

ADMINISTRATIVE PANEL DECISION

Enovix Corporation v. Mobashir Raihan, Mobashir Raihan Raihan
Case No. D2023-2036

1. The Parties

The Complainant is Enovix Corporation, United States of America, represented by Bryan Cave Leighton Paisner LLP, United States of America.

The Respondent is Mobashir Raihan, Mobashir Raihan Raihan, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <enovix-pro.com> is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 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 Domain Administrator, Registrant Organization: Registrant of <enovix-pro.com>]] and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

An email was received from the Respondent on May 17, 2023. On May 26, 2023, the Complainant requested the proceeding be suspended. The Center suspended the proceeding the same day. Two further extensions were requested on June 23, 2023, and July 23, 2023. On August 29, 2023, the Complainant requested reinstatement of the proceeding as the Parties were unable to reach a resolution of this dispute. As such, the Proceeding were reinstated as of August 29, 2023.

The Complainant was given opportunity to reply to the Center's Notice of Registrant Information. The Complainant's submission was due by September 4, 2023. The Response was then due within twenty (20) calendar days of the commencement of the administrative proceeding.

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 August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. No Response was filed with the Center. As such the notice of Commencement of Panel Appointment Process was sent out on September 28, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on October 6, 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 Enovix Corporation was established in 2007, and provides consumers with high-energy, high-capacity silicon-anode lithium-ion batteries for use with technologies ranging from eyewear and other wearable devices, such as virtual reality goggles, mobile headsets, smartphones, laptops, and electric vehicles.

Since at least as early as 2014, the Complainant has continuously used ENOVIX as trademark in connection with its batteries. The Complainant holds a number of trademark registrations and pending applications for the ENOVIX and the ENOVIX Logo trademarks including United States Trademark no. 4,556,153, for the word mark ENOVIX filed on March 30, 2010, and registered on June 24, 2014, for "batteries; battery packs; battery storage devices, namely, battery cells" in International Class 9 and International Registration no. 1691899 for the ENOVIX and logo trademark filed on September 20, 2022, and registered on September 20, 2022, for "batteries; battery packs; battery storage devices, namely, battery cells" in International Class 9.

The disputed domain name was registered on April 4, 2023.

At the time the Complaint was filed it was used for a website, which displayed the Complainant's ENOVIX trademark and the Complainant's logo, together with a request for Internet users accessing the website to register an account. At the time of this Decision, the disputed domain name does not resolve to an active website.

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 wholly incorporates the Complainant's ENOVIX trademark and resolved to a webpage prominently featuring Complainant's ENOVIX mark and distinctive logo, and that the disputed domain name is, therefore, confusingly similar to the Complainant's marks.

The Complainant further contends that the Respondent lacks any legitimate rights in the ENOVIX or ENOVIX Logo trademarks, and that the Respondent has registered and used the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

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 3.0](#), section 1.7.

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

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, gTLD "com", may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, 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.

While 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 often impossible 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. 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 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.

In addition, the Panel notes that the disputed domain name was used for a website reproducing the Complainant's device trademark together with a request for Internet users to register an account, and a link to recover a forgotten password, which indicates a likely attempt to commit fraud against the Complainant and to confuse unsuspecting Internet users. Such use cannot give rise to rights or legitimate interests for the Respondent in the disputed domain name.

Based on the available record, 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.

The Panel considers that the record of this case reflects that the Respondent has used the disputed domain name in an attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Considering the Respondent's deliberate intent to create an impression of an association with the Complainant and to potentially commit fraud and gather data from unsuspecting Internet users looking for the Complainant, thus, for perpetrating an illegal activity, the Respondent's registration and use of the disputed domain name is considered in bad faith.

The fact that the that disputed domain name no longer resolves to an active website nor appears to be used actively in other ways anymore, does not prevent a finding of bad faith in the circumstances of this proceeding. [WIPO Overview 3.0](#), section 3.3.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <enovix-pro.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: November 1, 2023