

ADMINISTRATIVE PANEL DECISION

senswork GmbH v. Neuralyze LL C (formerly known as AxAxA LC)
Case No. D2023-5363

1. The Parties

The Complainant is senswork GmbH, Germany, represented by Lichtnecker & Lichtnecker, Germany.

The Respondent is Neuralyze LL C (formerly known as AxAxA LC), United States of America, represented by Kris Eifler, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <neuralyze.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 December 27, 2023. On December 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 29, 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 January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. The Response was filed with the Center on January 25, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on January 30, 2024. 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.

On February 6, 2024, the Center received an unsolicited supplemental filing from the Complainant.

On February 12, 2024, the Panel issued, pursuant to paragraph 12 of the Rules, Administrative Panel Order No. 1 inviting:

1. the Respondent to submit by February 16, 2024, a supplemental filing (with appropriate corroborating documentation) clarifying the date(s) on which it became the registrant of the disputed domain name and began publicly using the disputed domain name;
2. If the Respondent submitted a supplemental filing pursuant to the Panel Order, permitting the Complainant to submit a supplemental filing in reply to that supplemental filing by February 23, 2024.

Both the Respondent and the Complainant submitted supplemental filings on, respectively, February 15 and February 22, 2024.

4. Factual Background

The Complainant is a company based in Germany.

The Complaint discloses that the Complainant owns three registered trademarks:

- (a) European Union Trademark (EUTM) No. 018368073, NEURALYZE, which was filed on January 4, 2021 and formally entered on the Register on May 28, 2021 in respect of a wide range of goods and services in International Classes 7, 8, 9, 10, 35, 37 and 42 including hand tools, robotic machines medical, dental and veterinary apparatus, construction services, repair services, scientific and technological services, machine learning for monitoring and analysis purposes and Software as a Service (SaaS);
- (b) International Registration No. 1627704, NEURALYZE, which was registered on July 1, 2021. in respect of similar goods and services but in International Classes 9, 35 and 42 only and designating Canada, China, India, Japan, Mexico, Republic of Korea, Russian Federation, Singapore, Switzerland, United Kingdom and the United States; and
- (c) United States Registered Trademark No 7,220,340, NEURALYZE, which was registered in the Principal Register on November 21, 2023, in respect of the International Class 9, 35 and 42 goods and services including, amongst other things, machine learning for monitoring and analysis purposes and Software as a Service (SaaS).

The Respondent was incorporated in Texas, United States on May 23, 2018, and based on a certificate issued by the Secretary of State for Texas in the United States, changed its name to Neuralyze LLC on September 5, 2023. Mr Kris Eifler is identified as the "managing member" of the Respondent in the documents certified by the Secretary of State.

According to the Response, the Respondent provides machine learning services.

The disputed domain name was created on June 20, 2016.

When the Complaint was filed, the disputed domain name resolved to a website apparently promoting data processing services under "Neuralyze".

In its supplemental filing, the Respondent has submitted receipts showing that Kris Eifler of [redacted] in San Antonio, Texas, United States registered the disputed domain name on June 20, 2016. Mr Eifler also registered <corticize.com> at the same time.

A search of the Wayback Machine, includes a capture on August 7, 2018 apparently showing that the disputed domain name resolved to a blank page. The next capture, on July 26, 2019, showed the disputed domain name resolving to a webpage:

“Welcome to nginx!

“If you see this page, the nginx web server is successfully installed and working. Further configuration is required.

“For online documentation and support please refer to nginx.org. Commercial support is available at nginx.com.

“Thank you for using nginx.”

The snapshots after 2019 cannot be loaded. In its second supplemental filing, the Complainant states that the pages refer to a “DevFolio Bootstrap Template”.

Annexes to the Response included documentation said to be:

- (a) the source code for the docker installation of the Neuralyze website, services and clients hosted at “<http://source.neuralyze.com>”,
- (b) a Python client library for accessing the Neuralyze API;
- (c) documentation for the Neuralyze API;
- (d) a copy of the printout of the Neuralyze API site hosted at “<http://api.neuralyze.com>; and
- (e) a copy of the yaml specification of services operating at “<http://neuralyze.com>”.

As noted in Panel Order No. 1, only the first of these appears to bear a date: “Copyright (c) 2021-present AxAxA LLC All rights reserved.”

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that, in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Supplemental Filings

The Panel admits the supplemental filings into the record in the proceeding, including pursuant to the Panel's powers under paragraph 10 of the Rules, the Complainant's unsolicited supplemental filing received before the issue of Panel Order No. 1.

B. Identical or Confusingly Similar

Disregarding the “.com” generic Top-Level Domain (gTLD) suffix as a functional component of the domain name system, the disputed domain name is identical to the Complainant’s registered trademarks. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), sections 1.11 and 1.7.

