

## **ADMINISTRATIVE PANEL DECISION**

Enel S.p.A. v. Lucky Graziano, lucky-enel.online  
Case No. D2022-1852

### **1. The Parties**

The Complainant is Enel S.p.A., Italy, represented by Società Italiana Brevetti S.p.A., Italy.

The Respondent is Lucky Graziano, lucky-enel.online, Italy.

### **2. The Domain Name and Registrar**

The disputed domain name <lucky-enel.online> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 2022, 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 amendment to the Complaint on June 13, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on June 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default July 15, 2022. The Center received a third party email on July 18, 2022. The Center requested the Respondent on July 28, 2022, to clarify its relationship with the sender of the third email party, but the Respondent did not answer to the Center’s communication.

The Center appointed Andrea Mondini as the sole panelist in this matter on August 3, 2022. 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 one of the largest Italian companies in the energy market serving more than 26 million Italian customers and has subsidiaries in 32 countries across four continents.

The Complainant owns numerous trademarks with the element ENEL, *inter alia*, the Italian Trademark ENEL (figurative) (Registration No. 1299011, registered on June 1, 2010, for goods in the International Class 9) and the European Union Trade Mark ENEL (Registration No. 756338, registered on June 25, 1999, for goods and services in the International Classes 9, 11, 16, 19, 25, 35, 36, 37, 38, 39, and 42).

The Complainant also holds several domain names, including the domain names <enel.it> and <enel.com>.

The disputed domain name was registered on October 26, 2021.

The disputed domain name resolves to a placeholder blog-type page with only a few repeated entries.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends as follows:

The disputed domain name is confusingly similar to the ENEL trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the word "lucky" is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The mark ENEL is associated with the Complainant, since the trademark ENEL has been extensively used to identify the Complainant and its services in the energy sector for decades. The Respondent has not been authorized by the Complainant to use this trademark. By using the disputed domain name for a placeholder blog page, the Respondent is not making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Furthermore, there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services.

The disputed domain name is registered and is being used in bad faith because it is obvious that the Respondent had knowledge of the Complainant's well known trademark ENEL at the time it registered the disputed domain name, and because the mere use of the disputed domain name coincides with a well-known trademark as a placeholder for a blog page constitutes use in bad faith.

##### **B. Respondent**

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

The third party email received by the Center on July 18, 2022, was sent by an individual using an email address associated with the disputed domain name. In that email, that individual stated that "any dispute must be risen with the owner of the domain, Lucky Graziano [and to] kindly contact Lucky Graziano [the Respondent] at the details on the record of the domain". The Center requested the Respondent on July 28, 2022, to clarify its relationship with the sender of the third email party (or vice versa), but the Respondent did

not answer to the Center's communication or communicate further in this case (nor did the apparent third party).

## 6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

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

### A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trademark registrations for its ENEL trademark.

The Panel notes that the disputed domain name incorporate the ENEL trademark in its entirety. The addition of the word "lucky" and a hyphen "-" does not prevent a finding of confusing similarity under Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

It is well accepted that a generic Top-Level Domain ("gTLD"), in this case ".online", may be ignored when assessing the similarity between a trademark and a domain name (see [WIPO Overview 3.0](#), section 1.11).

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's mark ENEL.

The first element of paragraph 4(a) of the Policy has been met.

### B. Rights or Legitimate Interests

The Complainant states it has not authorized the Respondent to use the trademark ENEL and that before notice of the dispute, there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services. The Complainant further stated that by using the disputed domain name as a placeholder for a blog page, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers. The Panel does not see any contrary evidence from the record.

In the view of the Panel, the Complainant has succeeded in raising a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. For its part, the Respondent failed to provide any explanations as to any rights or legitimate interests. Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The second element of paragraph 4(a) of the Policy has been met.

### C. Registered and Used in Bad Faith

The Complainant has shown to the satisfaction of the Panel that its ENEL trademark is well-known in particular in Italy, where the Complainant has over 26 million customers and where the Respondent is located.

The Panel notes that the Respondent appears to have been the same as in two prior cases involving the same Complainant: *Enel S.p.A. v. Lucky Graziano*, WIPO Case No. [D2021-2221](#), and *Enel S.p.A. v. Lucky Graziano, enel.website*, WIPO Case No. [D2021-1014](#).

In the view of the Panel, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well-known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolves to a placeholder blog-type page. In the circumstances of this case, such use is similar to a kind of passive holding which qualifies as use in bad faith (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). In this regard, the Panel notes the Respondent's failure to submit a response or provide any evidence of actual or contemplated good-faith use.

The Panel thus finds that the disputed domain name was registered and is being used in bad faith.

The third element of paragraph 4(a) of the Policy has been met.

## **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 <lucky-enel.online> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: August 16, 2022