

ADMINISTRATIVE PANEL DECISION

Elkjøp Nordic AS v. IWS LTD

Case No. D2024-2030

1. The Parties

The Complainant is Elkjøp Nordic AS, Norway, represented by Zacco Sweden AB, Sweden.

The Respondent is IWS LTD, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <elgiganten.online> is registered with TLD Registrar Solutions Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 15, 2024. On May 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 21, 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 Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 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 amendment to the Complaint on May 28, 2024.

The Center verified that the Complaint together with the amendment to the 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 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 19, 2024. On the same day, the Respondent sent an email communication to the Center.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on June 27, 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 Norwegian company group founded in 1962, and is an electronics retailer in the Nordic countries, with retail businesses established in Norway, Sweden, Denmark and Finland, and franchise operations in Greenland, Iceland and the Faroe Islands, Denmark. It is part of Currys Group Ltd. (formerly known as DSG Retail Ltd.), a leading multinational consumer electrical and mobile retailer and services company, employing over 25,000 people in six countries. It consists of around 10,400 employees operating under the brands ELKJØP and ELKJØP Phonehouse in Norway, ELGIGANTEN and ELGIGANTEN Phonehouse in Sweden, ELGIGANTEN in Denmark, GIGANTTI in Finland, ELKO on Iceland, ELDING on the Faroe Islands and PISIFFIK on Greenland. In total, the Complainant operates 430 stores and several e-commerce websites. It was established in Sweden as Elgiganten Aktiebolag in 1993 and in Denmark as Elgiganten A/S, also in 1993.

The Complainant's parent company Currys Group Limited owns European Union Trade Mark Registration No. 011148913 ELGIGANTEN registered on March 06, 2013, for goods and services in classes 7, 8, 9, 11, 14, 16, 20, 21, 28, 35, and 37.

In addition, the Complainant uses several domain names that incorporate ELGIGANTEN, such as <elgiganten.com>, <elgiganten.dk> and <elgiganten.se>, among others.

The disputed domain name <elgiganten.online> was registered on March 4, 2024. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a website (the "Website"), allegedly selling products under the Complainant's trademark, where the Respondent falsely claimed to be the Complainant by using the Complainant's graphical layout and copyrighted content on the Website, and by including (a) "©2023 Elgiganten A/S"; (b) the address of Elgiganten A/S; and (c) the Danish company registration no. of Elgiganten A/S, in the Website footer.

Furthermore, on May 2, 2024, the Complainant issued a cease and desist letter to the Respondent, requesting that the disputed domain name be transferred to the Complainant, but the Respondent never replied.

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 identical to the Complainant's ELGIGANTEN trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, no license or authorization of any other kind has been given by the Complainant to the Respondent to use the trademark ELGIGANTEN, and the Complainant has found no information indicating that the Respondent is somehow trading under a name corresponding to the disputed domain name. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services. Instead, the Respondent has intentionally chosen the disputed domain name based on the Complainant's trademark and fame, in order to generate traffic and income through a

website, where the Respondent falsely claimed to be the Complainant. This was done by using the Complainant's graphical layout and copyrighted content on the Website, and by including (a) "©2023 Elgiganten A/S"; (b) the address of Elgiganten A/S; and (c) the Danish company registration no. of Elgiganten A/S, in the Website footer. The Respondent was thus actively attempting to create the false impression that the disputed domain name is connected to, operated, or owned by the Complainant, and under such circumstances, the Complainant argues that it is obvious that potential visitor will risk assuming this to be true.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the fact that the website connected to the disputed domain name referred specifically to the Complainant and its brand, products and services, makes it even more obvious that the Respondent was fully aware of the Complainant and the Complainant's trademark at the time of registration. Accordingly, the Respondent cannot claim to have been using the trademark without being aware of the Complainant's rights to them. The Complainant can only presume that the Respondent's purpose with the Website is/was to intentionally create the false impression that the Website is/was affiliated with or operated by the Complainant, for illicit and fraudulent purposes.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions, however sent an email communication on June 19, 2024, asking to which domain name the notifications and emails were related.

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.

In accordance with section 1.4.1 of [WIPO Overview 3.0](#), as the Complainant is a subsidiary of the parent company Currys Group Limited that is the owner of the ELGIGANTEN trademark registrations mentioned above in the Factual Background, the Panel considers that the Complainant has standing to bring this UDRP proceeding.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.7.

In addition, the Panel finds that design elements of the ELGIGANTEN trademark are incapable of representation in domain names, and therefore these elements are to be disregarded for purposes of assessing identity or confusing similarity under the first element, [WIPO Overview 3.0](#), section 1.10.

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 Panel notes that the nature of the disputed domain name carries a high risk of implied affiliation, since the disputed domain name is identical to the Complainant’s trademark ELGIGANTEN and that the trademark ELGIGANTEN is not a combination of terms that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. Generally speaking, previous UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation (see [WIPO Overview 3.0](#), at section 2.5.1). The Panel shares this view.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: impersonation/passing off, 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.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy). In the present case, the Panel notes that it results from the Complainant’s documented allegations that the disputed domain name resolved to a website, allegedly selling products under the Complainant’s trademark, where the Respondent falsely claimed to be a Complainant’s affiliate by using the Complainant’s graphical layout and copyrighted content on the Website, and by including (a) “©2023 Elgiganten A/S”; (b) the address of Elgiganten A/S; and (c) the Danish company registration no. of Elgiganten A/S, in the Website footer. For the Panel, it is therefore evident that the Respondent positively knew the Complainant’s mark.

Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

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.

On this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the nature of the disputed domain name (identical to the Complainant's mark);
- (ii) the content of the website to which the disputed domain name direct, purportedly offering for sale the products under Complainant's trademark and falsely impersonating the Complainant i.e., a Complainant's affiliate Elgiganten A/S;
- (iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: impersonation/passing off, 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 <elgiganten.online> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: July 11, 2024