

ADMINISTRATIVE PANEL DECISION

AECI Limited v. Rick Matthews

Case No. D2022-1250

1. The Parties

The Complainant is AECI Limited, South Africa, represented by Adams & Adams Attorneys, South Africa.

The Respondent is Rick Matthews, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <aeci-world.com> is registered with Web4Africa Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 8, 2022. On April 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 11, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on May 17, 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 a South African corporation set up back in 1924 that became public in 1966, listed on the Johannesburg Securities Exchange. The Complainant operates worldwide in a diverse range of sectors with four main business divisions: mining, water, agricultural health, and chemicals.

The Complainant is the owner of a number of AECl trademarks in different of jurisdictions. Such as South Africa AECl trademark registration number 2010/18658, registered on October 25, 2013, Uganda AECl trademark registration number 41307, registered on October 21, 2013, and United Kingdom trademark registration number UK009341538, registered on November 17, 2011.

AECl trademark is deemed to be well known for the purposes of the UDRP.

The Complainant owns and operates the domain <aeciworld.com> since 2018 and has used it to advertise and promote Complainant's trademarks and business.

The disputed domain name was registered on August 9, 2021 and has been used to operate a fraudulent email scheme, in which the Respondent impersonates the Head of the mining division and uses the Complainant's trademark and logo. Currently the disputed domain name redirects to a pay-per-click ("ppc") site with links referred to a wide range of chemicals offers.

5. Parties' Contentions

A. Complainant

The Complainant asserts that <aeci-world.com> wholly incorporates the Complainant's registered and well-known AECl trademark. The addition of the word "world" is not sufficient to distinguish the disputed domain name from the Complainant's AECl trademark.

Indeed, the Complainant alleges that a number of panels have held that the addition of a descriptive term or a geographic term to an identical trademark is not sufficient to avoid a finding of confusing similarity between the domain name and the trade mark.

Further, the Complainant states that the inclusion of the generic Top-Level Domain ("gTLD") ".com" does not distinguish the disputed domain name from the Complainant's trademark.

Regarding the second requirement of the Policy, the Complainant highlights that it has not authorized the Respondent or any person to use its AECl trademark within the disputed domain name. Besides, the disputed domain name is being used to conclude both purchase and sale transactions in the Complainant's name without its knowledge or authorization. Therefore, the disputed domain name is being used for fraudulent and illegal activities.

The Complainant is of the opinion that Respondent had knowledge of its trademark rights, and Respondent's intention was clearly to purposefully mislead consumers to believe that its goods and services are those of the Complainant.

The Complainant contends that having established significant rights and reputation in the AECl trademarks prior to the registration date of the disputed domain name, the Respondent cannot claim to have been unaware of the AECl trademark. Indeed, says the Complainant, the Respondent was fully aware of the Complainant's rights in its AECl trademarks when posing as the Complainant and placing orders as well incurring debt in the Complainant's name, and even imitating the name of the Complainant's CEO.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

(i) the disputed domain name is identical or confusingly similar to a 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 was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

In accordance with the UDRP, the Complainant has shown trademark rights over AECl. The Panel finds that the addition of a term such as "world" to the AECl trademark, or the use of a hyphen between the AECl trademark and the term "world", do not prevent a finding of confusing similarity under the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 or see *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#).

Besides, gTLDs are generally not taken into the consideration of identity or confusing similarity between a trademark and a domain name. See *Crocs, Inc. v. Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2022-0029](#).

It is apparent the reproduction of the AECl trademark in the disputed domain name. Accordingly, the first requirement is met under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel highlights that the phishing practice is an illegitimate undertaking that can never confer rights or legitimate interests to a respondent. See [WIPO Overview 3.0](#), section 2.13.1. The evidence record in the file leads the Panel to accept such allegation and therefore to deny any right or legitimate interest to the Respondent. In fact, the Complainant has produced compelling evidence that such illegal activity took place in several attempts of impersonating the Complainant or its affiliates.

Evidently, the Complainant did not authorized the use of its mark in the corresponding disputed domain name and neither the parties are affiliated.

The silence of the Respondent, once duly notified of the administrative proceeding, leaves the Complainant's *prima facie* case un rebutted. It is well established that once the Complainant makes out a *prima facie* case the burden of production shifts to the Respondent. Had the Respondent come with any evidence or allegations, the Panel would have had the opportunity to assess them accordingly. However, the lack to file a formal response leaves the Complainant's *prima facie* case un rebutted.

Therefore, the Panel finds that the Complainant has carried out its burden as described in paragraph 4(a)(ii) of the Policy to affirm that the second requirement is met.

C. Registered and Used in Bad Faith

The evidence given to the Panel shows how the Respondent did try to impersonate the Complainant in order to take advantage of the AECl trademark in a fraudulent activity. Such attempts were supported in some cases with the use of the AECl logo, the name of the Head of Mining of the Complainant or by using an email address incorporating the AECl trademark as part of the disputed domain name. That said, AECl is a well-known trademark. The Panel further notes the similarities between the Complainant's domain name <aeciworld.com>, and the disputed domain name. Under these circumstances the Panel finds that the Respondent was most likely aware of the Complainant's AECl trademark at the time of the registration of the disputed domain name. Thus, the registration took place in bad faith.

Respondent's use of the disputed domain name falls under paragraph 4 b (iv) of the Policy: "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".

Moreover, the disputed domain name is currently baiting Internet users and redirect them to PPC websites where, purportedly, the Respondent is obtaining revenues. Such activity is to be considered in bad faith under the Policy.

Finally, the Panel finds that the Respondent has engaged in a pattern of conduct within the meaning of paragraph 4(b)(ii) of the Policy. *Reckitt Benckiser Group Plc, Reckitt & Colman (Overseas) Health Limited, and Reckitt Benckiser SARL v. Privacy Service Provided by Withheld for Privacy ehf / Rick Matthews*, WIPO Case No. [D2022-0815](#).

Therefore, the third requirement set in paragraph 4(a)(iii) of the Policy is met by the Complainant.

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 <aeci-world.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: May 31, 2022