

ADMINISTRATIVE PANEL DECISION

Enel S.p.A. v. Super Privacy Service LTD c/o Dynadot / Na Lendorff
Case No. D2022-1903

1. The Parties

Complainant is Enel S.p.A., Italy, represented by Società Italiana Brevetti, Italy.

Respondent is Super Privacy Service LTD c/o Dynadot, United States of America (“United States” / Na Lendorff, United States of America.

2. The Domain Names and Registrar

The disputed domain names <enel-greenpower.com> (“Domain Name”) and <enel-greenpower.org> (“Additional Domain Name”) (collectively the “Domain Names”) are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 26, 2022. On May 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on June 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 3, 2022.

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 Respondent of the Complaint, and the proceedings commenced on June 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2022. On June 16, 2022, the Complainant submitted a request to add an additional domain name to the proceeding. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 12, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on July 25, 2022. 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 August 24, 2022, the Panel issued a Procedural Order No. 1 (the "Order"), regarding the Complainant's request to add the Additional Domain Name to this proceeding. The Order:

(i) provided the Respondent with an additional 7 days to communicate whether it intended to make a Further Response in relation to the Additional Domain Name;

(ii) explained that if the Respondent timely communicated intent to provide a Further Response in relation to the Additional Domain Name, the Panel would consider whether it would be appropriate to allow the Respondent an additional 20 days from the issuance of the Order to provide a Further Response;

(iii) explained that the Panel's decision would be issued within 10 days of receipt of the Further Response or the date the Further Response was due;

(iv) explained that if the Respondent did not timely communicate intent to provide a Further Response, the Panel would issue its decision within 14 days of the issuance of Order (*i.e.*, seven days following a non-response to the Order); and

(v) specified that any Further Response must only relate to the issue of the Additional Domain Name.

4. Procedural Issue: Addition of Domain Name

Complainant requested the addition of a domain name to the Complaint after the Complaint had been notified to Respondent and the proceedings had formally commenced.

It is generally accepted, that except in limited cases where there is clear evidence of respondent gaming/attempts to frustrate the proceedings (*e.g.*, by the respondent's registration of additional domain names subsequent to complaint notification), such requests would be denied, since the addition of further domain names would delay the proceedings, which are expected to be carried out with due expedition (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) section 4.12.2).

Having regard to section 4.12.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), and following the issuance of the above-noted Panel Order, noting that the Respondent is the same for both Domain Names, the Panel considered it to be fair and practical, and not prejudicial to the Respondent for the Additional Domain Name, <enel-greenpower.org>, to be considered as part of this proceeding.

5. Factual Background

Per Complaint, Complainant is the largest Italian company in the energy market. With over 27 gigawatts ("GW") of installed capacity, it manages the majority of the Italian electricity and gas distribution network serving more than 26 million Italian customers. It is the parent company of the Enel Group, which operates through its subsidiaries in more than 32 countries across 4 continents, with a net installed capacity of around 88 GW and networks covering about 2.2 million kilometers, bringing energy to around 64 million customers. Complainant started its business activities in Spain, Canada, the United States, and Brazil in 2001. Today Complainant has an extensive presence in Europe where it operates along the entire energy chain, from generation to sale to end users in Italy and through subsidiaries in Spain and Portugal, Slovakia and Romania, where it serves 2.7 million customers through its supply and distribution network. It also produces in the Russian Federation, Greece, and Bulgaria, and sells electricity and gas in many other countries on the

continent. Complainant is also one of the largest energy companies in the Americas, with power generation plants of all types across 11 countries from Canada to the central Andes and, through a subsidiary, in Morocco and in South Africa.

Complainant's Group is made up of nearly 63,500 people. Complainant is listed on the Milan stock exchange since 1999 and has the largest number of shareholders of any Italian company, with 1.1 million retail and institutional investors. Thirteen other group companies are listed on the stock exchanges of Italy, Spain, Russia, Argentina, Brazil, Chile, and Peru. In the biennial 2018, Complainant posted revenues of approximately EUR 76 billion, EBITDA of more than EUR 16 billion and net ordinary income of almost EUR 5 billion. In 2019 Complainant was ranked 89th in the Fortune Global 500 List and 28th in the Fortune Changed the World List, ranking the top 50 companies in the world that have a positive social impact through activities that are part of their business strategy and their operations.

