

ADMINISTRATIVE PANEL DECISION

Telefonaktiebolaget LM Ericsson v. Jelly Pague
Case No. D2022-4036

1. The Parties

The Complainant is Telefonaktiebolaget LM Ericsson, Sweden, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Jelly Pague, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <ericssoninvestment.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 October 27, 2022. On October 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 27, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 28, 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 November 1, 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 November 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 22, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on November 25, 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 was founded in 1876 and is now a global provider of communication technology, offering services in telecommunications, communications software, and many related goods and services. Its head office is in Stockholm, Sweden. The Complainant employs over 101,000 employees worldwide and, in the second quarter of 2022, its net sales were SEK 62.5 billion.

The Complainant's principal brand is ERICSSON and it has registered many trade marks to protect this mark including, by way of example, European Union Trade Mark, registration number 000107003, registered on March 23, 1999 in multiple classes. The Complainant's primary domain name is <ericsson.com>, which resolves to a website providing information about its products and services.

The disputed domain name was registered on January 17, 2022. It resolves to a website headed "Ericsson Inv" (sometimes presented as "Ericsson Investment"), which solicits investments from consumers and features a central claim on the home page; "Professional Asset Management. Up to 20% daily earnings. Instant withdrawal. Payments are in your account". Throughout the website, greater prominence is given to the "Ericsson" component of the Respondent's trading style. The Respondent's address in the "Contact" page of its website is stated to be at a location in Manchester, United Kingdom. However, the associated telephone number has a United States country code and the accompanying map is of an address in Utrecht, Netherlands. The Complainant states that the Respondent claims that its corporate name is Ericsson Management Limited¹ and says that it has established that a company with this name was trading from the Manchester, United Kingdom address but that the official record shows that the company was dissolved in March 2022.

The Complainant has drawn attention to two other websites which, save for the name of the entity purportedly operating each of them, feature virtually identical content and identical design and layout. By way of example, one of the websites features an almost identical claim to that on the Respondent's website, namely; "Professional Asset Management. Up to 10 [per cent] daily earnings. Instant withdrawal. Payments are in your account".

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which it has rights, in that it includes the entirety of the Complainant's ERICSSON trade mark and simply adds the generic term "investment". The addition of this term does not negate the confusing similarity between the disputed domain name and the Complainant's mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not sponsored by, or affiliated with, the Complainant. The Complainant has not given permission for the Respondent to use its trade marks, nor to register domain names which incorporate its marks. Whilst the Respondent has claimed to be known as Ericsson Management Limited, this is not the Respondent's actual name and this name is being used in order to mislead investors who visit its website into believing that it is affiliated with the Complainant. Moreover, the contact number and the location map shown on the Respondent's website have no connection with the

¹ The Panel has not been able to locate where this specific claim is made on the Respondent's website

Respondent's claimed physical address. Furthermore, the actual name of the Respondent disclosed by the Registrar, that is "Jelly Pague", does not resemble the disputed domain name in any manner. Accordingly, there is no evidence that the Respondent is commonly known by the disputed domain name. Additionally, prior UDRP panels have found that use of a domain name to redirect Internet users to content unrelated to a complainant does not automatically render use of the domain name legitimate. Finally, the two other websites the Complainant has located, which contain practically identical content, photographs and text to the Respondent's website, suggest that the Respondent's website is part of a broader dishonest scheme.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The Complainant has sold and marketed goods using its ERICSSON trade mark since 1876, many years before the Respondent's registration of the disputed domain name. The scope and value of the services provided by the Complainant under its mark establishes its significant reputé in it. Accordingly, the Respondent was, or should have been, aware of the Complainant's mark prior to registering the disputed domain name. It is clear that the Respondent selected the disputed domain name in order to confuse Internet users into visiting its website. Such "bait and switch" tactics have been held to comprise evidence of bad faith registration and establish that the Respondent is using the disputed domain name in order to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source or affiliation of its website. This is affirmed by the existence of two other websites with near-identical content which the Complainant has found and by the Respondent's use of a privacy service to conceal its identity. Nor is there any plausible good faith explanation for the Respondent's registration of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions (the Panel notes that in addition to the email address given by the Registrar, notice was provided to the "info" email address at the website at the disputed domain name).

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following three elements in order to succeed in its Complaint:

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

The Complainant has provided details of the registered trade marks it owns for ERICSSON including the mark in respect of which details are set out above, and has thereby established its rights in it.