Accordingly, the Complainant has established the first requirement under the Policy.

C. Registered and Used in Bad Faith

In the circumstances of this case, it is appropriate to consider the third requirement under the Policy next.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Complaint provides extremely limited information about the Complainant.

All that the Complaint informs the Panel is that the Complainant owns the registered trademarks identified in Section 4 above. The Panel does not know when the Complainant was established, when (if) the Complainant started using the trademark or how extensively.

As noted above, the Complainant’s first trademark, the EUTM, was filed on January 1, 2021.

According to Annex 2 to the Complainant’s second supplemental filing, the Complainant (or someone acting on its behalf) initiated several attempts through a domain broker to buy the disputed domain name between December 10, 2020, and February 18, 2021. According to the supplemental filing, no replies were received to these approaches.

According to the Response, the Respondent has been using the disputed domain name in connection with its business providing machine learning services since the disputed domain name was registered.

The disputed domain name was registered on June 20, 2016 – more than four years before the Complainant filed its application to register the EUTM.

The disputed domain name was registered by Mr Eifler, however, not the Respondent. Despite the request in the Panel Order, the Respondent has not explained when Mr Eifler transferred the disputed domain name to it. However, Mr Eifler is the “managing member” of the Respondent.

As it was not incorporated until 2018, the Respondent plainly could not itself have been using the disputed domain name from 2016 when the disputed domain name was registered.

To support its claims, the Respondent has also submitted the five documents relating to “Neuralyze” referred to in Section 4 above. The only one of these which appears to be dated is the document bearing the copyright notice “© 2021 to present”.

As the Complainant points out in its second supplemental filing (the point having been raised in the Panel Order), the captures of the website at “www.neuralyze.com” do not show continuous use of “Neuralyze”.

Apart from apparently blank pages until recently, the only substantive capture, on June 26, 2019, related to something called “nginx web server”.

An internet search reveals that NGINX is open source software which “accelerates content and application delivery, improves security and facilitates availability and scalability for the busiest websites”. While that appears to be potentially relevant to the Respondent’s claimed business, how, if at all, it does in fact relate to the Respondent’s “Neuralyze” business and services is not at all clear to the Panel and not explained by the Respondent.

Further, as the Complainant points out, the Respondent changed its name to Neuralyze LLC only on September 5, 2023, which is significantly after the Complainant filed its trademark applications.

In this state of the evidence, the Panel is not prepared to find that the Complainant has established the disputed domain name was registered in bad faith.

It is well-established that, when a domain name is transferred from a third party to a respondent, the question of registration in bad faith falls to be considered at the date of the transfer. However, a transfer between closely related parties may constitute an exception to that approach. In some cases, that exception may not apply where there has been a clear change in the use of the disputed domain name to target a complainant’s trademark. See [WIPO Overview 3.0](#), section 3.9.

In the present case, there has been a change in the registration from an individual to a company of which he is the “managing member”. The transfer of a domain name from an individual to a company on the incorporation of the company is not an uncommon experience even where, as here, the company is incorporated a couple of years after the disputed domain name was registered.

There has been a clear change in the nature of the use of the disputed domain name, at least insofar as the use for a website is concerned. However, a domain name can be used in many different ways which do not lead to captures by the Wayback Machine.

As Mr Eifler first registered the disputed domain name and the Respondent was first incorporated (albeit under a different name to its current name) several years before the Complainant even applied to register its trademark, the Panel is not prepared to impute bad faith to the registration of the disputed domain name. Going behind these objective facts requires the sort of forensic investigation which the materials before the Panel do not permit and for which the Policy was not designed.

Accordingly, the Complainant has not established the Respondent registered the disputed domain name in bad faith and so cannot establish the third requirement under the Policy.

D. Rights or Legitimate Interests

As the Complaint cannot succeed, no good purpose would be served by considering the issues arising under this requirement of the Policy.

E. Reverse Domain Name Hijacking

The very limited amount of material submitted in the Complaint to support what are very serious allegations has caused the Panel to give serious consideration to a finding of reverse domain name hijacking.

Of course, the failure of the Complaint is not in itself sufficient basis to make such a finding.

Notwithstanding the very limited amount of material submitted in support of the Complaint, the Panel considers a finding of reverse domain name hijacking is not appropriate in this case. The Panel does not know whether the Complainant carried out any searches to ascertain the identity of the business operating the website or of the Wayback Machine about how the disputed domain name may have been used before filing the Complaint or only after the Response and Panel Order.

Even assuming the Complainant did not carry out the searches before it filed the Complaint, searches of Neuralyze LLC, or Axaxax LC, would have revealed that the Respondent adopted its name only well after the Complainant applied to register its trademarks. In addition, a search of the disputed domain name on the Wayback Machine would have revealed that the current form of use appears to have been adopted only recently.

6. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: March 1, 2024