

## **ADMINISTRATIVE PANEL DECISION**

**ELECNOR, S.A v. ryan quimby johnson**

**Case No. D2023-4166**

### **1. The Parties**

The Complainant is ELECNOR S.A, Spain, represented by Clarke, Modet y Cía., S.L, Spain.

The Respondent is ryan quimby johnson, United States of America.

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

The disputed domain name <eleconor.com> is registered with Squarespace Domains II LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 6, 2023. On October 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 12, 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 October 13, 2023. In response to the Center’s invitation to rectify certain information in the amended Complaint, the Complainant filed an amendment to the Complaint on October 25, 2023.

The Center verified that the Complaint, the amended Complaint, and 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 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 16, 2023.

The Center appointed Haig Oghigian as the sole panelist in this matter on December 12, 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, incorporated and headquartered in Spain, is a developer of sustainable projects spanning electricity, power generation, gas, telecommunications, industrial plants, and more. Being present in more than 53 countries, the Complainant comprises more than 80 group companies made up of 20,000 employees.

The Complainant owns trademark registrations for ELECNOR in multiple jurisdictions, including, e.g., European Union Trademark Registration No. 009496746 (figurative), registered on April 4, 2011.

The Complainant also owns and uses a number of domain names, including <elecnor.uy>, <elecnor.mx>, <elecnor.me>, <elecnor.ga>, <elecnor.eu>, <elecnor.de>, <elecnor.ec>, <elecnor.cl>, <elecnor.es>, <elecnor.com>, <elecnor.net>, and <elecnor.org>.

According to the Whois records, the disputed domain name was registered on September 1, 2023. The disputed domain name does not resolve to any active website. The Complainant has provided evidence showing that the disputed domain name was used to send fraudulent emails impersonating the Complainant in connection with a payment by one of its suppliers.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions are as follows.

First, the Complainant submits that the disputed domain name is confusingly similar to its well-known trademark ELECNOR. The Complainant highlights that the disputed domain name was registered more than 65 years after it started using the ELECNOR trademark. The Complainant points out that the disputed domain name is composed of the ELECNOR mark, incorporated in its entirety, plus an "o" between the letters "c" and "n", and submits that this addition was included with the deliberate intention to confuse and use the disputed domain name to send fraudulent emails.

Citing WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element". Therefore, it can be concluded that the disputed domain name is identical to the Complainant registered prior trademark.

Second, the Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name because (1) the Respondent is not commonly known by and has no prior use of the disputed domain name and (2) the Respondent has not acquired trademark rights to the corresponding name and (3) the

Respondent has no relation to the Complainant nor has given his permission to use the name and its trademarks and/or any other word that lends itself to confusion with them. The Complainant contends that: (i) the use of the disputed domain name cannot be protected by legitimate interests, and (ii) the Respondent could not have been unaware of the Complainant and its business when registering the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered in bad faith. In support of this contention, the Complainant highlights actions the Respondent has carried out under fraudulent pretenses, namely an attempt to impersonate the Complainant in connection with a payment from one of its suppliers. Furthermore, as personal data can be obtained (addresses, bank details) through these actions, the Complainant contends the actions of the Respondent could imply serious damage to the Complainant and the reputation of its trademark. Finally, citing *Insured Aircraft Title Service, LLC v. Domain Administrator*, WIPO Case No. [D2022-2280](#), the Complainant draws the Panel's attention to the deliberate use of the disputed domain name for use in illegal activity and in the context of a fraud scheme as being evident of use in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Even in the absence of a response from the Respondent, and in accordance with paragraph 4(a) of the Policy, the Complainant bears the burden to prove to the Panel each of the following elements:

- i. The disputed 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 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 satisfactorily established its rights in the ELECNOR trademark and that the disputed domain name is confusingly similar to the ELECNOR trademark.

The Complainant has shown its rights in the ELECNOR trademark through the above-cited registrations in various jurisdictions. Evidence of such registrations is sufficient to *prima facie* satisfy the threshold requirement of having trademark rights in the ELECNOR trademark, according to section 1.2.1 of the [WIPO Overview 3.0](#).

As stated in section 1.7 of the [WIPO Overview 3.0](#), a domain name which incorporates the entirety of a trademark, or where at least a dominant feature of the relevant trademark is recognizable in the domain name will normally be considered confusingly similar to that trademark. The test for identity or confusing similarity typically involves a side-by-side comparison of the domain name, to assess whether the trademark is recognizable within the domain name.

