holding. See section 3.3 of [WIPO Overview 3.0](#).

Considering that before the Respondent was contacted by the Complainant, the disputed domain name resolved to a login page including the Complainant’s logo, that the Respondent has not replied to the Complainant’s pre-complaint correspondence, the Respondent has not responded to the complaint, the Respondent has used a privacy service to conceal its identity, there are no obvious good faith or legitimate uses to which the inherently misleading disputed domain name may be put, the Panel considers, on balance, that the disputed domain name has been registered and is being used in bad faith.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

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, <exelontradelink.com> be transferred to the Complainant.

/Tuukka Airaksinen/

Tuukka Airaksinen

Sole Panelist

Date: June 20, 2023