

## **ADMINISTRATIVE PANEL DECISION**

AB Electrolux v. Phil Cherry  
Case No. D2023-3393

### **1. The Parties**

The Complainant is AB Electrolux, Sweden, represented by SILKA AB, Sweden.

The Respondent is Phil Cherry, Belize.

### **2. The Domain Name and Registrar**

The disputed domain name <electroluxprofassional.com> is registered with PDR Ltd. d/b/a <PublicDomainRegistry.com> (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 8, 2023. On August 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 10, 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 and contact information in the Complaint.

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 August 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 12, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on September 20, 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 Swedish producer of appliances and equipment for kitchen and cleaning and floor care products; it owns numerous trademark registrations containing the mark ELECTROLUX around the world; some of these trademark registrations date back far more than 100 years (Annex 5 to the Complaint).

The Complainant is the owner of multiple trademark registrations for ELECTROLUX across various jurisdictions, including but not limited to the following: International Registration for ELECTROLUX (figurative), No. 836605 in classes 3, 7, 8, 9, 11, 12, 21, 25, 35, 37, and 39, registered on March 17, 2004.

Further, the Complainant owns domain names containing the ELECTROLUX mark, especially the domain names <electrolux.com> and <electroluxprofessional.com> which resolve to the Complainant's website.

The disputed domain name was registered on July 4, 2023 (Annex 2 to the Complaint); it does not resolve to an active webpage (Annex 6 to the Complaint).

#### 5. Parties' Contentions

##### A. Complainant

The Complainant is a Swedish company founded in 1901; according to the Complainant, it is one of the world's leading producers of appliances and equipment for kitchen and cleaning products and floor care products. Further, Electrolux Professional is one of the Complainant's subsidiaries and one of the leading global providers of food service, beverage and laundry solutions.

The ELECTROLUX trademark is the Complainant's flagship brand for its products, for both consumers and professional users. The Complainant is the owner of more than 800 registered (well-known) trademarks ELECTROLUX as a word and figure mark, in several classes, transliterations and in more than 150 countries all over the world.

Furthermore, the Complainant has registered a number of domain names containing its well-known trademark ELECTROLUX, among the most relevant <electrolux.com>, registered on April 30, 1996, and <electroluxprofessional.com>, registered on July 2, 2004.

The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights: the disputed domain name incorporates the Complainant's well-known registered trademark ELECTROLUX in its entirety together with the word "profassional" with a conscious and purported mistype, this is, the replacement of the vowel "e" with "a". The addition of this term does not differentiate the disputed domain name from the Complainant's registered trademark ELECTROLUX.

The Respondent has no rights or legitimate interests in respect of the disputed domain name: The Respondent is not commonly known by the disputed domain name and has no history of using or preparing to use the disputed domain name in connection with a *bona fide* offering of goods and services. The Complainant has not granted authorization or license to the Respondent to use the trademark ELECTROLUX, and therefore, the Respondent has no rights (including trademark rights), in respect of the mark ELECTROLUX. Furthermore, there is no business or legal relationship between the Complainant and the Respondent.

Finally, the disputed domain name is registered and is being used in bad faith: It is clear that the Respondent has registered the disputed domain name in an unfaithful try to link the disputed domain name to a domain name actually registered and used by the Complainant, merely replacing the letter "e" by the letter "a" in the disputed domain name, this is, a common typographical error when typing a domain name into an Internet browser. The Complainant's popularity is also evident from its promotion, active social media pages and over 500 domain names containing the mark ELECTROLUX, especially the domain names

<electrolux.com> and <electroluxprofessional.com>. It is therefore unlikely that the Respondent was not aware of the Complainant's ELECTROLUX trademarks when registering the disputed domain name. Hence, the disputed domain name has been registered to capitalize on the reputation and goodwill of the Complainant's ELECTROLUX trademark and there is no reason that could justify a registration in good faith.

Although the disputed domain name is not being actively used, the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding, which can be applied to the disputed domain name since the Complainant's ELECTROLUX trademark is well known and the Respondent is clearly trying to impersonate the Complainant by including the word "profassional" together with the Complainant's trademark ELECTROLUX.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in 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**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

In the case at issue, the Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark ELECTROLUX.

The disputed domain name is confusingly similar to the ELECTROLUX mark in which the Complainant has rights since the Complainant's ELECTROLUX mark is clearly recognizable in the disputed domain name. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the [WIPO Overview 3.0](#)).

This is the case at hand: the addition of the term "profassional" combined with "electrolux" in the disputed domain name does not prevent a finding of confusing similarity.

Finally, it has also long been held that generic Top-Level Domain ("gTLDs") are generally disregarded when evaluating the confusing similarity under the first element.

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

## B. Rights or Legitimate Interests

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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant’s mark in its entirety together with an additional related term with misspellings “profassional”, indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which cannot be considered fair as this carries a risk of implied affiliation with the Complainant that does not exist.

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

## C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated.

(i) In the present case the Complainant has rights and is the owner of the well-known and highly distinctive registered trademark ELECTROLUX, which is registered and used in many jurisdictions around the world much more than 100 years. Moreover, the Complainant registered and is using domain names containing the ELECTROLUX trademark e.g., <electrolux.com> or <electroluxprofessional.com> to address its websites which are highly frequented and visited.

Because of the fame and distinctiveness of the ELECTROLUX marks of the Complainant as well as the use of the ELECTROLUX marks that has lasted for more than a century, it is inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant’s rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant’s trademark ELECTROLUX entirely. The fact, that there is a typo in the additional descriptive term of the disputed domain name, “profassional” instead of “professional” does not change this finding.

(ii) The disputed domain name is also being used in bad faith: Although there is no evidence that the disputed domain name has been actively used or resolved to a website with substantive content, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent, the non-use of a domain name (including a blank or “coming soon” or resolving to a parking page or an offer for sale page) would not prevent a finding of bad faith (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#) and section 3.3. of the [WIPO Overview 3.0](#)).

This Panel concludes that the disputed domain name is being used in bad faith, putting emphasis on the following:

- the Complainant’s trademark ELECTROLUX is well known, distinctive and has been used for much more than a century;

- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to divert or mislead potential Internet users from the website they are actually trying to visit (the Complainant's site); and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these aspects and evidence into consideration and the fact that the Respondent failed to respond to the Complaint supports the finding that the disputed domain name has been registered and is being used in bad faith under 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 disputed domain name <electroluxprofassional.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: October 4, 2023