In this case, the disputed domain name is composed of a single element: "eleconor", the ELECNOR trademark with the addition of an "o". The Panel is permitted to ignore the generic top-level domain ".com", in accordance with section 1.11 of the [WIPO Overview 3.0](#). Pursuant to [WIPO Overview 3.0](#), section 1.9, the addition of the letter "o" does not prevent the disputed domain name from being confusingly similar to the Complainant's mark, which remains recognizable.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the ELECNOR trademark and thus the Complainant has discharged its burden under subparagraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant satisfactorily established that the Respondent has no rights or legitimate interests in the disputed domain name.

Following section 2.1 of the [WIPO Overview 3.0](#), the Complainant must demonstrate, *prima facie*, that the Respondent has no rights to or legitimate interests in the disputed domain name. If the Complainant succeeds, the burden of production of this second element of the Policy shifts to the Respondent. Here, the Respondent must now produce relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Such a legitimate interest is defined, non-exhaustively at paragraph 4(c) of the Policy, as use of the domain name in connection with a *bona fide* offering of goods or services, the Respondent being commonly known by the disputed domain name, or a legitimate noncommercial or fair use of the disputed domain name, without misleading the consumers or tarnishing the trademark at issue.

In the present case, the Respondent did not file a response and thus provided no evidence that it holds any such rights or legitimate interests in the disputed domain name, namely that it has used or made preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The ELECNOR trademark is clearly present in the disputed domain name, and in the absence of evidence from the Respondent to the contrary, this is sufficient for the Panel to agree with the Complainant's submissions that the Respondent is not a licensee of the Complainant, that the Respondent has not received any authorization from the Complainant to use its mark in association with the registration of the disputed domain name, and that there is no conceivable use to which the disputed domain name could be put that would confer any legitimate interest upon the Respondent.

Furthermore, as set out in section 2.13 of the [WIPO Overview 3.0](#), the Respondent's use of the disputed domain name can never confer rights or legitimate interests upon the Respondent since the disputed domain name is being used for illegal activity, namely the impersonation of the Complainant through a fraudulent email scheme.

Therefore, the Panel finds that the Respondent does not hold any rights or legitimate interests in the disputed domain name and that the Complainant has discharged its burden under subparagraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

The Complainant satisfactorily established that the Respondent has registered and uses the disputed domain name in bad faith.

Paragraph 4(a)(iii) of the Policy states this double requirement. According to section 3.1 of the [WIPO Overview 3.0](#), bad faith occurs if the Respondent takes unfair advantage of or otherwise abuses the Complainant's trademark. The same paragraph lists non-exhaustive scenarios, which could constitute evidence of bad faith.

The Panel notes that the evidence provided to it regarding the Respondent's use of the disputed domain name is a screen capture of fraudulent emails addressed to a supplier of the Complainant in connection with a payment.

First, the Panel agrees that the Respondent's email phishing activities support the Complainant's position that the disputed domain name was registered and is being used in bad faith by the Respondent.

The express use of a domain name to send deceptive emails is evidence of bad faith, in accordance with [WIPO Overview 3.0](#), section 3.4. This section namely states that: panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. (In some such cases, the respondent may host a copycat version of the complainant's website). Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers.

In this regard, the Panel notes that the Complainant has successfully established that the ELECNOR trademark is very well known and has been in use for over 65 years prior to the registration of the disputed domain name.

Finally, as noted above, the Complainant established that the Respondent is not a licensee of the Complainant, that the Respondent has not received any authorization from the Complainant to use its mark in association with the registration of the disputed domain name, and that there is no conceivable use to which the disputed domain name could be put that would confer any legitimate interest upon the Respondent. Given the fame and reputation of the ELECNOR trademark, and particularly the impersonating use of the disputed domain name as further explained below, the Panel is of the view that the Respondent was aware of the ELECNOR trademark and the Complainant's reputation. This further removes any doubt that the Respondent knew of the Complainant and chose the disputed domain name with knowledge of the Complainant.

Furthermore, use of the Complainant's trademark, logos, corporate name and the names of the Complainant's employees in a fraudulent email scam reinforce that the Respondent was obviously aware of the Complainant and has deliberately and intentionally caused damage to the brand in addition to the fraudulent payment scam involving economic losses.

In addition to all of the above, the Respondent has concealed his identity when registering the disputed domain name.

Therefore, the Panel finds that the Respondent registered and used the disputed domain name in bad faith and that the Complainant has established the third element under subparagraph 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 <eleconor.com> be transferred to the Complainant.

/Haig Oghigian/

**Haig Oghigian**

Sole Panelist

Date: January 9, 2024