

ADMINISTRATIVE PANEL DECISION

TotalEnergies SE v. Craig Nikolaus, Medhurst Romaguera Group and Kevin Fish

Case No. D2024-2966

1. The Parties

The Complainant is TotalEnergies SE, France, represented by In Concreto, France.

The Respondents are Craig Nikolaus, Medhurst Romaguera Group, United States of America and Kevin Fish, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain names <totalenergies-uae.com>, <uae-totalenergies.com> are registered with Wild West Domains, LLC and PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 22, 2024, against two disputed domain names. On July 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 22, 2024, and July 23, 2024, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Medhurst Romaguera Group and Domain Admin) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 24, 2024, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 29, 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 August 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on September 17, 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 French based worldwide energy company that has traded for many decades and produces and markets energies on a global scale, including oil, biofuels, natural gas, green gases, renewables, and electricity. It operates in more than 130 countries through a large group with numerous subsidiaries including in the United States of America and in China. It is the second largest global Liquefied Natural Gas (LNG) producer in the world. The Complainant has been present in the United Arab Emirates for more than 80 years mainly in natural gas exploration and production and currently the Complainant is involved in seven oil & gas joint ventures there which produce 270.000 barrels of oil equivalent per day.

The Complainant owns numerous trade mark registrations that incorporate its TOTAL or TOTAL ENERGIES marks including European Union trade mark 018308753 for TOTAL ENERGIES registered on May 28, 2021. The Complainant or its subsidiaries own various domain names that incorporate its marks including in particular <totalenergies.com> registered on March 8, 2014, and <totalenergies.ae> which is used to promote the Complainant's activities and services in the UAE.

The disputed domain name <totalenergies-uae.com> was registered on May 6, 2024, ostensibly by the Medhurst Romaguera Group and resolves to a blank website with the message "*Welcome Your website is now on-line*". Upon registrar verification the registrar confirmed that this disputed domain name is owned by Craig Nikolaus.

The disputed domain name <uae-totalenergies.com> was registered on May 20, 2024, through a privacy service and resolves to the Registrar's placekeeper site. Upon registrar verification the registrar confirmed that this disputed domain name is owned by Kevin Fish.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Panel approves the consolidation of the Complaint, for the 2 disputed domain names on the basis that they are under common control. The Complainant considers that the two disputed domains are managed by the same person and has noted that both include the TOTAL ENERGIES mark, both include the country element "uae" at the beginning or at the end, they were registered within the same month, both resolve to inactive websites and both have been used for sending fraudulent emails in the name of TotalEnergies. The Complainant also notes that the mailing addresses for correspondence sent from each email address is the same. In view of the similar structure of the disputed domain names (inclusion of "uae"; same extension (".com"); similar registration dates, the same construction including "totalenergies" + "uae", the same country of reservation (being the United States of America) and the same false name and mailing addresses in Abu Dhabi used in the fraudulent emails, the Complainant submits that the same person is the originator of both of the disputed domain names and they are therefore under common control. The Complainant submits that accordingly it would be most efficacious in terms of time and costs, for the two complaints to be consolidated.

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of each of the disputed domain names.

Notably, the Complainant contends that it owns registered trade mark rights as set out above and that the TOTALENERGIES trade mark is wholly incorporated into both of the disputed domain names which are each

therefore confusingly similar to it. The Complainant submits that the addition of the acronym “uae” does not distinguish each of the disputed domain names and is instead likely to be perceived as indicating a localised version of the Complainant’s domain names and websites and therefore increases the level of confusing similarity.

The Complainant submits that the Respondent(s) have absolutely no rights to either of the disputed domain names, nor any legitimate interests in respect of them. It says that the Complainant has not licensed the Respondent to use its trade marks, company names or domain names and neither has it allowed the Respondent to reserve or use a domain name incorporating its rights.

The Complainant provides evidence that the IP addresses linked to the disputed domain names have been used to send fraudulent emails in which the Complainant’s logo and information are reproduced. The Complainant says that this is an obvious attempt to usurp the Complainant’s identity. As a consequence, says the Complainant, the Respondent cannot possibly have acquired a right or have a legitimate interest in the disputed domain names. It says further that the Respondent is not using either of the disputed domain names in connection with a bona fide offering of goods and services and neither has it made serious preparations for that purpose. It also asserts that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain names. In view of the above, the Complainant submits that it has successfully demonstrated that the Respondent has no rights nor legitimate interest in respect of the disputed domain names.

