

ADMINISTRATIVE PANEL DECISION

TotalEnergies SE v. Privacy Service Provided by Withheld for Privacy ehf /
pater parker2, paterparker global ltd
Case No. D2022-3211

1. The Parties

The Complainant is TotalEnergies SE, France, represented by In Concreto, France.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / pater parker2, paterparker global ltd, United States of America.

2. The Domain Name and Registrar

The disputed domain name <totalenegries.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 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 September 1, 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 amended Complaint on September 5, 2022.

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 September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 29, 2022.

The Center appointed Mladen Vukmir as the sole panelist in this matter on October 11, 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 Panel has determined the following non-contested facts:

- (i) the Complainant operates under the company TotalEnergies SE which is registered before the French Companies Registry under the number 542 051 180 (Annex 5 to the Complaint);
- (ii) the Complainant is a well-known company operating worldwide in more than 130 countries in the field of oil and biofuels, natural gas and green gases, renewables, and electricity (Annexes 7, 8, 13.1, 13.2);
- (iii) the Respondent is the registrant of the disputed domain name, as disclosed by the Registrar;
- (iv) the Complainant is the owner of a number of TOTAL and TOTALENERGIES trademark registrations in different classes, as listed and evidenced in the Complaint and Annex 10 to the Complaint:

Trademark	Trademark Office	Reg. No. / Status	Date of registration	Class(es)
TOTAL (word)	France	1540708 / registered	May 12, 1988	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33 and 34
TOTAL (word)	WIPO	591228 / registered	August 3, 1992	1, 2, 3, 4, 5, 9, 11, 16, 17, 19, 37, 39, 41 and 42
TOTAL (figurative)	WIPO	813234 / registered	September 2, 2003	1, 3, 4, 5, 17, 19, 35, 36, 37, 39, 40, 42 and 43
TOTAL (figurative)	WIPO	1469417 / registered	November 14, 2018	1, 2, 4, 5, 6, 7, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 45
TOTAL ENERGIES (word)	EUIPO	018308753 / registered	May 28, 2021	1, 2, 3, 4, 5, 6, 7, 9, 11, 14, 16, 17, 18, 19, 20, 21, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 45
TOTALENERGIES (figurative)	EUIPO	018392850 / registered	June 25, 2021	1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 45;
TOTALENERGIES (figurative)	EUIPO	018392838 / registered	June 26, 2021	1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 45
TOTALENERGIES (figurative)	EUIPO	018395480 / registered	June 25, 2021	1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 45
TOTALENERGIES (figurative)	WIPO	1601110 / registered	February 9, 2021	1, 4, 7, 9, 37, 39 and 40
TOTALENERGIES (figurative)	WIPO	1601092 / registered	May 18, 2021	1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 45

(v) the disputed domain name was registered on June 12, 2022 (Annex 1 to the Complaint);

(vi) As listed and evidenced in the Complaint and Annex 7 and 9 to the Complaint, the Complainant is the registrant of a number of domain names incorporating the Complainant's TOTAL and TOTALENERGIES trademarks, for instance:

<total.com> registered on December 31, 1996;
<totalenergies.com> registered on March 8, 2014;
<totalenergies.info> registered on June 29, 2017;
<totalenergies.net> registered on June 29, 2017.

The Complainant also registered following misspelled domain names with typo to prevent cybersquatting issues:

<totalernegie.com> registered on June 28, 2021;
<totalernegies.com> registered on June 28, 2021;
<totalenregie.com> registered on June 29, 2021;
<totalenregies.com> registered on June 29, 2021.

5. Parties' Contentions

A. Complainant

The Complaint, essentially, asserts that:

(i) it is a worldwide and well-known company that produces and markets energies on a global scale, whose business includes all aspects of the energy industry from production to marketing, as well as the development of next generation energy activities and is a world-leading solar energy operator and the second largest global LNG player in the world;

(ii) through its financial, material and human substantial investments, it has developed a significant reputation and a large customers base in regard of TOTAL and TOTALENERGIES brands, that enjoy a long-standing reputation and a certain notoriety in its industry;

(iii) it holds a broad portfolio of domain names including the brands TOTAL (more than 2.400) and TOTALENERGIES (more than 490), as well as many filed, registered and renewed French, European Union and international trademarks;

(iv) the disputed domain name is *prima facie* confusingly similar to the Complainant's registered and well-known trademark TOTALENERGIES, because:

- it represents a clear and intentional misspelling of the Complainant's main website <totalenergies.com>, by simply moving a letter from one place to another;

- there was an attempt of a Request for Quotation (RFQ) scam in which the scammers used the Complainant's registered trademark in order to impersonate the Complainant's services and employees, while the email address was in fact connected with the disputed domain name;

- in support of the above, the Complainant points out that it has already obtained many transfers in its favor for similar disputed domains;

(v) the Respondent has no rights or legitimate interests in the disputed domain name, as:

- the Complainant has worldwide trademark rights for the domain name <totalenergies.com> and its similar

variants;

- the disputed domain name is not in active use (*i.e.* there is no website associated with it);
- the TOTALENERGIES is a well-known trademark and highly distinctive company name, therefore it is not very likely that the disputed domain name very similar to it was chosen randomly by the Respondent;
- the only online use of the disputed domain name known to the Complainant relates to the fraudulent emails that were sent from the email address incorporating the disputed domain name as a part of it, used to impersonate the Complainant's services and employees;

(vi) the Respondent registered and is using the disputed domain name in bad faith, since:

- the Respondent was aware of the Complainant's existence and its business (as well as of the Complainant's trademark and domain name registrations) at the time of registration of the disputed domain name and has therefore registered the same in bad faith;
- the Respondent demonstrated bad faith by registering a domain name that is an obvious misspelling and confusingly similar to trademarks in which it had no rights or legitimate interests;
- by sending fraudulent emails impersonating an employee of the Complainant, the Respondent is engaging in a phishing scam that may damage the Complainant's reputation and that demonstrates that the Respondent maliciously intended to use the confusing similarity of the disputed domain name with the Complainant's main website for financial gain.

