

ADMINISTRATIVE PANEL DECISION

Elecnor, S.A. v. Tayim Henri Priso

Case No. D2023-0673

1. The Parties

The Complainant is Elecnor, S.A., Spain, represented by Clarke, Modet y Cia. S.L., Spain.

The Respondent is Tayim Henri Priso, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <elecnor-cameroun.com> is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 14, 2023. On February 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 2023, 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 February 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 4, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on April 13, 2023. 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 Spanish company belonging to a group of nearly 80 companies operating in the infrastructure and concession fields. The Complainant's group is active in more than 53 countries worldwide, including in Cameroon through a local subsidiary named Elecnor Cameroun S.A. The Complainant employs more than 2,300 people and in 2022 generated a net profit of EUR 70.9 million.

The Complainant is the owner of numerous ELECNOR trademark registrations around the world, including the following:

Trademark	Country	Registration No.	Registration date	Classes
ELECNOR (figurative)	European Union ("EU")	009496746	April 4, 2011	37, 40, 42
ELECNOR (figurative)	EU	010572857	June 15, 2012	6, 9, 11, 16, 19, 35, 36, 38, 41, 45
ELECNOR (figurative)	Spain	1159100	June 5, 1987	16
ELECNOR (figurative)	Spain	1159101	May 5, 1989	19
ELECNOR (figurative)	Spain	1159106	May 3, 1990	42
ELECNOR (figurative)	Spain	2822835	October 1, 1992	35, 39
ELECNOR (figurative)	Spain	2868917	October 1, 1992	38, 40
ELECNOR (figurative)	Spain	2957988	April 13, 2011	6, 9, 11, 16, 19, 35, 36, 37, 38, 39, 40, 41, 42, 45

The Complainant is also the owner of various domain names containing the trademark ELECNOR, among which <elecnor.com>, which resolves to the Complainant's official website.

The disputed domain name was registered on January 12, 2023, and resolves to an under construction web page. When the Complainant detected the disputed domain name, it sent a cease and desist letter to the Respondent, but received no answer.

5. Parties' Contentions

A. Complainant

The Complainant maintains that the disputed domain name is similar to the Complainant's earlier marks as the only difference lies in the addition of the geographical term "cameroun". The addition of a geographical term to the Complainant's mark in the disputed domain name cannot avoid confusing similarity especially considering that one of the subsidiaries part of the Complainant's group is named Elecnor Cameroun S.A.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name. In particular, the Complainant affirms that it has not licensed, nor otherwise permitted the Respondent to use its trademark, and that there is no relationship between the parties that could justify the registration of the disputed domain name by the Respondent. Furthermore, there is no evidence of the fact that the Respondent is commonly known by the disputed domain name. The disputed domain name was registered later than the vast majority of the Complainant's trademarks and the Complainant's ELECNOR trademark is well known. Consequently, the Respondent could not have been unaware of the Complainant and its business when it registered the disputed domain name. Given the reputation of the Complainant's

ELECNOT mark, the only reason to register this trademark as a domain name is to create an impression of an association with the Complainant and, consequently, to dilute the Complainant's mark.

According to the Complainant, the Respondent has intentionally registered the disputed domain name in bad faith. Given the reputation of the Complainant's mark, it is not conceivable that the Respondent was not aware of the Complainant's mark when it registered the disputed domain name. In the Complainant's opinion, the Respondent registered and used the disputed domain name to trade-off the goodwill and reputation of the Complainant's mark, or otherwise create a false association, sponsorship or endorsement with the Complainant. The disputed domain name resolves to a web page "under construction", inducing an expectation to users who try to access the relevant website. The registration of the disputed domain name by a person with no connection with the Complainant's mark amounts to opportunistic bad faith, as also confirmed by the fact that the Respondent did not answer to the cease and desist letter sent by the Complainant when it detected the registration of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it is the owner of various registrations for the trademark ELECNOT, dating back earlier than the registration of the disputed domain name.

The disputed domain name consists of the Complainant ELECNOT mark, followed by a hyphen and the term "cameroun". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), "[w]here 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". Thus, the addition of the term "cameroun" to the Complainant's mark ELECNOT does not prevent a finding of confusing similarity, especially considering that the Complainant's mark is well recognizable within the disputed domain name, being its first element and being separated from the term "cameroun" by a hyphen.

Thus, the Panel is satisfied that the first condition under the Policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge 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 shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Complainant states that it has no relation with the Respondent and that it did not authorize the Respondent to use its trademark in a domain name. Furthermore, there is no evidence in the file that the Respondent has acquired trademark rights or other rights on the word "elecnot", and that the Respondent is commonly known by the name "elecnot-cameroun".

The Respondent registered a domain name containing the geographical term "Cameroun", which is a clear reference to a country where the Complainant operates and to the name of the Complainant's subsidiary active in this country. The Respondent's selection of the geographical term "Cameroun" separated by a hyphen to the Complainant's trademark tends to support a finding that the respondent obtained the disputed domain name to take advantage of the Complainant's mark, and as such, that the respondent lacks rights or

legitimate interests in the domain name.

At the time of the filing of the Complaint, the disputed domain name resolved to a page “under construction”. Therefore, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or a legitimate, noncommercial or fair use of the disputed domain name.

In view of the above, the Panel finds that the Complainant has discharged its burden of proof that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The burden of production now shifts to the Respondent to demonstrate that it owns rights or legitimate interests in the disputed domain name. The Respondent has chosen not to file a Response and therefore has waived its right to contest the Complainant’s allegations.

Accordingly, the Panel is satisfied that the second condition under the Policy is met.

C. Registered and Used in Bad Faith

The Panel is of the opinion the Respondent was well aware of the Complainant and of its ELECNOR trademark when it registered the disputed domain name. The Complainant operates in Cameroun through a local subsidiary whose name coincides with the disputed domain name. The Respondent is located in Cameroun and the selection of the disputed domain name cannot be the result of a mere coincidence. Accordingly, the Panel finds that by registering the disputed domain name, the Respondent is attempting to impersonate the Complainant to take advantage of the disputed domain name.

As far as use in bad faith is concerned, the disputed domain name does not resolve to an active website. The non-use of a domain name cannot prevent a finding of bad faith under the doctrine of passive holding. As noted in section 3.3 of the [WIPO Overview 3.0](#), in order to assess bad faith in a passive holding case, it is necessary to evaluate the totality of the circumstances of the case, including (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In the instant case, the ELECNOR trademark enjoys a high distinctive character, considering that it is a coined word with no descriptive or evocative meaning. Furthermore, the Respondent failed to reply to the Complainant’s cease and desist letter and to file a Response in this UDRP dispute. Lastly, in the Panel’s view, considering the type of domain name that the Respondent has registered, which suggests an affiliation with, or endorsement by, the Complainant, there is no possible good faith use to which the disputed domain name may be put.

For all the reasons mentioned above, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

Therefore, the Panel is satisfied that also the third and last condition under the Policy is met.

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, <elecnor-cameroun.com> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: April 27, 2023