

ADMINISTRATIVE PANEL DECISION

Enel S.p.A. v. Ahehbsss Ahehbsss
Case No. D2022-3782

1. The Parties

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

The Respondent is Ahehbsss Ahehbsss, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <enelmy.net> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2022. On October 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 11, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 21, 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 October 25, 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 October 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 18, 2022.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on November 28, 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. It manages the greater part of the Italian electricity and gas distribution network, serving more than 26 million Italian customers. The Complainant is the parent company of the Enel Group, which operates through its subsidiaries in more than 32 countries across four continents and brings energy to around 64 million customers.

Today, the Complainant supplies energy worldwide, with an extensive presence in Europe. The Complainant is also one of the largest energy companies in the Americas, with 71 power generation plants of all types with a managed capacity of around 6.03 GW across 18 states in the United States of America and Canada, and in South America up to the central Andes.

The Complainant is the owner of more than 100 domain names containing the trademark ENEL, including <enel.it> and <enel.com>, both of which have been registered in the name of the Complainant since 1996. Most of the Complainant's domain names redirect to the main corporate website "www.enel.com". Such domain names include, *inter alia*, 15 domain names consisting of the Second-Level domain "enelenergia", or variations thereof, such "energiaenel" and "enel-energia", associated with various Top-Level domains.

The Complainant owns several trademark registrations worldwide, including but not limited to the Italian trademark registration for the device mark ENEL, with registration number 1299011, registered on June 1, 2010, and the European Union trademark registration for the device mark ENEL, with registration number 015052152, registered on May 13, 2016. These trademarks will hereinafter be referred to as the "ENEL Trademarks".

The Domain Name was registered on May 24, 2022.

The Domain Name resolves to a webpage of the provider GoDaddy, where pay-per-click links are displayed.

5. Parties' Contentions

A. Complainant

The Complainant has submitted a very extensive Complaint. To the extent relevant for rendering this decision the Complainant alleges the following.

The Domain Name is confusingly similar to the Complainant's ENEL Trademarks. The acronym "my" stands for "Malaysia". The Complainant is active in Malaysia to provide services through its ENEL Trademarks. The addition of a geographic element, such as "my", does not prevent the Domain Name from being seen as confusingly similar to the trademark.

The Complainant alleges that the word "enel" is not a natural or ordinary word in English or in any other language, that the Respondent is not an authorized agent or licensee of the Complainant, and that it is not commonly known by the Domain Name.

The Complainant has neither authorized, nor somehow given its consent to register and use the Domain Name to the Respondent. The Domain Name has been registered and is being used to exploit the reputation of the ENEL Trademarks to attract current and potential customers of the Complainant.

As the Domain Name resolves to a webpage of the provider GoDaddy where pay-per click links are displayed, there is no evidence of the Respondent's use (or demonstrable preparations to use) the Domain Name in connection with a *bona fide* offering of goods and services. Furthermore, the Respondent is not making a legitimate non-commercial or fair use of the Domain Name without intent for commercial gain.

The Domain Name was registered and is being used in bad faith.

The registration of the Domain Name in bad faith can be found in the following circumstances:

- there is no connection between the Respondent and the Complainant and the ENEL Trademarks;
- it is also evidence of the Respondent's bad faith that the Domain Name is not used in good faith for the offering of goods and services to the public, nor is it used for a legitimate noncommercial use without the intention of misleading the Complainant's customers or infringing the ENEL Trademarks;
- Enel is not common or descriptive term, but this is obviously the trademark in and to which the Complainant has demonstrated to have rights;
- because of the intensive use made by the Complainant, the ENEL Trademarks are well known;
- the Domain Name reproduces, without any authorization or approval, the ENEL Trademarks, which is the most distinctive component of the Domain Name.

Furthermore, the Respondent is unfairly and intentionally taking advantage of, and exploiting without authorization, the reputation and distinctiveness of the ENEL Trademarks to attract Internet users to the website to which the Domain Name resolves, creating a likelihood of confusion with the ENEL Trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website depriving the Complainant of the possibility to register the Domain Name in which it has a legitimate interest.

Furthermore, the Complainant has previously also been involved a dispute relating to a similar domain name <enelmy.com>, see *Enel S.p.A. v. Ahshshs Ahshshs*, WIPO Case No. [D2022-2567](#), which decision, issued on September 1, 2022, was in favor of 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, the Complainant must prove each of the following three elements:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark and, if so, the Domain Name must be shown to be identical or confusingly similar to such trademark. The first element serves as a standing requirement.

The Complainant is the owner of the ENEL Trademarks in which the word element ENEL is a dominant element. The ENEL Trademarks precede the registration of the Domain Name.

The Domain Name is confusingly similar to the ENEL Trademarks since it merely reproduces the word element of the ENEL Trademarks in their entirety with the addition of the two letters "my". As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is sufficient to establish that the domain name is identical or confusingly similar to that trademark.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the Domain Name:

- (i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the Domain Name or the ENEL Trademarks. The Complainant has prior rights in the distinctive ENEL Trademarks which precede the Respondent's registration of the Domain Name. The Respondent has incorporated the ENEL trademark entirely along with the geographic acronym "my", designating "Malaysia", within the disputed domain name. As such, the disputed domain name carries a risk of implied affiliation to the Complainant, which cannot constitute fair use. Moreover, the Respondent is not using the Domain Name in connection with a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. Rather, the Domain Name resolves to a webpage of the provider GoDaddy where pay-per click links are displayed. According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.2, when assessing circumstances beyond the disputed domain name, panels will assess whether the registration of the disputed domain name was done merely as a pretext for commercial gain, which appears to be the applicable inference here.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent 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 respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on its website or location.

"Enel" is not a common or descriptive term, but a renowned trademark. The Domain Name reproduces, without any authorization or approval, the Complainant's ENEL Trademarks, and this is the only distinctive component of the Domain Name. The Domain Name was registered many years after the renowned ENEL Trademarks were registered and used. In addition, the Complainant has registered more than 100 domain names in generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs") worldwide which incorporate the ENEL Trademark, hence it is unlikely that the Respondent was not aware of the existence of the ENEL Trademarks when registering the Domain Name. Therefore, it is more likely than not that the Respondent, when registering the Domain Name, had knowledge of the Complainant's earlier rights to the ENEL Trademarks and trade name.

The Domain Name resolves to a parked page where pay-per-click links are displayed. Lacking a response from the Respondent, the Panel finds that the Respondent has registered the Domain Name to attract Internet users to its website by creating a likelihood of confusion with the ENEL Trademarks as to the source, sponsorship, affiliation or endorsement of the webpage to which the Domain Name resolves as has been alleged by the Complainant.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using Domain Name in bad faith. Therefore, the Complainant has satisfied paragraph 4(a)(iii) 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 Domain Name <enelmy.net> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: December 12, 2022