B. Respondent

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

6. Discussion and Findings

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of the Response, the Policy, the Rules, the Supplemental Rules and other applicable legal authority pursuant to paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy provides that the Complainant must prove, with respect to the disputed domain name, each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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

The Panel holds that the disputed domain name is confusingly similar to the Complainant's TOTALENERGIES trademark.

Primarily, the Panel emphasizes that it is accepted that ownership of a registered trademark by a complainant *prima facie* satisfies the threshold requirement of having the trademark rights for purposes of standing to file a UDRP case, as stated in section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

The Complainant has submitted sufficient evidence to show that it is the owner of a number of TOTALENERGIES trademarks, which are duly registered before competent trademark authorities. As such, these trademarks provide to the Complainant all the exclusive rights that are granted with such trademark registrations.

After performing a straightforward visual comparison of the disputed domain name and the Complainant's trademark TOTALENERGIES, it is evident to this Panel that the disputed domain name incorporates the Complainant's trademark in its entirety. The only difference between the disputed domain name and the Complainant's trademark is that the positions of letter "r" and "g" have been inverted.

In this Panel's view, the disputed domain name is purposefully misspelled by substituting one letter with the other. The Panel holds that this conduct, commonly referred to as typosquatting creates a virtually identical and/or confusingly similar mark to the Complainant's TOTALENERGIES trademark. In accordance with section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element, especially when such typos are made by inversion of letters. This Panel's conclusion is in line with views taken by panels in earlier UDRP cases (see *Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd.*, WIPO Case No. [D2015-2333](#); and *Sanofi, Genzyme Corporation v. Domain Privacy*, WIPO Case No. [D2016-1193](#)).

For all the foregoing reasons, the Panel finds that the Complainant has satisfied the requirement set forth in paragraph 4(a)(i) of the Policy, *i.e.* has proven that the disputed domain name is confusingly similar to its registered trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy. However, the Respondent has not been able to go through any of the gateways in paragraph 4(c) of the Policy with regard to demonstrating that it does have rights to or legitimate interests in the disputed domain name.

As noted by previous UDRP panels on the onus of proof under paragraph 4(a)(ii) of the Policy, and as summarized in section 2.1 of the [WIPO Overview 3.0](#): "[...]While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element [...]."

In the present case, the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests to the disputed domain name, with the Respondent failing to provide any reply to the Complaint.

Namely, the Complainant has established that it is the owner of a number of TOTALENERGIES trademarks in various jurisdictions, as well as that it has used the same trademarks widely on the market including through the Complainant's main website <totalenergies.com> and others, so that it may be recognized as well-known in public.

The Panel observes that there is neither any relation, disclosed to the Panel nor otherwise apparent from the records, between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its TOTALENERGIES trademarks, or any misspellings thereof, or to apply for or use any domain name incorporating the same trademarks.

Furthermore, there is no evidence in the case file or otherwise apparent to the Panel that the Respondent has been using the disputed domain name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name.

In this Panel's opinion, there is no evidence that the Respondent has any legitimate rights to use the disputed domain name. It seems that the Respondent deliberately misspelled the Complainant's well-known trademarks in the disputed domain name, in order to achieve commercial gain by sending fraudulent emails impersonating the Complainant's employee, to mislead their recipients and receive payments. The use of a domain name for illegal activity such as impersonation and phishing, can never confer rights or legitimate interests on a respondent (section 2.13 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the requirements set forth in paragraph 4(a)(ii) of the Policy have been fulfilled by the Complainant's making the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and by the Respondent's failing to produce any arguments or evidence to the contrary.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

“(i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or

(ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.”

The Panel accepts the Complainant's arguments substantiated by evidence that the Respondent has registered and used the disputed domain name in bad faith. The Complainant filed sufficient evidence to prove that its TOTALENERGIES trademarks are well-known around the world. It is highly unlikely that the Respondent was unaware of the Complainant and its trademarks when it registered the disputed domain name.

By registering a confusingly similar domain name to the Complainant's trademark that is simply a misspelling of its main website, the Respondent is attempting to take advantage of the Complainant's reputation by sending fraudulent and misleading emails. The purpose of these emails was to mislead their recipients into believing that they need to make a payment to the Complainant, when in fact the email address of the sender refers to the disputed domain name and has no connection with the Complainant. Such actions and this form of typosquatting supports a finding of bad faith within the meaning of the Policy (see *Sanofi-aventis v. Elizabeth Riegel and Andrew Riegal*, WIPO Case No. [D2005-1045](#); and *Est'e Lauder Inc. v. estelauder.com and Jeff Hanna*, WIPO Case No. [D2000-0869](#)). See also section 3.4 of the [WIPO Overview 3.0](#).

Given the above, the Panel determines that the disputed domain name has been registered and is being used in bad faith, and that the Complainant has fulfilled the third element under paragraph 4(a) 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 <totalenegries.com> be transferred to the Complainant.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: October 24, 2022