Complainant is the owner of trademark registrations for ENEL and ENEL GREENPOWER, including:

- the Italian trademark registration No. 0001480966, ENEL GREENPOWER (design) filed on February 28, 2012 and registered on March 5, 2012 for goods and services in international classes 1, 37, and 42; and

- the European Union trademark registration No. 2575306, ENEL GREENPOWER (design), filed on February 13, 2002 and registered on November 16, 2004 for goods and services in international classes 1, 37, and 42.

Complainant also owns more than 100 domain name registration consisting of or containing the trademark ENEL including the domain name <enel.com> registered on September 11, 2001.

The Domain Name was registered on April 15, 2022 and resolves to a registration and data collection web page in the Cyrillic alphabet, which requests Internet users to provide login information. The Additional Domain Name was registered on August 6, 2022, and resolves to an inactive page.

6. Parties' Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name and the Additional Domain Name

B. Respondent

Respondent did not reply to the Complainant's contentions.

7. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name and the Additional Domain Name:

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

A. Identical or Confusingly Similar

The Panel finds that the Domain Names, that incorporates Complainant's ENEL GREENPOWER mark along with a hyphen ("-"), is confusingly similar to the ENEL GREENPOWER trademark of Complainant.

The generic Top-Level Domain ".com" ("gTLD" and ".org" respectively) is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developments SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

(i) before any notice to Respondent of the dispute, Respondent's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or

(ii) Respondent (as an individual, business, or other organization) has been commonly known by the Domain Name, even if it has acquired no trademark or service mark rights; or

(iii) Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Names.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Names. As per Complaint, Respondent was not authorized to register the Domain Names and Respondent has not been commonly known by the Domain Names.

Prior to the notice of the dispute, Respondent did not demonstrate any use of the Domain Names or a trademark corresponding to the Domain Names in connection with a *bona fide* offering of goods or services.

On the contrary, the Domain Names lead respectively to a registration and data collection web page, in the Cyrillic alphabet, which requests Internet users to login with their information, and to a blank page.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Names.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Names in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Names; or

(ii) that Respondent has registered the Domain Names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has

engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Names primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Names, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Names in bad faith.

Because the ENEL GREENPOWER mark had been widely used and registered by Complainant before the Domain Names' registration, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Names (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)). Furthermore, ENEL is a fictitious word. This further indicates that Respondent knew of Complainant and chose the Domain Names with knowledge of Complainant and its trademarks.

Respondent should have known about Complainant's rights, as such knowledge is readily obtainable through a simple browser search (see *Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

Furthermore, Respondent could have conducted a trademark search and should have found Complainant's prior registrations in respect of ENEL GREENPOWER (*Citrix Online LLC v. Ramalinga Reddy Sanikommu Venkata*, WIPO Case No. [D2012-1338](#)).

Furthermore, the Domain Names was registered with a privacy shield service to hide Respondent's identity, while false information appear (per Complainant) to be provided as address contact details of Respondent. These further support the finding of bad faith registration.

As regards bad faith use, the Panel finds that the Domain Names are respectively employed to host a registration and data collection web page, in the Cyrillic alphabet, which per Complaint is untranslatable and does not relate to the sale of goods or services

The Panel also notes also that the request to provide login information and non use of a domain name respectively would not prevent a finding of bad faith under the circumstances of this proceeding (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3).

The Panel moreover notes that the registration of the Additional Domain Name after notice of this proceeding shows a clear attempt to add time and costs and generally to frustrate the efficiency of the present proceedings; this is textbook bad faith.

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Names in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

8. 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 <enel-greenpower.com> and <enel-greenpower.org> be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: September 5, 2022