

ADMINISTRATIVE PANEL DECISION

Rubis Energie v. Denis Kemp
Case No. D2023-3296

1. The Parties

The Complainant is Rubis Energie, France, represented by IP Twins, France.

The Respondent is Denis Kemp, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <rubisenergies.com> is registered with One.com A/S (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2023. On August 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 2, 2023, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 2, 2023, 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 August 4, 2023.

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 August 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 29, 2023.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on September 5, 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 in the energy sector and offers energy and bitumen distribution activities. It has submitted evidence that it is the owner of a large number of trademark registrations for RUBIS ENERGIE, including:

- RUBIS ENERGIE, French trademark with registration number 3431985 and registration date November 3, 2006 for class 4, 19, 35, 37, 38, 39, 40 and 42.
- RUBIS ENERGIE, French trademark with registration number 3447950 and registration date February 2, 2007 for class 19, 40 and 42.
- RUBIS ENERGIE, International trademark with registration number 1219226 and registration date June 18, 2014 for class 4, 35, 37, 38 and 39.

The disputed domain name <rubisenergies.com> was registered on June 6, 2023 and does not resolve to an active website. The Respondent has been using the disputed domain name to impersonate the Complainant by sending fraudulent emails.

5. Parties' Contentions

A. Complainant

The Complainant is the French company Rubis Energie, a subsidiary of the French Rubis Group which combines its energy and bitumen distribution activities, mainly in Europe, Africa and the Caribbean. The Complainant, which historically specialized in the distribution of liquefied gas, has expanded its distribution to other energies such as service station networks, aviation and marine fuels, commercial fuel oil, lubricants and bitumens. The Rubis group, founded in 1990, is an independent French company in the energy sector listed on Euronext Paris (SBF 120). The Group specializes in the retail and marketing of fuel, liquefied gas and bitumen from supply to end consumer and the production of renewable electricity. With nearly 4,500 employees, it operates in over 40 countries across Europe, Africa and the Caribbean.

The Complainant's trademark registration for RUBIS ENERGIE dates back to 2006, which is long before the Respondent registered the disputed domain name <rubisenergies.com> in 2023. The disputed domain name is identical or similar to the point of confusion to the Complainant's trademark RUBIS ENERGIE. The trademark is reproduced within the disputed domain name and is highly recognizable. The addition of the letter "s" to the term "energie" is a minor difference which is not sufficient to avoid a finding of confusing similarity. See for example *Carrefour SA v. Qin Li*, Case No. [D2022-0991](#), where the Panel stated "The additional letter 's' does not avoid a finding of confusing similarity as it can be considered a misspelling". The addition of the generic Top-Level Domain ("gTLD") ".com" is not significant in determining whether the domain name is identical or confusingly similar to the mark.

The Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. Given that the Respondent registered the domain name less than two months before the filing of the present Complaint, the Respondent had no time to become commonly known by the disputed domain name. Furthermore, the Respondent has acquired no trademark or service mark related to the term RUBIS ENERGIE. The Complainant has conducted trademark searches and found no RUBIS ENERGIE trademark or right owned by the owner of the disputed domain name. In addition, the Respondent reproduces the Complainant's

trademark without any license or authorization, which is strong evidence of the lack of legitimate interest.

The Respondent's use of the disputed domain name or preparation to use the domain name demonstrate no intent to use it in connection with a *bona fide* offering of goods or services. The disputed domain name resolves to an error page. See for instance, *Carrefour v. Andre Machado*, WIPO Case No. [DIO2020-0004](#), where the Panel stated that a blank or error page is not a *bona fide* offering of goods or services under the Policy.

The disputed domain name is used by the Respondent to send fraudulent emails. In the emails, the Respondent impersonates the Complainant and poses as a senior officer of the Complainant, in an attempt to defraud partners or potential partners of the Complainant. It should be noted that the emails reproduce the trademarked logo and the address of the Complainant. The Respondent has pretended to be the Complainant to propose commercial partnerships to various companies in the field of energy. None of the circumstances which set out how a respondent can prove his rights or legitimate interests are present in this case. In light of all the elements mentioned above, the Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name.

The Complainant states that the Respondent has registered and is using the disputed domain name in bad faith, for the following reasons. Firstly, the Complainant states that the Respondent had the Complainant's name and trademark in mind when registering the domain name. The Respondent's choice of domain name cannot have been accidental. Indeed, a search on an online search engine yields results only related to the Complainant. Therefore, at the very least, the Respondent knew or should have known that, when registering and using the disputed domain name, it would do so in violation of the Complainant's earlier rights. From these findings, the Complainant asserts that the Respondent knew or should have known of the Complainant and its earlier trademarks, and therefore registered the disputed domain name in bad faith.

