

## **ADMINISTRATIVE PANEL DECISION**

Cellnex Telecom, S.A. v. cami elmer  
Case No. D2023-4883

### **1. The Parties**

The Complainant is Cellnex Telecom, S.A., Spain, represented by Ubilibet, S.L., Spain.

The Respondent is cami elmer, Norway.

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

The disputed domain name <cellnexgroup.com> is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 23, 2023. On November 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 30, 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 December 1, 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 December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on January 18, 2024. 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 primary infrastructure operator for wireless telecommunications in Europe, it primarily operates under the trademark CELLNEX on a global scale.

In its own right, or via an affiliate, the Complainant owns various trademark registrations containing the mark CELLNEX, inter alia:

- European Union Trademark No. 013523329, registered on April 13, 2015;
- Switzerland Trademark No. 708009, registered on October 9, 2017; or
- Germany Trademark Registration No. 302017005360, registered on March 29, 2017.

The disputed domain name was registered on August 31, 2023; and it does not resolve to an active website.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the CELLNEX trademark is distinctive and wellknown and notes that the disputed domain name contains the CELLNEX trademark in its entirety, simply adding the descriptive term "group". The Complainant submits that it is therefore inconceivable that the Respondent would not have been aware of the Complainant's trademark when registering the disputed domain name, or that there would be any legitimate use for the disputed domain name. Further, the Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the CELLNEX trademark in any manner.

The Complainant notes that the disputed domain name is not actively used; however, it is depriving the Complainant of the opportunity of reflecting its own tradename and trademark CELLNEX, in a configuration fully including that mark, together with a term "group"; this constitutes bad faith under the Policy.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

## **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 of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark CELLNEX.

In the present case the disputed domain name <cellnexgroup.com> is confusingly similar to the CELLNEX mark in which the Complainant has rights since it only adds the descriptive term "group" to the mark. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of a term will not prevent a finding of confusing similarity under the first element of the Policy. [WIPO Overview 3.0](#), section 1.8.

This is the case at present.

Finally, it has also long been held that generic Top-Level-Domains are generally disregarded when evaluating the confusing similarity of a disputed domain name.

Based on the available record, the Panel finds 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 Complainant focuses on the fact that its trademark is well known, descriptive, and registered in various jurisdictions around the world and provides suitable evidence of its reputation, adding that it is inconceivable that the Respondent would not have been aware of this when registering the disputed domain name. The Complainant also notes that the disputed domain name is not being used for a bona fide offering of goods or services - it refers to an inactive website.

The Respondent did not reply to the Complainant's contentions and hence has not rebutted the Complainant's prima facie showing.

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

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

As stated in many decisions rendered under the Policy, both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith; and
- the disputed domain name is being used by the Respondent in bad faith.

(a) Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a distinctive trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Moreover, the disputed domain name contains the term “group” as suffix to the CELLNEX mark, which in fact even strengthens the impression that the Respondent must have known of the Complainant’s mark when registering the disputed domain name, since the term “group” is often used as a designation for a group or group of companies.

The Panel is therefore convinced that it is inconceivable that the Respondent has registered the disputed domain name without knowledge of the Complainant’s distinctive trademark CELLNEX; and this is further supported by the fact that the Complainant has a strong Internet presence and the Complainant has rights in and is using the mark CELLNEX for years and long before the registration of the disputed domain name.

The Panel is therefore convinced that the disputed domain name was registered with full knowledge of the Complainant’s rights and as such in bad faith by the Respondent.

(b) The disputed domain name is also being used in bad faith: although there is no evidence that the disputed domain name is being actively used or resolved to a website with substantive content, previous UDRP panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

This Panel concludes that the non-use of the disputed domain name does not prevent a finding of bad faith, especially putting emphasis on the following:

- the Complainant’s trademark CELLNEX is distinctive and has a strong Internet presence;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name is inherently misleading, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant’s site); and
- there is no conceivable plausible good faith use with regard to the disputed domain name.

The evidence and documents produced and put forward by the Complainant together with the fact that the Respondent has failed to present any evidence of any good faith registration and use with regard to the disputed domain name supports the finding of bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 name <cellnexgroup.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: January 27, 2024