For the purpose of considering whether the disputed domain name is identical or similar to the Complainant's trade mark, the generic Top-Level Domain ("gTLD") ".com" is disregarded as this is a technical requirement of registration. The addition of the term "investment" does not prevent the disputed domain name from being found to be confusingly similar to the Complainant's trade mark. In this respect, see section 1.8 of the WIPO

Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Complainant's ERICSSON trade mark is recognizable within the disputed domain name and the Panel accordingly finds that it is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

There are strong indications that the Respondent's website is fake. A telling example is that the contact details, namely a Manchester, United Kingdom postal address relating to a defunct company, used in combination with a United States contact telephone number and an associated map showing a physical location in the Netherlands make no sense and point to a rather desultory attempt by the Respondent to create a seemingly genuine website. The fact that the Respondent's website solicits monies for investment using fake contact details, coupled with its use of a privacy service to hide its identity and its failure to respond to either claim letters sent by the Complainant or to the Complaint, suggest, on at least a balance of probabilities, that the Respondent is engaged in a form of fraud. The position is further affirmed by the content of the two additional websites the Complainant has located which are almost identical to that of the Respondent. Whether the Respondent is working with in tandem with the operators of those websites or has simply used the same template in order to create its own website does not impact on the assessment under the second element. Section 2.13.1 of the [WIPO Overview 3.0](#) explains that "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent". The Respondent is not therefore using the disputed domain name in connection with a *bona fide* offering of goods and services.

Having regard to the fact that the Respondent's name, as provided by the Registrar is Jelly Pague and that the company which, according to the Complainant, is purportedly operating the Respondent's website, Ericsson Management Limited, has been dissolved, there is no evidence that the Respondent is commonly known by the disputed domain name. The second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. The third circumstance is also inapplicable as the Respondent is making a commercial use of the disputed domain name.

The Complainant has accordingly made out a *prima facie* case under the second element and the burden of production shifts to the Respondent; see section 2.1 of the [WIPO Overview 3.0](#). As the Respondent has not provided a response to the Complaint, it has self-evidently failed to satisfy that burden. The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

At the date of registration of the disputed domain name in January 2022, the Complainant had been using its ERICSSON mark for many decades. There is nothing in the Respondent's website that alludes expressly to the Complainant or that asserts or implies that the Respondent has any form of association or connection with it. However, having regard to the fact that, as discussed above, the Respondent is manifestly not the dissolved corporate entity Ericsson Management Limited, the Respondent has not provided any explanation, whether by way of Response to the Complaint nor by way of response to the Complainant's cease and

desist letters, that seek to explain its choice of the disputed domain name. In the absence of any purported justification, the Panel finds, on a balance of probabilities, that the Respondent registered the disputed domain name because of the generalized association which (having regard to the very wide scope and international repute of the Complainant's ERICSSON mark), Internet users would be apt to make with the Complainant's business and to have registered it in order to take unfair advantage of the Complainant's mark in some manner. As the panel found in *Herbalife International, Inc. v. Surinder S. Farmaha*, WIPO Case No. [D2005-0765](#), "the registration of a domain name with the knowledge of the complainant's trademark registration amounts to bad faith". See also *ArcelorMittal (Société Anonyme) v. Empirical Data Insights, EDI*, WIPO Case No. [D2021-1582](#). The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

The use of the Complainant's mark in the disputed domain name will lead some Internet users to believe that any website to which it resolves will likely be operated by, or on behalf of, the Complainant. Even though Internet users will likely appreciate, on reaching the Respondent's website, that it is neither owned nor operated by the Complainant nor authorized or associated with it, it will have been the confusing similarity of the disputed domain name to the Complainant's mark that will have led them to visit it and thereby enabled the Respondent to gain the opportunity of exploiting the repute of the Complainant's mark; see, for example, *Ugly, Inc. v. Sivachuck Stanislav*, WIPO Case No. [D2021-1027](#). Moreover, as explained at section 3.1.4 of the [WIPO Overview 3.0](#): "As noted in section 2.13.1, given that the use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith". See also, by way of example, *FIL Limited v. Adam Crawford*, WIPO Case No. [D2019-1904](#).

For the above reasons, the Respondent's use of the disputed domain name falls within the circumstance of bad faith set out at paragraph 4(b)(iv) of the Policy in that it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. The Panel therefore finds that the disputed domain name was registered and is being used in bad faith.

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 <ericssoninvestment.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: December 9, 2022