

ADMINISTRATIVE PANEL DECISION

Elkjøp Nordic AS v. Joakim And
Case No. D2024-3849

1. The Parties

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

Respondent is Joakim And, Denmark.

2. The Domain Name and Registrar

The disputed domain name <elgiganten.site> (the “Domain Name”) is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2024. On September 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to Complainant on September 23, 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 September 24, 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 October 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 23, 2024.

The Center appointed Marina Perraki as the sole panelist in this matter on October 30, 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 part of a Norwegian company group founded in 1962, which, per Complaint, is the largest 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. Complainant's group is a multinational consumer electrical and mobile retailer and services company, employing over 25,000 people in six countries. It was established in Denmark and Sweden in 1993, as Elgiganten A/S and Elgiganten Aktiebolag, respectively. Complainant currently consists of around 10,400 colleagues operating, inter alia, under the brands ELGIGANTEN and ELGIGANTEN PHONEHOUSE in Sweden and ELGIGANTEN in Denmark. Complainant operates 430 stores, several e-commerce websites and has a turnover of more than NOK 45 billion.

Complainant's group owns trademark registrations for ELGIGANTEN, including the European Union trademark registration No. 005908678, ELGIGANTEN (word), filed on May 15, 2007 and registered on May 30, 2008, for goods and services in international classes 7, 8, 9, 11, 21, 35, 36, and 37, as well as the European Union trademark registration No. 011148913, ELGIGANTEN (figurative), filed on August 29, 2012 and registered on March 6, 2013, for goods and services in international classes 7, 8, 9, 11, 14, 16, 20, 21, 28, 35, and 37.

Complainant also owns domain name registrations for, inter alia, <elgiganten.com>, <elgiganten.dk> and <elgiganten.se>.

The Domain Name was registered on May 29, 2024, and at the time of filing of the Complaint, resolved to a website ("the Website") which prominently displayed Complainant's trademarks and mimicked the website of Complainant. On the Website, Respondent used phrases such as "©2023 Elgiganten A/S" and indicated the Danish company registration number of Elgiganten A/S, one of Complainant's wholly-owned subsidiaries. Furthermore, the layout of the Website was almost identical to Complainant's website, with an identical layout, icons and images which are all copyrighted material of Complainant. Some of the images also incorporate Complainant's logo.

On September 12, 2024, Complainant sent a cease-and-desist letter to Respondent, to which Respondent did not reply.

The Domain Name currently leads to an inactive website.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

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

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 Complainant's trademark and the 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 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 Domain Name. Accordingly, the Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The generic Top-Level Domain ("gTLD") ".site" is disregarded in the case, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#), see also [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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the 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 Domain Name such as those enumerated in the Policy or otherwise.

Prior to the notice of the dispute, Respondent did not demonstrate any use of the Domain Name or a trademark corresponding to the Domain Name in connection with a bona fide offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name resolved to the Website, which featured Complainant's trademarks and suggested falsely that it was that of Complainant or an affiliated entity or an authorized partner of Complainant.

Per Complaint, Respondent is not an affiliated entity or an authorised distributor or reseller of Complainant and no agreement, express or otherwise, exists allowing the use of Complainant's trademarks on the Website and the use of the Domain Name by Respondent.

Panels have held that the use of a domain name for illegitimate activity, here, claimed 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.

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.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. Because the ELGIGANTEN mark had been used and registered at the time of the Domain Name registration by Respondent, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)). This also takes into account the content of the Website which mimicked that of Complainant.

As regards bad faith use of the Domain Name, Complainant has demonstrated that the Domain Name was used to resolve to the Website, which mimicked that of Complainant and prominently displayed Complainant's registered trademarks, thereby giving the false impression that it was operated by Complainant, or a company affiliated to Complainant or an authorised partner of Complainant. The Domain Name was therefore used to intentionally create a likelihood of confusion with Complainant's trademark and business as to the source, sponsorship, affiliation, or endorsement of the website it resolves to. This can be used in support of bad faith registration and use (*Booking.com BV v. Chen Guo Long*, WIPO Case No. [D2017-0311](#); *Ebel International Limited v. Alan Brashear*, WIPO Case No. [D2017-0001](#); *Walgreen Co. v. Muhammad Azeem / Wang Zheng, Nicenic International Group Co., Limited*, WIPO Case No. [D2016-1607](#); *Oculus VR, LLC v. Sean Lin*, WIPO Case No. [DCO2016-0034](#); and [WIPO Overview 3.0](#), section 3.1.4).

Panels have held that the use of a domain name for illegitimate activity, here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

Furthermore, Panels have found that the non-use of a domain 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 the distinctiveness or reputation of Complainant's trademark, and the composition of the Domain Name, fully incorporating Complainant's trademark and finds that in the circumstances of this case the current passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds that 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 Domain Name <elgiganten.site> be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: November 6, 2024