

## **ADMINISTRATIVE PANEL DECISION**

**ELECNOR, S.A v. Selma Adams**

**Case No. D2024-1685**

### **1. The Parties**

The Complainant is ELECNOR, S.A, Spain, represented by Clarke, Modet y Cía. S.L., Spain.

The Respondent is Selma Adams, United States of America.

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

The disputed domain name <elecnorserviciotecnico.online> 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 22, 2024. On April 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 22, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 24, 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 April 26, 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 May 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 24, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on June 4, 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 Spanish-based corporation with operations in 53 countries involved in the infrastructure, renewable energy and technology sectors. Part of the Complainant's activities also encompass project development, construction and operations relating to infrastructure, engineering, construction and services, as well as energy transmission and generation assets.

The Complainant is the owner of the following, amongst other, trademark registrations:

- European Union trademark registration No. 009496746 for the word and device mark ELECNOR, registered on April 4, 2011, successively renewed, in classes 37, 40 and 42;
- European Union trademark registration No. 010572857 for the word and device mark ELECNOR, registered on June 15, 2012, successively renewed, in classes 6, 9, 11, 16, 19, 35, 36, 38, 41 and 45; and
- Spanish trademark registration No. 1.159.106 for the word and device mark ELECNOR, registered on May 3, 1990, successively renewed, in class 42.

The disputed domain name was registered on March 24, 2024, and presently does not resolve to an active webpage. According to the evidence presented by the Complainant, the webpage available at the disputed domain name displayed what appears to be false content mimicking a Spanish newspaper.

The Complainant sent a Cease-and-Desist letter to the Registrar's abuse email address to be forwarded to the Respondent on March 26, 2024, followed by email communication reminders on April 1, 2024 and April 8, 2024, as well as a Cease-and-Desist letter to the privacy protection service e-mail address on April 1, 2024, followed up by an email communication reminder on April 8, 2024 (Annex IV to the Complaint).

#### **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 well-known ELECNOR trademark with the addition of the generic terms "servicio" and "tecnico" which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark under the first element of the Policy.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- i) the Respondent has never been known by the disputed domain name;
- ii) the Respondent has not acquired trademark rights corresponding to the disputed domain name;
- iii) the Respondent has no relation to the Complainant nor has the Complainant given its permission to use its name and trademarks and/or any other similar signs that cause confusion therewith; and
- iv) the Respondent has not replied the several letters sent prior to the filing of the Complaint in an attempt to solve this issue.

As to the registration and use of the disputed domain name in bad faith, the Complainant asserts that the ELECNOR trademark is well-known worldwide, being it highly unlikely that the Respondent chose the disputed domain name without prior knowledge of the Complainant's activities and trademark. Furthermore, the lack of reply to the Cease-and-Desist letters sent prior to this proceeding and the past use of the disputed domain name in connection with a webpage depicting false content are further indicatives of the Respondent's bad faith conduct.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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 Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

### **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, "servicio" and "tecnico") may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

In that sense, and according to the evidence submitted, the Complainant has made a prime facie case against the Respondent who has no relationship with the Complainant nor has been given permission to use the Complainant’s name and trademark in a confusingly similar domain name.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

Moreover, according to the evidence submitted by the Complainant, the webpage available at the disputed domain name displayed what appears to be false content mimicking a Spanish newspaper. After the Cease-and-Desist letters, the disputed domain name resolved to an inactive webpage. Previous use of the disputed domain name and the apparent passive holding of the disputed domain name do not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to 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.

The Panel notes the well-known status of the Complainant’s ELECNOR trademark and its strong presence over the Internet. Thus, the Panel finds that the selection of the disputed domain name, which is confusingly similar to the Complainant’s trademark and almost identical to the Complainant’s domain name <elecnorserviciotecnico.com> cannot be the result of a mere coincidence, hence it was registered in bad faith.

Before the Complainant’s Cease-and-Desist letters, the disputed domain name resolved to an active website mimicking a Spanish newspaper. Noting the lack of Respondent’s own rights to or legitimate interests in the disputed domain name and absence of any conceivable good faith use, the Panel finds that the Complainant has intentionally attempted to attract, likely for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website. [WIPO Overview 3.0](#), section 3.1.4.

The disputed domain name currently does not resolve to an active website. 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 includes: (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 reputation of the Complainant's trademark, and the composition of the disputed domain name, 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.

Moreover, in these circumstances, bad faith of the Respondent is also supported here by (i) the lack of reply by the Respondent invoking any rights or legitimate interests; (ii) the Respondent's lack of reply to the Cease-and-Desist letters sent prior to this proceeding; and (iii) the Respondent's choice to retain a privacy protection service.

For the reasons above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith. The third element of the Policy has therefore been met.

## **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 <elecnorserviciotecnico.online> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: June 10, 2024