

ADMINISTRATIVE PANEL DECISION

EMEC s.r.l. v. mohammad marashi

Case No. D2024-0748

1. The Parties

The Complainant is EMEC s.r.l., Italy, represented by Herbert Smith Freehills, Italy.

The Respondent is mohammad marashi, Afghanistan.

2. The Domain Name and Registrar

The disputed domain name <emecpump.com> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 19, 2024. On February 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 20, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 20, 2024, 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 February 26, 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 March 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2024. The Respondent did not submit a formal response, however sent an email communication on February 26, 2024. The Center informed the Parties that it would proceed to panel appointment on March 28, 2024.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on April 4, 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 EMEC s.r.l., a limited liability company incorporated under the laws of Italy. The Complainant has been on the market for over 40 years and is a leading company in the field of chemical control and dosing systems, producing pumps, controllers, probes, and other accessories. The Complainant has ten subsidiaries worldwide and distribution agreements in several countries, including Iran (Islamic Republic of).

The Complainant is the owner of the following trademarks for EMEC:

- European Union figurative mark for EMEC, register under no. 016468878, filed on March 14, 2017, and registered on January 7, 2020, for the classes 1, 7, 9, 11, 37, 40, 42;
- European Union figurative mark for EMEC SIMPLE AS WATER, registered under no. 018146186, filed on October 31, 2019, and registered on May 13, 2021, for the classes 1, 7, 9, 11, 37, 40, 42.

The Complainant is also the owner of the domain name <emecpumps.com> registered on June 16, 2000.

The disputed domain name was registered on December 22, 2020.

At the time of filing the Complaint, the Respondent has been using the disputed domain name for impersonating the Complainant. On the website connected to the disputed domain name, the Respondent reproduced the same information, colors and names of the official website of the Complainant. The Complainant also states that at some point, when clicking on one of the links included on the website linked to the disputed domain name, the user was redirected to a new website that promoted the products of the Complainant's competitors. After the Complaint was filed the Respondent deactivated the disputed domain name.

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 name.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

On February 26, 2024, the Respondent sent an email stating: "(...), the domain is stopped and not working".

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy 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.

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 trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The 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 disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the term "pump" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the 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 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 like impersonation of the Complainant can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the nature of the disputed domain name carries a risk of an implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

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 Complainant has been using the mark for more than 40 years;
- The Respondent registered the disputed domain name only in 2020;
- The disputed domain name includes the term “pump” related to the Complainant business;
- The disputed domain name imitates the Complainant website and contained reference to the Complainant products with link to competitors’ products;
- The Respondent registered the disputed domain name and intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark.

Panels have held that the use of a domain name for illegal activity like impersonation/passing off as the Complainant constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes 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 name <emecpump.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: April 15, 2024