

ADMINISTRATIVE PANEL DECISION

ELECNOR S.A. v. ahmed nolan
Case No. D2024-2327

1. The Parties

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

The Respondent is ahmed nolan, Germany.

2. The Domain Name and Registrar

The Disputed Domain Name <elecnors.cam> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2024. On June 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 11, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 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 14, 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 June 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 15, 2024.

The Center appointed Christos A. Theodoulou as the sole panelist in this matter on July 22, 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, Elecnor, S.A. is the parent company of a group comprised of nearly 80 companies located in Spain and in more than 53 other countries, active in project development, construction and operation through two major mutually enriching business areas. These are the infrastructure business, which carries out engineering, construction and services projects, and the concessions business, which promotes, seeks financing for and manages energy transmission and generation assets. Its strong international outlook has helped it sustain a continuous expansion process which has unlocked the doors to new markets around the world, namely America, Africa, Australia and the Middle East. With nearly 60 years of continuous growth and a presence in more than 50 countries, the Complainant is known in the infrastructure, renewable energy and technology sectors.

According to the Complainant, it is an organization made up of 22,000 workers. In Spain, both the Complainant and its domestic subsidiaries operate directly, while abroad, the Complainant does so through local subsidiaries or export projects undertaken by the parent company itself.

The Complainant claims to be the owner of a large number of trademarks named ELECNOR around the world, registered in, among other countries: Kingdom of Spain, European Union, Republic of Angola,, Republic of Panama, Oriental Republic of Uruguay,, United Mexican States , Canada, Australia, Argentina, Honduras, Brazil, Dominican Republic, South Africa, Bolivarian Republic of Venezuela, El Salvador, People's Democratic Republic of Algeria, Republic of Ghana, Kingdom of Morocco, United States of America, Ukraine, United Kingdom.

The Complainant's trademarks include:

- (i) Spanish Trademark Registration No. 2822835, ELECNOR & logo, registered on August 29, 1986;
- (ii) Spanish Trademark Registration No. 1159106, ELECNOR & logo, registered on August 29, 1986;
- (iii) United Kingdom Trademark Registration No. 10572857, ELECNOR & logo, registered on June 15,2012
- (iv) European Union Trademark Registration No. 9496746, ELECNOR & logo, registered on April 4, 2011;
- (v) European Union Trademark Registration No. 10572857, ELECNOR & logo, registered on June 15, 2012;
- (vi) European Union Trademark Registration No. 10572683, GRUPO ELECNOR & logo, registered on June 15, 2012.

Furthermore, the Complainant also owns and uses domain names under a number of country code top level domains ("ccTLDs"), including <elecnor.uy>; <elecnor.mx>; <elecnor.me>; <elecnor.ga>; <elecnor.eu>; <elecnor.de>; <elecnor.ec>; <elecnor.cl>; <elecnor.es>, also owns <elecnor.com>, etc. The Complainant also owns an extensive portfolio of domains incorporating the trademark ELECNOR.

As it can be inferred from the case record, the Disputed Domain Name was registered on May 27, 2024, by the Respondent. The Disputed Domain Name was used to impersonate Complainant in an email fraud scheme.

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 or confusingly similar to trademarks in which the Complainant has rights, that the Respondent lacks any rights or legitimate interests in respect of the Disputed Domain Name and that the Respondent must have known of the Complainant's trademark and used the mark in the Disputed Domain Name in bad faith.

The Complainant contends that the Respondent has selected the Disputed Domain Name with the intention to confuse, that the addition of an 's' does not avoid confusion, and that the extension (".cam") is also very similar to (".com"). The Complainant also states that the choice of the name that constitutes the Disputed Domain Name as well as the extension of the same, was done to generate confusion and assimilation and in order to subsequently commit fraud.

Moreover, the Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name, as the Respondent has never been known by the Disputed Domain Name; that the Respondent has not acquired trademark rights on the corresponding Disputed Domain Name and has no relation to the Complainant; that the Complainant has not given any permission to the Respondent to use its name and trademarks and/or other word that leads to confusion.