Secondly, the Complainant sees no possible way whatsoever that the Respondent would use the disputed domain name in connection with a *bona fide* offer of products or services. Any use of the trademark would amount to trademark infringement and damage to the repute of the trademark. The sole detention of the disputed domain name by the Respondent, in an attempt to prevent the Complainant from reflecting its trademark in a domain name, is strong evidence of bad faith. The Complainant's trademark is arbitrary and has no common or general meaning in any language, and the disputed domain name is not generic or descriptive.

Thirdly, the Complainant's trademark registrations significantly predate the registration date of the disputed domain name. In this regard, previous panels have established that knowledge of the Complainant's intellectual property rights, including trademarks, at the time of registration of the disputed domain name, proves bad faith registration. A quick trademark search would have revealed to the Respondent the existence of the Complainant and its trademarks. Respondent's failure to do so is a contributory factor to its bad faith.

Fourthly, the current use of the disputed domain name should not be considered a good faith use. By simply holding the disputed domain name, the Respondent is preventing the Complainant from reflecting its registered trademark in the corresponding domain name. The Respondent intentionally adopted the Complainant's RUBIS ENERGIE trademark to create the appearance of legitimacy in the execution of its fraud scheme. The Respondent's intentional misidentification of a senior officer of Complainant in the fraudulent emails evidences a clear intent to trade off the goodwill of the Complainant's trademark at the time the Respondent registered the disputed domain name for commercial gain. The fraud scheme itself is clear evidence of bad faith use. The only feasible explanation for Respondent's registration and use of the disputed domain name is that Respondent intends to cause confusion, mistake and deception by means of the disputed domain name.

In light of all the elements above, the Complainant contends that the disputed domain name was registered and is being used in bad faith by the Respondent. The combination of all the elements listed and detailed above unequivocally show that the Respondent has acted in bad faith when registering, in line with the Policy.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant is, according to the submitted evidence, the owner of the registered trademark RUBIS ENERGIE. The disputed domain name <rubisenergies.com> incorporates the trademark in its entirety with the addition of the letter "s", commonly used as a plural signifier. Adding the plural "s" to the trademark does not prevent a finding of confusing similarity.

Having the above in mind, the Panel concludes that the disputed domain name <rubisenergies.com> is confusingly similar to the Complainant's trademark RUBIS ENERGIE and that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that the Respondent uses or has made preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or
- (ii) that the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark rights; or
- (iii) that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Complainant has not licensed or otherwise consented to the Respondent's use of the Complainant's registered trademark RUBIS ENERGIE in connection with the disputed domain name <rubisenergies.com>, which is confusingly similar to the Complainant's trademark.

The disputed domain name resolves to an error page. However, the Complainant has submitted evidence demonstrating that the Respondent has been using the disputed domain name to impersonate the Complainant by sending fraudulent emails to companies in the field of energy posing as a senior officer of the Complainant. The Respondent's fake email messages contain the signature of the Complainant, including the Complainant's trademark and address. Such use cannot be considered a legitimate, noncommercial or fair use of the disputed domain name.

There is no evidence in the case indicating that the Respondent has made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services prior to the dispute. Furthermore, there is nothing in the case suggesting that the Respondent is commonly known by the disputed domain name. Although given the opportunity, the Respondent has not submitted any evidence indicating that the Respondent is the owner of any trademark rights or that the Respondent is commonly known by the disputed domain name.

By not submitting a Response, the Respondent has failed to invoke any circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case that refutes the Complainant's submissions, and the Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

The submitted evidence in the case file clearly indicates that the disputed domain name has not only been registered but also used with the Complainant's business and trademark in mind. The Respondent has used the disputed domain name to create and send fraudulent email messages to third parties, passing itself off as a senior officer of the Complainant. In the Panel's view, the Respondent has been engaged in a scam which was intended to generate revenue for the Respondent.

The Panel finds that there is sufficient evidence that the Respondent, by registering and using the disputed domain name for its fraudulent activities, attempted to create, for commercial gain, a likelihood of confusion as to the source of the disputed domain name. There is no evidence that refutes the Complainant's submissions.

The Panel concludes that the Complainant has proved the requirements under paragraph 4(b) of the Policy and that the disputed domain name <rubisenergies.com> has been registered and 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 <rubisenergies.com> shall be transferred to the Complainant.

/Johan Sjöbeck/

Johan Sjöbeck

Sole Panelist

Date: September 6, 2023