

## **ADMINISTRATIVE PANEL DECISION**

Elecnor, SA v. Hafiz Abdul Majeed  
Case No. D2023-5185

### **1. The Parties**

The Complainant is Elecnor, S.A, Spain, represented by Clarke, Modet y Cia. S.L, Spain.

The Respondent is Hafiz Abdul Majeed, Pakistan.

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

The disputed domain name <elecnorbelcoelectricinc.shop> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 13, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 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 (UNKNOWN) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 15, 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 18, 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 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 12, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on January 29, 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 belongs to the Elecnor Group, a Spanish business group active in the sector of infrastructure, renewable energy, and technology with nearly 60 years activity in currently in more than 50 countries. One of the subsidiaries of the Elecnor group in the United States of America ("US") is Elecnor Belco Electric, Inc.

It results from the Complainant's undisputed allegations that the Complainant is the proprietor of a portfolio of trademark registrations containing or consisting of the term "elecnor" in jurisdictions worldwide. In particular, the Complaint is based on figurative European Union trademark no. 009496746, registered on April 04, 2011, for services in classes 37, 40, and 42, as displayed hereinafter:



The disputed domain name was registered on November 16, 2023, and the language of the Registration Agreement is English.

It results from the Complainant's undisputed allegations that it tried to contact the Respondent on November 21 and 29, 2023 through the account set up by the Registrar without receiving any response.

The disputed domain name resolves to an Index parking page and does not appear to be used.

#### **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:

- (i) the disputed domain name is identical or confusingly similar to its trademarks ELECNOR, as it contains said trademark identically. In addition, the disputed domain name is identical to the trade name of the Complainant Elecnor and its US subsidiary, Elecnor Belco Electric, Inc.;
- (ii) the Complainant has not licensed or otherwise permitted the Respondent to use its trademarks. Nothing in the record, including the Whois information of the disputed domain name, suggests that the Respondent is commonly known by the disputed domain name. The Respondent has not registered any trademarks corresponding to the disputed domain name. The Respondent could not have been unaware of the Complainant and its business when registering the disputed domain name; and
- (iii) the Respondent's registration and use of the disputed domain name constitutes bad faith. According to the Complainant, the following elements underline the Respondent's bad faith: Lack of the Respondent's rights to or legitimate interests in the disputed domain name; the nature of the disputed domain name; the absence of answer to the Complainant's Cease and Desist letter and subsequent reminders; and the Respondent has registered a domain name that is confusingly similar to the Complainant's trademarks and is identical to its US subsidiary Elecnor Belco Electric, Inc.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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 in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### **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 has shown rights in respect of a trademark or service mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.2.1., e.g. European Union trademark registration ELECNOR, no. 009496746 registered on April 04, 2011.

The Panel notes that said mark is a figurative mark showing an orange-coloured graphical element horizontally placed on top of the verbal element ELECNOR. To the extent that design (or figurative/stylized) elements are incapable of representation in domain names, the Panel disregards this figurative element for purposes of assessing identity or confusing similarity under the first element ([WIPO Overview 3.0](#), section 1.10).

In the light of the above, the textual component of the mark ELECNOR is entirely reproduced in the disputed domain name, combined with further verbal elements “belcoelectricinc”. The Panel has no doubts that the mark ELECNOR is recognizable within the disputed domain name. In addition, the further elements do not prevent a finding of confusing similarity between the Complainant's mark and the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy, [WIPO Overview 3.0](#), sections 1.7 and 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

(i) First, no content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name in the sense of paragraphs 4(c)(i) and (iii) of the Policy (see, e.g., *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1531](#)). In addition, the Panel notes that the Respondent originally concealed its identity behind a privacy service, so that this Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant’s registered trademark ELECNOR and its US subsidiary’s (Elecnor Belco Electric, Inc.), by registering a domain name containing that trademark and consisting of said company name.

(ii) Furthermore, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain names in the sense of paragraph 4(c)(ii) of the Policy.

Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the intrinsic distinctiveness of the Complainant's trademark ELECNOR and its US subsidiary's company name Elecnor Belco Electric, Inc., and the composition of the disputed domain name including both signs, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Furthermore, the Panel considers the following circumstances surrounding the registration as suggesting that the Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith:

- (i) the Respondent's failure to respond to this Complaint and the Complainant's communications sent before the proceedings had started;
- (ii) the fact that the Respondent originally hid its identity behind a privacy shield: and
- (iii) the fact that the details disclosed for the Respondent by the Registrar are incomplete and inaccurate, noting the courier's inability to deliver the Center's Written Notice.

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 <elecnorbelcoelectricinc.shop> be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: February 12, 2024