

ADMINISTRATIVE PANEL DECISION

TotalEnergies SE v. Kris Parker

Case No. D2024-0017

1. The Parties

The Complainant is TotalEnergies SE, France, represented by In Concreto, France.

The Respondent is Kris Parker, South Africa.

2. The Domain Name and Registrar

The disputed domain name <totalenergiesproject.com> is registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 4, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 2024, 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 (Whois Privacy Protection Service, Inc.) and contact information in the Complaint.

The Center sent an email communication to the Complainant on January 5, 2024 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 January 9, 2024.

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 January 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 5, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on February 8, 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

It results from the Complainant's undisputed allegations that it is a worldwide company that produces and markets energies on a global scale: oil and biofuels, natural gas and green gases, renewables, and electricity, operating worldwide in more than 130 countries through a large Group, and numerous subsidiaries. Its business includes all aspects of the energy industry from production to marketing, as well as in the development of next generation energy activities (biomass, wind). It is also a major actor of natural gas and a world-leading solar energy operator.

The Complainant is the registered owner of many trademarks worldwide containing or consisting of "TOTAL", such as, European Union trademark registration No. 018308753 TOTAL ENERGIES registered on May 28, 2021 for goods and services in classes: 1, 2, 3, 4, 5, 6, 7, 9, 11, 14, 16, 17, 18, 19, 20, 21, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45; French trademark registration No. 1540708 TOTAL registered on December 5, 1988 in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33 and 34.

In addition, the Complainant uses – amongst others - the following domain names <totalenergies.com> and <totalenergies.group> in order to promote its activities on its main website.

The disputed domain name <totalenergiesproject.com> was registered on August 8, 2023, and resolves to an error webpage.

Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name was used to contact third parties via email, while pretending to be a Complainant's employee, seemingly in order to obtain improper supply of products.

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 disputed domain name is confusingly similar to the Complainant's trademark since it reproduces identically its prior rights. The addition of descriptive term "project" suits perfectly with the Complainant activities since it is specialized in investments and program in various fields throughout the world. In this respect the Complainant runs dedicated webpages for its currents "Project": , "https://totalenergies.com/projects" and "https://ep.totalenergies.com/en/our-oil-gas-projects".

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the disputed domain name is inactive and therefore not used in connection with a bona fide offering of products or services. The Respondent is not commonly known by the disputed domain name. It is also impossible for the Respondent to have acquired any right or have any legitimate interest with regard to the disputed domain name since the Respondent is notably sending fraudulent emails trying to impersonate the Complainant. Indeed, several companies have reported directly to the Complainant, fraudulent emails including the disputed domain name for requests of quotation. In addition, the Complainant's trademark is slavishly reproduced in the signature of the emails.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the reservation of a domain name identical or confusingly similar to a well-known trademark in which the Complainant has rights demonstrates in itself that the Respondent is in bad faith. In addition, the Respondent is using the disputed domain name for fraudulent and malicious intents. Indeed, several companies have reported directly to the Complainant, fraudulent emails including the disputed domain name for requests of quotation. Therefore, there is no doubt that the Respondent has registered a domain name very close to the Complainant's well-known trademarks to the purpose of using it to impersonate the Complainant and try to gain a financial benefit.

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 a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name 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 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.

The entirety of the mark is reproduced within 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](#), section 1.7.

Although the addition of other terms, here "project", 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.

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.

Moreover, the evidence indicates that the disputed domain name is being used for a fraudulent email scheme aimed to impersonate the Complainant. Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

As explained above, it results from the undisputed evidence submitted by the Complainant that the disputed domain name has been used for sending a fraudulent email in the name of an alleged employee of the Complainant, seemingly in order to obtain improper supply of products on the Complainant's account. Such use of the disputed domain name additionally demonstrates that the Respondent not only knew of the Complainant, its business, and marks, but also attempted to pass itself off as the Complainant.

Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <totalenergiesproject.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: February 22, 2024