The Complainant further asserts that the Respondent has been acting contrary to a fair market practice. The Respondent has registered the Disputed Domain Name with knowledge of the use of the Complainant's trademark, as it can be seen and verified by the email sent by the Respondent (not only used in the Disputed Domain Name but also in the content of the email) which gives appearance of a false legitimacy.

Furthermore, the Complainant alleges that the Respondent has sent an email to the Complainant's supplier requesting payment, supplanting the identity of the Complainant, impersonated Complainant's employees and falsified the Complainant's documents. It was also stated by the Complainant, that there was a possible phishing action. Apart from the confusion with the identity of the trademark and its induction to an apparent legitimacy with the Complainant, through the emails that the Respondent sent, personal data could be obtained. It is stated that this could imply a serious damage to the Complainant and to the reputation of its trademark.

The Complainant contends that the Respondent does not make any legitimate or fair use of the Disputed Domain Name and therefore, cannot be protected by a legitimate right.

Lastly, according to the Complainant, the use of the trademark ELECNOR in the Disputed Domain Name to trade-off the goodwill and reputation of Complainant's trademark or otherwise create a false association, sponsorship or endorsement with or of the Complainant, is in the present case supporting the finding of bad faith. Also, use of Complainant's trademark, logos, corporate name and the names of Complainant's employees, and a fraudulent email scam evidence that Respondent was obviously aware of the Complainant and has deliberately and intentionally caused damage to the image of brand; in addition to the fraudulent payment scam involving economic losses.

B. Respondent

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

6. Discussion and Findings

The Panel shall now proceed to the analysis of the evidence in this case, and shall decide if the Complainant has satisfied the three elements 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has presented evidence to demonstrate that it owns registered trademark rights in ELEC NOR. Therefore, 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 almost identical and confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The mere fact that Respondent has added an "s" at the end of the Complainant's trademark does not prevent a finding of confusing similarity. The trademark of the Complainant remains recognizable in the Disputed Domain Name, and, in the circumstances of this case, this is by itself sufficient to establish the criterion of confusing similarity for purposes of the Policy, as many previous UDRP panels have found. [WIPO Overview 3.0](#), section 1.8.

In view of the above, the Panel finds that the Complainant has discharged its burden of proof on this point and holds that the Disputed Domain Name is almost identical and confusingly similar to the Complainant's trademark ELEC NOR for the purposes of the Policy.

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 that 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.

In particular, the Panel finds that the Respondent has not used the Disputed Domain Name with a bona fide offering; that the Respondent is not commonly known by the Disputed Domain Name; and that the Respondent has made legitimate noncommercial or fair use of the Disputed Domain Name.

Moreover, based on the case record, the Respondent does not seem to have any trademark registrations including the term "ELEC NOR". Additionally, it is to be noted that the Respondent did not present evidence of any license or permission by the Complainant, with whom there seems to exist no relationship whatsoever.

As a conclusion on this point, the Panel finds the second element of the Policy has been established and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has thus satisfied paragraph 4(a)(ii) of the Policy.

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.

In the present case, the Panel notes that the Respondent's Disputed Domain Name is registered has only been registered since May 27, 2024, whereas the Complainant's trademarks are registered since 1986. From the case record at hand, the Panel finds that the Respondent, when registering the Disputed Domain Name was aware of the Complainant's trademarks. Therefore, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (See *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#), *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#), *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#)).

The Panel finds that the Respondent had a pattern of bad faith conduct (sent emails to the Complainant's supplier, sent false documents, impersonated the Complainant's employees, and attempted possible phishing action), disrupted the business of the Complainant and intentionally attempted to create confusion with the Complainant's trademark.

Panels have held that the use of a domain name for illegal activity here, claimed phishing, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

As a consequence of the above, the Panel finds that the Respondent registered and is using the Disputed Domain Name in bad faith, thus satisfying 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 <elecnors.cam> be transferred to the Complainant.

/Christos A. Theodoulou/

Christos A. Theodoulou

Sole Panelist

Date: August 5, 2024