

## **ADMINISTRATIVE PANEL DECISION**

Elecnor, SA v. Zlova Wa

Case No. D2023-2627

### **1. The Parties**

The Complainant is Elecnor, S.A., Spain, represented by Clarke, Modet y Cía. S.L., Spain.

The Respondent is Zlova Wa, Spain.

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

The disputed domain name <elecnor.vip> is registered with CloudFlare, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2023. On June 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 2023, 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 (Privacy Protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 2023 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 amended Complaint on July 6, 2023.

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 July 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 7, 2023.

The Center appointed José Ignacio San Martín Santamaría as the sole panelist in this matter on August 17, 2023. 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 Elecnor, S.A. is the proprietor of multiple trademark registrations for ELEC NOR, *inter alia*:

- United Kingdom (“UK”) Trademark Registration No. 00909496746 ELEC NOR (fig), filed on November 4, 2010 and registered on April 4, 2011 for services in classes 37, 40, and 42;
- UK Trademark Registration No. 00910572857 ELEC NOR (fig), filed on January 19, 2012 and registered on June 15, 2012 for products/services in classes 6, 9, 11, 16, 19, 35, 36, 38, 41, and 45;
- Spanish Trademark Registration No. 1159100 ELEC NOR (fig), filed on August 29, 1986 and registered on June 5, 1987 for products in class 16;
- Spanish Trademark Registration No. 1159101 ELEC NOR (fig), filed on August 29, 1986 and registered on May 5, 1989 for products in class 19;
- Spanish Trademark Registration No. 1159106 ELEC NOR (fig), filed on August 29, 1986 and registered on May 3, 1990 for services in class 42;
- Spanish Trademark Registration No. 2822835 ELEC NOR (fig), filed on August 29, 1986 and registered on April 15, 2008 for services in classes 35, and 39;
- Spanish Trademark Registration No. 2868917 ELEC NOR (fig), filed on August 29, 1986 and registered on March 23, 2009 for services in classes 38 and 40;
- Spanish Trademark Registration No. 2957988 ELEC NOR (fig), filed on November 30, 2010 and registered on April 13, 2011 for products/services in classes 6, 9, 11, 16, 19, 35, 36, 37, 38, 39, 40, 41, 42, and 45;
- European Union Trade Mark (“EUTM”) Registration No. 009496746 ELEC NOR (fig), filed on November 4, 2010 and registered on April 4, 2011 for services in classes 37, 40, and 42;
- EUTM Registration No. 010572857 ELEC NOR (fig), filed on January 19, 2012 and registered on June 15, 2012 for products/services in classes 6, 9, 11, 16, 19, 35, 36, 38, 41, and 45;
- EUTM Registration No. 018631880 ELEC NOR (fig), filed on December 30, 2021 and registered on May 11, 2022 for products/services in classes 6, 7, 9, 19, 37, 39, 40, 42, and 45.

The disputed domain name was registered on May 16, 2023. The disputed domain name resolved to a website that reproduced the Complainant’s ELEC NOR (fig) trademark. Currently, the disputed domain name currently does not resolve to any active webpage.

#### 5. Parties’ Contentions

##### A. Complainant

- Elecnor Group is one of the leading corporations in project development, construction and operation through two major mutually enriching business areas: Services and Projects and Concessions. Elecnor is the parent company of a group comprised of nearly 80 companies located in Spain and in more than 53 other countries.
- The Complainant Elecnor, S.A. is the owner of many trademarks named ELEC NOR around the world, amongst them the ones mentioned above.

- The disputed domain name is identical to the Complainant's ELECNOR trademark.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. When the Complainant detected the disputed domain name registration, on May 17, 2023, a cease and desist letter was sent to the Registrar. No response to this communication was obtained from the domain name owner.
- The Respondent has intentionally registered the disputed domain name in bad faith. This individual must have known of the Complainant's trademark ELECNOR and used the trademark in the disputed domain name to trade-off the goodwill and reputation of the Complainant's trademark or otherwise create a false association, sponsorship or endorsement with or of the Complainant.
- The Respondent's registration of a domain name identical to a registered trademark by a person with no connection to that trademark amounts to "opportunistic bad faith". This argument is clearly connected with the fact that no answer to the Complainant's request was received.
- The disputed domain name resolved to a website that reproduced the Complainant's ELECNOR (fig) trademark. However, after the mentioned request that content was deleted and currently it does not resolve to any active webpage.

As a consequence, the Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy and 15 of the Rules, the Panel shall grant the remedies requested if the Complainant proves that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 is being used in bad faith.

Pursuant to paragraph 4(a) of the Policy and 15 of the Rules, for this purpose the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

### **A. Identical or Confusingly Similar**

The Complainant has proved its rights for its trademark ELECNOR. The disputed domain name is identical to the Complainant's trademark. The Panel therefore finds that the first requirement under paragraph 4(a)(i) of the Policy is met.

### **B. Rights or Legitimate Interests**

The Complainant has established based on the facts set out above a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Having done so, the burden of production shifts to the Respondent to come forward with appropriate evidence demonstrating rights or

legitimate interests (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#), section 2.1). Given that the Respondent has defaulted, he or she has not met that burden.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these circumstances appears to be present in the present case.

UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

Furthermore, the Complainant's request was not contested, but the content of the website reproducing the Complainant's trade mark was removed, which can be considered as an indication that the Respondent has no rights or legitimate interests.

Consequently, the second requirement under paragraph 4(a)(ii) of the Policy is also met.

### **C. Registered and Used in Bad Faith**

According to paragraph 4(b)(iv) of the Policy, registration or use of a domain name will be considered in bad faith when:

"by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Complainant's ELECNOR trademark is well-known. Prior UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

The Complainant has further provided evidence that the Respondent's website reproduced the Complainant's ELECNOR (fig) trademark and that content was deleted after its request. This seems a clear indication that the disputed domain name was registered to impersonate the Complainant.

Thus, the Panel finds that the disputed domain name was registered and is being used in bad faith by the Respondent in accordance with paragraph 4(b) of the Policy. In the light of the above, the Panel finds that the Complainant has established registration and use of the disputed domain name in bad faith and concludes that paragraph 4(a)(iii) of the Policy is satisfied.

## 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 <elecnor.vip> be transferred to the Complainant.

*/José Ignacio San Martín Santamaría/*

**José Ignacio San Martín Santamaría**

Sole Panelist

Date: August 31, 2023