

ADMINISTRATIVE PANEL DECISION

E.ON SE v. Clarus ltd
Case No. D2023-3025

1. The Parties

The Complainant is E.ON SE, Germany, represented by Baker & McKenzie, Germany.

The Respondent is Clarus ltd, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <eontechnology.org> is registered with REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 14, 2023. On July 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 3, 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 August 8, 2023.

On August 3, 2023 the Center informed the parties in English and Russian, that the language of the registration agreement for the disputed domain name is Russian. On August 8, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in English and Russian, and the proceedings commenced on August 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 1, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 8, 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 global energy company offering electrical power and natural gas products and electricity generation and distribution as well as natural gas exploration, production, transportation and distribution. It was created in 2000 and employs over 43,000 people, operates in over 30 countries and serves over 33 million customers. The company is active in the adoption of blockchain technologies in the electricity and carbon markets and energy distribution.

The Complainant is the owner of the European Union trademark EON with registration No. 002361616, registered on December 19, 2002 for services in International Classes 35, 39 and 40 (the “EON trademark”), and of the International trademark E.ON with registration No. 866641, registered on May 12, 2005 for services in International Classes 41 and 42, for multiple jurisdictions, including for the Russian Federation, where the Respondent is located (the “E.ON trademark”).

The Complainant is also the owner of the domain name <eon.de>, which resolves to the Complainant’s official website.

The disputed domain name was registered on May 9, 2016. It resolves to an English-language website that offers blockchain technologies and products. The website includes the header: “EON is flexible Blockchain-technology of the new generation”.

5. Parties’ Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to their EON trademark, because it is a combination of the trademark with the dictionary word “technology”, and is also confusingly similar to the Complainant’s E.ON trademark, because it only omits the full stop sign between “e” and “on”, which cannot be used as part of the second level of the disputed domain name for technical reasons.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has no relevant trademark rights, is not commonly known by the disputed domain name, and is not conducting any legitimate business under it. The Complainant adds that it has not permitted the Respondent to use its EON and E.ON trademarks or business name or to apply for or use any domain name incorporating them. According to the Complainant, the Respondent is not making any legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademarks.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent’s intention in registering the disputed domain name was to confuse and attract, for commercial gain, Internet users to the website at the disputed domain name by creating a likelihood of confusion with the Complainant’s EON and E.ON trademarks. The Complainant maintains that the Respondent repeatedly uses the Complainant’s trademarks on its website and intentionally creates a link to the Complainant’s business by using identical marketing headlines, and concludes that when registering the disputed domain name, the Respondent was well aware that “EON” has been exclusively associated with the Complainant for decades, and intended to benefit from the reputation of the EON and E.ON trademarks by causing a likelihood of confusion for Internet users and free-riding on the goodwill of the Complainant for its own commercial gain.

The Complainant further states that the Respondent registered the disputed domain name also with the purpose to disrupt the business of the Complainant, to which the Respondent is a competitor offering various software programs and financial services - a sector in which the Complainant is active as well. According to the Complainant, its potential customers are confused as to the origin of the goods and services offered on the website at the disputed domain name, and may wrongly consider them being linked to the Complainant's brand and company.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue - Language of the proceeding

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant requests that the language of the proceedings be English. It notes that the website at the disputed domain name is exclusively in English, which shows that the Respondent conducts business in this language and is familiar with it. The Complainant adds that the Respondent's LinkedIn profile contains a detailed description of the Respondent's business purpose that is also in English. The Complainant further submits that it is not able to communicate in Russian and if it were to submit all documents in that language, the proceeding would be delayed and the Complainant would have to incur substantial translation expenses.

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a Response or any objections to the Complainant's request that the proceedings be held in English.

Taking into account all the above, the Panel considers that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Therefore, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the EON and E.ON trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the EON and E.ON trademarks are recognizable within the disputed domain name.

Accordingly, the disputed domain name is confusingly similar to these trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, “technology”), may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel therefore finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The disputed domain name is confusingly similar to the Complainant’s well-known EON and E.ON trademarks, and the Respondent has not provided any plausible explanation why it has chosen to register and use it in relation to a website offering blockchain technology products and services, without disclosing the lack of relationship with the Complainant, who uses such technologies in its business. In the absence of evidence to the contrary, it appears as more likely that the Respondent has registered and used the disputed domain name unfairly targeting the Complainant’s trademarks to confuse and attract Internet users to its own services for commercial gain, which is an activity that does not give rise to rights or legitimate interests of the Respondent in the disputed domain name.

Based on the available record, the Panel therefore finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

As discussed above, the disputed domain name is confusingly similar to the well-known EON and E.ON trademarks and has been linked to a website that offered blockchain technology products and services without disclosing the lack of relationship with the Complainant, who actively adopts and advertises the use of blockchain technologies in the electricity trading and distribution.

Taking the above into account, and in the lack of any contrary allegation by the Respondent, the Panel accepts that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting its EON and E.ON trademarks in an attempt to attract traffic to the disputed domain name by confusing Internet users that they are reaching an online location related to the Complainant and the technologies used in its business, and to offer them its own products and services for commercial gain. This supports a finding of bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel therefore finds the third element of the Policy has been 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 <eontechnology.org> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: September 22, 2023