

ADMINISTRATIVE PANEL DECISION

Enel S.p.A. v. Alejandro Messina
Case No. D2022-2464

1. The Parties

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

The Respondent is Alejandro Messina, Argentina.

2. The Domain Name and Registrar

The disputed domain name <enelwebpay.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1 and 6, 2022, respectively. On July 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 8, 2022, 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 July 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 9, 2022.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on August 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.

4. Factual Background

The Complainant is the Italian company, Enel S.p.A., one of the largest energy companies in the Italian market. The Complainant manages most part of the Italian distribution network for electricity and gas, serving over 26 million customers in the country.

The Complainant is the parent company of the Enel Group, which operates through its subsidiaries in more than 32 countries across four continents. Starting with Spain, the United States of America, Canada and Brazil, the Complainant brings today energy to over 64 million customers worldwide. Annexes 5 to 12 of the Complaint show the importance of the Complainant in the market, as well as in international media.

The Complainant owns several registrations for its mark ENEL worldwide, among others Italian registrations Nos. 0001299011, registered on June 1, 2010, and 0000825734, registered on October 4, 2000, and International registration No. 1322301, registered on February 4, 2016. A proof of these and all other registrations owned by the Complainant worldwide was attached to the Complaint as Annexes 14 and 15.

The Complainant also owns several domain names formed by the trademark ENEL registered worldwide, such as <enel.com> (Annex 16 of the Complaint).

The disputed domain name was registered on June 21, 2022. The disputed domain name resolves to website displaying a message of deceptive site, if Internet users choose to visit the site, it then resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant is the owner of registrations worldwide for the mark ENEL, which has been in use worldwide for more than 20 years. The Complainant contends that the disputed domain name is confusingly similar to the Complainant's mark registered and used worldwide.

In fact, the only distinctive word in the disputed domain name is "enel", which is identical to the Complainant's registered mark, the remaining elements being the words "web" and "pay", which together form the expression "webpay", inducing the idea of an online payment.

As stated by the documents presented, the registration and use of the trademark ENEL predates the registration of the disputed domain name.

The disputed domain name does not direct to an active website but a warning message of deceptive site. Nevertheless, the Complainant considers that the Respondent does not appear to make any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services.

In sum, the Complainant alleges that the registration and use of the disputed domain name is intentional to mislead Internet users by leading them to possible phishing scams, that it is clear that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- (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 to 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 Panel finds that the disputed domain name is, indeed, confusingly similar to the ENEL trademark, as the latter is entirely incorporated in the disputed domain name, with the mere addition of the expression “webpay”.

The Complainant has presented consistent evidence of ownership of the trademark ENEL in jurisdictions throughout the world, by presenting international registrations for it, as well as comprehensive evidence of the use of the trademark for over two decades.

The use of the Complainant’s trademark with the addition of the expression “webpay” in the disputed domain name does not prevent a finding of confusing similarity with the trademark.

Given the above, the Panel concludes that the disputed domain name is confusingly similar to the registered trademark of the Complainant.

B. Rights or Legitimate Interests

Given the clear evidence that the trademark ENEL is registered in the Complainant’s name and is widely known as identifying the Complainant’s activities, and that the Complainant has not licensed nor authorized the Respondent to use its trademark, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

In the absence of a Response, the Respondent has not rebutted such *prima facie* case. Furthermore, the Respondent does not appear to be commonly known by the disputed domain name.

It has also been shown that the Respondent is not making any direct use of the disputed domain name, noting the disputed domain name does not resolve to an active website. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, nor a *bona fide* offering of goods or services.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. In the absence of a Response, the Respondent has not rebutted such *prima facie* case.

Furthermore, the Panel finds that “webpay” in the disputed domain name may be considered as an intention to reinforce the disputed domain name to the Complainant, since “webpay” would lead consumers into thinking that the website at the disputed domain name is an online payment system of the Complainant.

The Panel, thus, finds for the Complainant under the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent has probably registered the disputed domain name with the purpose of taking unfair advantage of the Complainant's mark.

The disputed domain name reproduces the Complainant's mark ENEL in its entirety with the addition of the expression "webpay". The composition of the disputed domain name points towards the Respondent's likely intent to give an impression that the disputed domain name is associated with the Complainant. In the absence of any reasonable explanation for the selection of the disputed domain name by the Respondent, and in the circumstances of this case, the Panel finds that it is more likely than not that the disputed domain name has been registered to take advantage due to its value as a trademark owned by the Complainant.

The current passive holding of the disputed domain name is also evidence of bad faith from the Respondent. Previous UDRP panels have found that the apparent lack of so-called active use of a domain name without any active attempt to sell or to contact the trademark holder does not prevent a finding of bad faith. See, e.g., *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Redcats S.A. and La Redoute S.A. v. Tumay Asena*, WIPO Case No. [D2001-0859](#); and *DCI S.A. v. Link Commercial Corporation*, WIPO Case No. [D2000-1232](#).

Here, the Panel notes the distinctive and well-known nature of the Complainant's trademark ENEL, the failure of the Respondent to submit a Response, and the implausibility of any good faith use to which the disputed domain name may be put support a finding of bad faith.

The Panel finds that the Respondent registered and is using the disputed domain name with the intention of improperly obtaining benefits and harming the Complainant's reputation in the market.

In the totality of the circumstances, the Panel finds the Respondent has registered and is using the disputed domain name in bad faith.

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 <enelwebpay.com> be transferred to the Complainant.

/Alvaro Loureiro Oliveira/

Alvaro Loureiro Oliveira

Sole Panelist

Date: September 12, 2022