As far as registration and use in bad faith is concerned, the Complainant notes that its business is particularly active in the United Arab Emirates, with active facilities and websites and a media presence. Accordingly, it suggests that it is very unlikely that the Respondent chose the disputed domain names by coincidence and that it is apparent from the fraudulent emails sent using email addresses based on each of the disputed domain names that the Respondent(s) has used them to masquerade as if they are representatives of the Complainant, including by reproducing a variant of the Complainant’s logo and common seal on emails or in procurement contracts. The Complainant submits and has provided evidence that the Respondent(s) have used these email addresses to have potential third parties complete procurement questionnaires or to provide contract information which is detailed and confidential and in some cases includes banking information that this has been done for fraudulent and malicious purposes. This, says the Complainant is evidence of use of the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

The Complainant has requested the consolidation of the 2 disputed domain names into a single Complaint on the basis that they are under common control.

As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 4.11., previous panels have looked at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency also underpins the Panel’s consideration of such a consolidation scenario.

Overall, the Panel finds that it is most likely that the disputed domain names are under the common control of the same person or entity. The reasons for this finding include: the apparent similarities in the form of each disputed domain name considering that both include the TOTALENERGIES mark and the country abbreviation “uae;” both were registered within the same month and importantly that both have been used for sending fraudulent emails in the name of TotalEnergies with the same mailing address. Accordingly, it would be most efficacious in terms of time and costs, for the two complaints to be consolidated. None of the

listed Respondents have objected to consolidation and it is clearly the most efficacious and efficient way forward. The Panel therefore considers that consolidation is most appropriate and so orders.

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's TOTAL or TOTALENERGIES marks are reproduced within each of the disputed domain names. Accordingly, each of the disputed domain names is confusingly similar to the Complainant's marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, such as here "uae" and a hyphen, 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 each of the disputed domain names and the Complainant's marks 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.

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.

Panels have held that the use of a domain name for illegal activity, here claimed as using each of the disputed domain names for fraudulent email addresses in an attempt to impersonate the Complainant so as to be able to phish for confidential corporate information, including banking details (and as described further under part C below), apparently for fraudulent purposes 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.

In the present case, the Panel notes that the disputed domain names were registered in May 2024, many years after the registration of the Complainant's TOTAL and TOTAL ENERGIES trade marks. Considering the degree of renown attaching to these marks internationally, including in the United Arab Emirates and in the United States of America and that there is evidence on the record that each of the disputed domain names have been used as the basis for fraudulent email addresses in an apparent attempt to phish for third party information for fraudulent purposes, then it is apparent that the Respondent(s) were most likely aware of the Complainant's marks and business at the date of registration of each disputed domain names.

Panels have held that the use of a domain name for illegal activity, here claimed as using each of the disputed domain names for fraudulent email addresses in an attempt to impersonate the Complainant so as to be able to phish for confidential corporate information, including banking details, apparently for fraudulent purposes, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Panel notes that the emails and documents sent to third parties from these email addresses were framed as if they were from the Complainant's representative and included reproductions of a variant of the Complainant's logo and common seal. The Complainant has provided evidence that the Respondent(s) have used these email addresses to have potential third parties complete procurement questionnaires or to provide contract information which is detailed and confidential and in some cases includes banking information and it appears that this has been done for fraudulent purposes. Under the Policy this conduct amounts to use in bad faith of each of the disputed domain names.

Each of the disputed domain names resolves to a non-active website or to a blank page. Panels have found that the non-use of a domain name (including a blank page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes that considering the distinctiveness and very considerable degree of international reputation attaching to the Complainant's marks and the composition of each of the disputed domain names to include the country abbreviation "UAE", which is suggestive of a localised operation of the Complainant, even had there not been evidence of illegal activity in relation to each of the disputed domain name in this case, the Panel would still have found that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of 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 names <totalenergies-uae.com> and <uae-totalenergies.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: September 25, 2024