

ADMINISTRATIVE PANEL DECISION

Charu Gandhi Pominkiewicz v. vinka mangal, elicyon design studio
Case No. D2024-2641

1. The Parties

Complainant is Charu Gandhi Pominkiewicz, United Kingdom (“UK”), represented by Murgitroyd & Company, UK.

Respondent is vinka mangal, elicyon design studio, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2024. On July 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 1, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on July 3, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on July 4, 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 Respondent of the Complaint, and the proceedings commenced on July 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 28, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 29, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on August 5, 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

Complainant is a resident of Great Britain and the director of Elicyon Limited, a private limited company organized under the laws of England & Wales that runs a renowned luxury interior design studio in London.

Complainant has provided evidence that it is the registered owner of various trademarks relating to its ELICYON brand, including, but not limited to, the following which predates the registration of the disputed domain name:

- word mark ELICYON, International Registration (World Intellectual Property Organization), registration number: 1778181, registration date: October 26, 2023, status: active; and
- word mark ELICYON, TAILORED ENVIRONMENTS, United Kingdom national trademark, registration number: UK00915134703, registration date: October 13, 2016, status: active.

Moreover, Complainant has demonstrated to own the domain name <elycion.com> which resolves to Complainant's main website at "www.elycion.com", promoting Complainant's projects and related services in the luxury interior design business.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in India. The disputed domain name was registered on December 29, 2023, and resolves to a website at "www.elisyon.com" which advertises an interior design studio and related services in India, thereby prominently displaying Complainant's ELICYON trademark in a stylized manner without any authorization to do so.

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

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, Complainant contends that it has been involved in a number of high profile design and architecture projects in hotels, hospitality venues and private residences across the world, and that it has been recognized as one of the UK's top 50 interior designers in 2023/24 by a leading independent lifestyle publication.

Complainant submits that the disputed domain name is confusingly similar to Complainant's ELICYON trademark, as it consists of a nearly identical word, the only difference being the inclusion of the letter "s" to replace the letter "c", which still leads to a pronunciation in an identical manner. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has no business or other relationship with Respondent, and Complainant has not consented to the registration of the disputed domain name or its use by Respondent, (2) Respondent appears to have acquired the disputed domain name simply on the basis that Complainant's domain name <elycion.com> was unavailable, which is evidenced by the fact that Respondent is still trading under a trade name identical to Complainant, namely "Elicyon", and (3) the disputed domain name is currently active for commercial purposes and has already led to commercial gain for Respondent, which, in turn, may lead to substantial commercial loss for Complainant if so continued. Finally, Complainant argues that Respondent has

registered and is using the disputed domain name in bad faith since (1) it is dubious that the disputed domain name was registered, or could be used, in good faith, without Respondent having been aware of Complainant and its ELICYON trademark, (2) despite the subtle differences between the disputed domain name and Complainant's ELICYON trademark, it remains that the use of the disputed domain name amounts to a misrepresentation to consumers of an association with Complainant and its goodwill in such trademark, (3) the disputed domain name has been registered for the purpose of creating an unauthorized association with Complainant for the commercial gain of Respondent, and finally (4) the disputed domain name resolves to a website which uses the ELICYON sign which is identical to Complainant's trademark.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

First, 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 Complainant's ELICYON 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.

Complainant has shown rights in respect of its ELICYON trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Also, the entirety of such trademark is reproduced within the disputed domain name, simply in a typo-squatted manner by substituting the letter "c" for the letter "s". Numerous UDRP panels, however, have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark (see [WIPO Overview 3.0](#), section 1.7). Moreover, the fact that the disputed domain name obviously includes an intentional misspelling of Complainant's ELICYON trademark is not at all inconsistent with such finding of confusing similarity. Typo-squatted domain names are, on the contrary, intended to be confusing so that Internet users, who unwittingly make common type errors, will enter the typo-squatted domain name instead of the correct spelled trademark (see e.g., *National Association of Professional Baseball Leagues, Inc, d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)). Accordingly, UDRP panels agree that domain names which consist e.g. of an intentional misspelling of a trademark are considered to be confusingly similar under the UDRP (see [WIPO Overview 3.0](#), section 1.9).

The Panel, therefore, finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Second, Paragraph 4(c) of the Policy provides a list of circumstances in which 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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, Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its ELICYON trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent’s name somehow corresponds with the disputed domain name, and Respondent does not appear to have any trademark rights associated with e.g. the terms “elicyon” or “elisyon” on its own. Finally, the disputed domain name resolves to a website at “www.elisyon.com” which advertises an interior design studio in India and related services which are at the core of Complainant’s business, thereby prominently displaying Complainant’s ELICYON trademark in a stylized manner without any authorization to do so. The latter circumstance also proves that the disputed domain name is a deliberate misspelling of Complainant’s ELICYON trademark. Therefore, it appears most likely that Respondent has deliberately chosen a registrant organization name and designed the website resolving from the disputed domain name in a way to falsely suggest an affiliation with Complainant. Such use of the disputed domain name, thus, neither qualifies as bona fide nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy.

The Panel, therefore, finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Finally, 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 particular, the Panel recognizes that the disputed domain name is an obvious and intentional typo-squatted version of Complainant’s undisputedly well-reputed ELICYON trademark by substituting the letter “c” for the letter “s” which, in turn, is a clear indication that Respondent registered the disputed domain name in full knowledge of said trademark. This is even more true when also taking into account that the disputed domain name resolves to a website at “www.elisyon.com” which advertises an interior design studio and related services in India, thereby prominently displaying Complainant’s ELICYON trademark in a stylized manner without any authorization to do so, thus directly targeting Complainant and its core business on the luxury interior design market. Finally, there is no indication whatsoever in the available record, that Respondent made use of the disputed domain name ever since that would not have been to somehow unfairly ride on the reputation connected to Complainant’s well-reputed ELICYON trademark, thus constituting registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b) of the Policy.

The Panel, therefore, finds that Complainant has established the third element of the Policy, too.

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, <elisyon.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: August 8, 2024