

ADMINISTRATIVE PANEL DECISION

Wendel-Participations SE v. Mustafa Sonmez and Alain Barbier
Case No. D2024-4084

1. The Parties

The Complainant is Wendel-Participations SE, France, represented by Dreyfus & Associés, France.

The Respondents are Mustafa Sonmez, France, and Alain Barbier, France.

2. The Domain Names and Registrars

The disputed domain name <eufor-gestion.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com.

The disputed domain name <eufor-gestions.com> is registered with GoDaddy.com, LLC (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 4, 2024. On October 7, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On October 7 and 8, 2024, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Redacted for Privacy, Privacy Protect LLC and Domains by Proxy LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 8, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that both disputed domain names are under common control. The Complainant filed an amended Complaint on October 10, 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 Respondents of the Complaint, and the proceedings commenced on October 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 4, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on November 5, 2024.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on November 11, 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.

On November 29, 2024, the Panel issued Procedural Order No. 1, requiring the Complainant to provide additional information on its unregistered trade mark rights, within five days and granting the Respondents five days to provide comments, starting from the date the Complainant sent the evidence requested. On December 4, 2024, the Complainant answered Procedural Order No. 1, submitting additional information as requested. The Respondents did not submit any comments.

4. Factual Background

The Complainant is a group of companies specialized in the provision of investment management services including portfolio management, financial planning, advisory, investment banking, private equity, real estate, brokerage, and research services for corporate, institutional investors, and individuals.

One of the Complainant's wholly-owned subsidiaries operates under the company name "Eufor" which was registered on June 27, 2005, with the French companies' registry.

The Complainant owns the Benelux trade mark EUFOR with registration number 1508097 filed on July 19, 2024, and registered on July 22, 2024.

The disputed domain name <eufor-gestion.com> was registered on July 5, 2024, and does not point to any active website.

The disputed domain name <eufor-gestions.com> was registered on July 11, 2024, and points to a registrar parking page which includes Pay-Per-Click ("PPC") links relating to the business sector of the Complainant.

On July 15, 2024, the Complainant was alerted to the existence of the disputed domain names by the French Prudential Supervision and Resolution Authority (Autorité de Contrôle Prudentiel et de Résolution, "ACPR") and the use of the disputed domain names to carry out fraudulent email activities. Both disputed domain names have been placed on the blacklist of Assurance Banque Epargne Info Service which is the joint platform of the ACPR as well as the Banque de France and the Autorité des Marchés Financiers.

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 names. As discussed below, the Complainant treats the Respondents in the singular (i.e., "Respondent") under the belief they are the same entity or mere alter egos of each other, and that the disputed domain names are under common control.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the EUFOR trade mark in which the Complainant has rights as the disputed domain names incorporate the entire EUFOR trade mark with the mere addition of a hyphen "-" and the terms "gestion" or "gestions".

The Complainant asserts that it has never given any authorization or permission to the Respondent to register or to use its trade mark EUFOR. The Complainant contends that the Respondent is not commonly known by the disputed domain names. The Complainant asserts that in light of the fraudulent activities carried out by the Respondent through the disputed domain names, the Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a bona fide offering of goods or services.

The Complainant contends that the Respondent has registered and used the disputed domain names with full knowledge of the Complainant and its trade mark. The Complainant asserts that the facts of the case establish that the Respondent's intent in registering the disputed domain names was to unfairly capitalize on the Complainant's nascent EUFOR trade mark rights. In terms of use of the disputed domain names in bad faith, the Complainant points to the deceptive use of the disputed domain names to conclude that they were registered and are used to create a likelihood of confusion with the Complainant and its trade mark in an effort to defraud unsuspecting victims.

B. Respondents

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

6. Discussion and Findings

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain names registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that:

- The naming pattern in both disputed domain names is highly similar in that it includes the entire EUFOR trade mark of the Complainant followed by a hyphen "-" and the terms "gestion" or "gestions";
- The disputed domain names were registered within a few days of each other;
- The disputed domain names have been used for the exact same type of fraudulent activities by impersonating the same member of staff of the Complainant;
- The ACPR alerted the Complainant on the same day and by the same email in relation to both disputed domain names.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

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 names. [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 trade mark EUFOR is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the EUFOR trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "gestion" or "gestions", may bear on assessment of the second and third elements, the Panel finds that such additions do not prevent a finding of confusing similarity between the disputed domain names and the trade mark 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 names. 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 names such as those enumerated in the Policy or otherwise.

The Complainant has stated that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark EUFOR. There is no indication that the Respondent is commonly known by any of the disputed domain names. Further, the Complainant has provided clear evidence that the disputed domain names were used to send fraudulent emails (phishing emails) impersonating the Complainant. Panels have held that the use of a domain name for illegal activity here, phishing and impersonation, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

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.

The Panel preliminarily notes that the Complainant's registered trade mark was filed a few days after the registration of the disputed domain names.

Therefore, a question arises as to whether bad faith can be found in this case since the disputed domain names were registered before the Complainant acquired registered trade mark rights.

Generally, where a respondent registers a domain name before the complainant's trade mark rights accrue, panels will not normally find bad faith on the part of the respondent. [WIPO Overview 3.0](#), section 3.8.1.

As an exception to the general proposition described above in 3.8.1, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trade mark rights, panels have been prepared to find that the respondent has acted in bad faith. [WIPO Overview 3.0](#), section 3.8.2.

Within a matter of a few days and in chronological order, the disputed domain names were registered one after the other, put almost immediately to a fraudulent use demonstrating in-depth knowledge of the Complainant, and the EUFOR trade mark was successfully registered. The Complainant declared that even before the EUFOR trade mark was registered, the Complainant held rights in its name through its corporate designation "Eufor", which had been in continuous use for nearly 20 years and that due to its long-standing existence and its activities regulated by the relevant authorities, it was necessarily known within its business sector.

The list of circumstances where it can be found that a respondent's intent in registering a domain name was to unfairly capitalize on a complainant's nascent trade mark rights, are not exhaustively listed and in the present circumstances, the Panel finds that it is inconceivable that the Respondent would have registered the disputed domain names were it not for the fact that the Respondent knew that they were in use or about to be used as unregistered or registered trade marks by the Complainant. The Panel finds that the Respondent acted in opportunistic bad faith when registering the disputed domain names, as they are so obviously connected with the Complainant and its services that its selection by the Respondent, which has no connection with the Complainant, suggests the disputed domain names have been registered with a deliberate intent to create an impression of an association with the Complainant (see for instance *New European College GmbH v. Moniker Privacy Services / Mr. Li Chang, NECM*, WIPO Case No. [D2017-0538](#)).

The Panel thus finds that the disputed domain names were registered in bad faith.

As for the use of the disputed domain names in bad faith, given the circumstances described in the Complaint and the evidence provided by the Complainant, the Panel considers that the disputed domain names are used in bad faith.

The use of both disputed domain names to carry out fraudulent activities that were so concerning that they prompted the ACPR to send a formal notification to the Complainant on July 15, 2024 (only 4 days after the registration of the second disputed domain name) is very persuasive and clear evidence of the Respondent's bad faith use of the disputed domain names and typically the type of use the Policy is designed to tackle. [WIPO Overview 3.0](#), section 3.4.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the disputed domain names are used in bad faith.

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 <eufor-gestion.com> and <eufor-gestions.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: December 14, 2024