

## **ADMINISTRATIVE PANEL DECISION**

Arkema France v. SIMON LUBWAMA

Case No. D2023-4334

### **1. The Parties**

The Complainant is Arkema France, represented by Fross Zelnick Lehrman & Zissu, PC, United States of America (“United States”).

The Respondent is SIMON LUBWAMA, Uganda.

### **2. The Domain Name and Registrar**

The disputed domain name <arkemafr.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 October 18, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 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 (WITHHELD FOR PRIVACY EHF) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 24, 2023, 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 October 24, 2023.

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 October 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 17, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on December 4, 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 is a French company established in 2004, which has offices in 55 countries and over 20,000 employees. The Complainant operates 136 industrial facilities in Europe, North America, and Asia and is organized into three business segments: High Performance Materials, Industrial Specialties, and Coating Solutions.

The Complainant holds the domain name <arkema.com>, which hosts its main website.

The Complainant owns numerous trademark registrations in several jurisdictions, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	IC CLASS
ARKEMA	United States	3,082,057	April 18, 2006	1-5, 16, 17, 41, 42, and 45
ARKEMA	France	847865	November 30, 2004	1-5, 16, 17, 37-42, and 45

The disputed domain name was registered on July 23, 2023.

The disputed domain name redirects visitors to the Complainant's own website <arkema.com>.

The Respondent used the disputed domain name to send fraudulent emails impersonating the Complainant.

#### 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 as follows:

The disputed domain name is confusingly similar to the ARKEMA trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the geographic term "fr", which stands for "France", is not sufficient to prevent a finding of confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark ARKEMA has been extensively used to identify the Complainant and its products. The Respondent has not been authorized by the Complainant to use this trademark, is not commonly known by the disputed domain name, and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services. The Complainant submitted emails showing that the disputed domain name was registered and used to perpetrate fraud: someone falsely using the name of a sales manager of the Complainant has used the email address "[...].@arkemafr.com" in an attempt to place orders for sodium benzonate for delivery to Uganda. This creates a risk that unsuspecting recipients would remit payment to the wrong account or ship goods to an address unaffiliated with the Complainant after receiving the fraudulent emails sent by the Respondent.

The disputed domain name was registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademark ARKEMA at the time it registered the disputed domain name.

The Respondent is using the disputed domain names in bad faith, by impersonating the Complainant and sending fraudulent emails. The use of the disputed domain name to send emails to perpetuate a fraud violates paragraph 4(b)(iii) of the Policy by disrupting the business of the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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 has been 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 or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

Although the addition of other terms (here, "fr" which is understood as referring to "France") may bear on assessment of the second and third elements, the Panel finds that in the circumstances of this case the addition of such term does 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.

Based on the available record, 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 Complainant has shown that the Respondent impersonated the Complainant to send fraudulent emails. Panels have held that the use of a domain name for illegal activity such as impersonating the complainant can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the view of the Panel, noting that that the Complainant's trademark predates the registration of the disputed domain name and considering that the disputed domain name is redirected to the Complainant's official website, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well known trademark. In the circumstances of this case, this is evidence of registration in bad faith. Moreover, given the use of the disputed domain name as explained above and below, it is clear that the Respondent knew of, and targeted the Complainant when registering and using the disputed domain name.

Panels have held that the use of a domain name for illegal activity (such as here to send fraudulent emails impersonating the Complainant) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, 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 <arkemafr.com> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: December 18, 2023