

ADMINISTRATIVE PANEL DECISION

Rubis Energie v. Pierre Leroy
Case No. D2024-2203

1. The Parties

The Complainant is Rubis Energie, France, represented by IP Twins, France.

The Respondent is Pierre Leroy, France.

2. The Domain Name and Registrar

The disputed domain name <rubienergie.com> is registered with Yelles AB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2024. On May 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 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 June 10, 2024.

On June 5, 2024, the Center informed the parties in French and English, that the language of the registration agreement for the disputed domain name is French. On June 10, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in French and English, and the proceedings commenced on June 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2024.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on July 15, 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, founded in 1990, is a French independent energy company listed on Euronext Paris (SBF 120). In 2023, its turnover was EUR 6,6 billion. It operates in over 40 countries with 4.700 employees worldwide, most of its revenue as an energy distributor and bitumen producer coming from Africa and the Caribbean.

The Complainant owns several registered trademarks containing the terms RUBIS ENERGIE, including, inter alia, the French Trade Mark No. 3431985, registered on May 31, 2006 (hereinafter referred to as “the Mark”).

It also owns several domain names, including the <rubisenergie.com> domain name, registered on June 9, 2006 and the <rubisenergie.fr> domain name, registered on June 12, 2006.

The disputed domain name was registered on May 20, 2024. The Complainant provided evidence that it resolved to the Complainant’s official website. At the time of this decision, the disputed domain name still points to the Complainant’s official 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:

- (i) the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety. The deletion of the letter “s” in the disputed domain name does not serve to distinguish the disputed domain name from the Mark.
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name, by which he is not commonly known. Furthermore, the Complainant contends that it never licensed the Respondent to use the Mark in any manner or consented to such use, and that the Respondent never had any business connection or affiliation with the Complainant.
- (iii) The Respondent knew of the Mark when registering the disputed domain name and is using it in bad faith by resolving to the Complainant’s website and configuring mail exchange (“MX”) servers.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects

A. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is French. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the findings that the Registrar is located in Sweden and that its instructions to configure a server are in English, thus inferring that the Respondent who did so must read and understand English.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

In addition, pursuant to paragraph 10(c) of the Rules, the Panel must ensure that the administrative proceeding takes place with due expedition.

Having considered all the matters above, the Panel, who is conversant in both English and French, considering the time and cost for the Complainant of translating and submitting the Complaint in French, determines pursuant to paragraph 11(a) of the Rules that the language of the proceeding shall be English.

B. Failure to respond

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

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 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.

Save for one letter "s", the entirety of the Mark is reproduced within the disputed domain name. Although the deletion of the final letter "s" of the word "rubis" may bear on the assessment of the second and third elements, the Panel finds the deletion of the letter "s" 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.

Accordingly, the disputed domain name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well established that a generic Top-Level-Domain ("gTLD") does not generally affect the assessment of a domain name for the purpose of determining identity or confusing similarity. [WIPO Overview 3.0](#), section 1.11.1.

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.

The Panel finds that the composition of the disputed domain name, in effect typosquatting the Mark, (deleting the final letter "s" of the word "rubis"), points to an intention to confuse Internet users seeking for or expecting the Complainant.

Further, in the present case, the disputed domain name redirects to the Complainant's website. The Panel finds that the disputed domain name is confusingly similar to the Mark and is targeting Internet users seeking the Complainant's services, with a risk of phishing activity, since MX servers were configured on the disputed domain name. Such circumstances cannot be considered as a bona fide offering of goods or services.

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.

In the present case, the Panel notes that the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name which is confusingly similar to the Mark.

Given the redirection of the disputed domain name to the Complainant's website, the Panel finds it impossible to believe that the Respondent, who is apparently located in France (where the Complainant is headquartered), was unaware of the Mark prior to its registration of the disputed domain name.

In this case, the Respondent, whose primary intention was likely to deceive Internet users and unfairly capitalize on the Mark, has furthermore used the disputed domain name to configure MX servers, thus enabling the Respondent to generate e-mail addresses, this fact creating an actual and ongoing threat to the Complainant.

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 <rubiennergie.com> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: July 18, 2024