

ADMINISTRATIVE PANEL DECISION

elobau GmbH & Co. KG v. Jullian Sotirov, Hermes Engineering
Case No. D2024-4604

1. The Parties

The Complainant is elobau GmbH & Co. KG, Germany, represented by VKK Patentanwälte PartG mbB, Germany.

The Respondent is Jullian Sotirov, Hermes Engineering, Bulgaria.

2. The Domain Name and Registrar

The disputed domain name <elobau-connectors.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2024. On November 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 2024, 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 0166125544) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 11, 2024, 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 November 22, 2024.

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 November 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 16, 2024.

The Center appointed Mireille Buydens as the sole panelist in this matter on December 23, 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.

4. Factual Background

The Complainant presents itself on its website as one of the leading suppliers of contactless sensor technology founded in Germany in 1972. It offers a wide range of electronic components, in particular sensors for the industry. The Complainant has 1,200 employees, 48 affiliated companies and partners, and has a turnover of EUR160 million. It is mostly active in Europe but also inter alia in Brazil or in the United States of America.

The Complainant owns various registrations for trademarks containing the word element ELOBAU ("the ELOBAU Trademark"), including the following:

- European Union Trademark No. 010536902, for ELOBAU (word and design), registered on May 31, 2012;
- International Trademark No. 1559014, for ELOBAU (word and design), registered on September 23, 2020; and
- German Trademark No. 30233743, for ELOBAU (word mark), registered on October 24, 2002.

The Complainant claims that it is the owner of several domain names containing the mark ELOBAU, alone or with descriptive terms, including <elobau.com>, <elobau.us>, <elobau.ru>, <elobau-sensortechnology.com>, <elobau-france.fr>, <elobau-vcl.co.uk>, and <elobau-vehicle-components.co.uk>.

The disputed domain name was registered on January 5, 2023. At the time of filing of the Complaint and at the time of this Decision, the disputed domain name resolves to a website advertising various sensors and connectors, as well as other products to be used with sensors. The products advertised on the Respondent's website are identical or at least very similar to the products offered by the Complainant. The website to which the disputed domain name resolves displays the Complainant's ELOBAU Trademark and gives many details about the Complainant, including its history and description of its business operations. This website does not mention any address or contact details of the company actually running it but includes a "contact request form" asking Internet users to fill in their own contact details.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the ELOBAU Trademark, as it includes the word element "elobau" identically. The second element of the disputed domain name (the word "connectors") is merely descriptive of the offered goods.

In addition, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent possesses no registered trademarks ELOBAU, nor any unregistered rights, and is not linked to, nor authorized by, the Complainant.

The Complainant finally contends that the Respondent registered and uses the disputed domain name in bad faith because, given the Complainant's reputation and the presence of the ELOBAU Trademark on the Internet, as well as the use of various domain names containing ELOBAU by the Complainant, the

Respondent was or should have been aware of the ELOBAU Trademark prior to registering the disputed domain name. The Respondent uses the disputed domain name to intentionally attempt to attract for commercial gain Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and products. Further, the Complainant contends that the Respondent is the registrant of another domain name <hermeses.com> which offers an ELOBAU product (a control switch) bearing the Complainant's genuine product number, which confirms that the Respondent was and is fully aware of the existence of the Complainant and its Trademark. The Complainant also asserts that there is no conceivable good-faith use to which the Respondent could put the disputed domain name that would not infringe the Complainant's ELOBAU Trademark.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (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 was 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the ELOBAU Trademark is reproduced within the disputed domain name. The only difference between the ELOBAU Trademark and the disputed domain name is the addition of the term "connectors". Although the addition of this term may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Further, the generic Top-Level Domain ".com" is a standard registration requirement and does not prevent the disputed domain name from being confusingly similar to the ELOBAU Trademark.

Accordingly, the disputed domain name is confusingly similar to the ELOBAU Trademark for the purposes of the Policy.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent is not licensed by, nor affiliated with, the Complainant in any way. There is no evidence that the Respondent is commonly known by the disputed domain name, nor is there any evidence of use or demonstrable preparations to use the disputed domain name for a bona fide offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the disputed domain name, either. On the contrary, the Panel notes that the disputed domain name reproduces the ELOBAU Trademark with the mere addition of the term “connectors” (describing a type of products sold by the Complainant), and as such carries a risk of implied affiliation, which cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. Noting also the impersonating nature of the content exhibited on the website at the disputed domain name, the Respondent induces Internet users into believing that the disputed domain name resolves to a website operated or endorsed by the Complainant. Panels have held that the use of a domain name for illegitimate activity, here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy. The Panel notes that the Respondent has composed the disputed domain name by combining the Complainant’s ELOBAU Trademark with the term “connectors” descriptive of the Complainant’s products for resolving to a website which sells sensors and related products and where the Respondent passes itself off as the Complainant. A quick search for the term “elobau” online would have revealed to the Respondent the existence of the Complainant and its Trademark. As a result, the Panel finds that the Respondent was more likely than not aware of the Complainant’s Trademark at the time of the registration of the disputed domain name. [WIPO Overview 3.0](#) section 3.2.2.

Moreover, panels have held that the use of a domain name for illegitimate activity, here impersonating or passing off, constitutes bad faith. In the present case, the disputed domain name resolves to a website offering sensors and related products which are identical or at least very similar to the products sold by the Complainant. The Respondent passes itself off as the Complainant, the website to which the disputed domain name resolves displays the Complainant’s ELOBAU Trademark while giving many details about the Complainant, including its history and description of its business operations, and offering potential customers to send a request and to leave their contact details. This website does not contain any information allowing Internet users to identify the company operating the website. In light of this, it seems inconceivable that the

Respondent would have registered and used the disputed domain name for a reason other than seeking to unduly benefit from the Complainant, its ELOBAU Trademark, and associated goodwill.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <elobau-connectors.com> be transferred to the Complainant.

/Mireille Buydens/

Mireille Buydens

Sole Panelist

Date: January 6, 2025