

ADMINISTRATIVE PANEL DECISION

ACTEON v. Reus Leon

Case No. DCO2023-0088

1. The Parties

The Complainant is ACTEON, France, represented by IP Twins, France.

The Respondent is Reus Leon, Netherlands (Kingdom of the).

2. The Domain Name and Registrar

The disputed domain name <acteongroups.co> 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 12, 2023. On October 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 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 16, 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 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 13, 2023.

The Center appointed Alissia Shchichka as the sole panelist in this matter on November 17, 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 specializes in high-technology dental equipment.

Established in 1991 through the consolidation of two entities within the Sanofi group, the Complainant currently has around 800 employees spread across 27 countries globally. The company achieves an annual revenue of approximately 200 million euros, driven by sales in over 120 countries.

The Complainant owns several trademarks containing the term ACTEON, amongst others:

- International trade mark registration No. 178433, registered on July 19, 1954, for the word mark ACTEON in class 5; and
- French trademark registration No. 3201305, registered on January 31, 2003, for the combined mark ACTEON in classes 5 and 10.

The Complainant is also the owner of a domain name <acteongroup.fr> registered since August 19, 2008, and <acteongroup.com> registered since June 26, 2002.

The above trademarks and domain names were registered prior to the registration of the disputed domain name, which was registered on July 29, 2023.

The disputed domain name <acteongroups.co> currently resolves to parking pages with pay-per-click ("PPC") links to third-party websites. According to the evidence provided by the Complainant, the Respondent has used the disputed domain name in connection with a phishing email impersonating an employee of the Complainant.

5. Parties' Contentions

A. Complainant

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark ACTEON as it incorporates the entire trademark. The Complainant believes that by using a side-by-side comparison the trademark ACTEON is recognizable within the disputed domain name. The mere inclusion of the term "groups" does not prevent the disputed domain name from being confusingly similar to the Complainant's trademark. The country code Top-Level Domain ("ccTLD") ".co" is not sufficient to prevent confusing similarity.

Second, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name, has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name. The Complainant's trademarks significantly predate the registration of the disputed domain name. The Complainant supports that the Respondent chose the disputed domain name to attract visitors to his website to generate traffic and income.

Third, the Complainant further contends that the trademark ACTEON is widely known and the Respondent knew about the Complainant's trademark, which evidences bad faith registration. Furthermore, the Complainant submits that the disputed domain name is being pointed to an inactive page, i.e. passively held. Finally, the Complainant presents evidence of the use of the disputed domain name in connection with a phishing scheme, wherein the Respondent impersonated an employee of the Complainant. Such use cannot be considered a *bona fide* offering of goods or services.

Therefore, the Complainant alleges that the registration and use of the disputed domain name was, and currently is, in bad faith, contrary to the Policy and Rules.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

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

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

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 proven that it has the requisite rights in the ACTEON trademarks.

The ACTEON trademark is recognizable in the disputed domain name. In particular, the disputed domain name's inclusion of the Complainant's trademark ACTEON in its entirety, with the addition of the term "groups" does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8.

Accordingly, the Panel finds that the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy.

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

B. Rights or Legitimate Interests

For the second element, the Complainant must prove that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of [WIPO Overview 3.0](#) states;

"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".

Once this burden is met, the burden of production shifts to the Respondent to demonstrate its rights or legitimate interests in the disputed domain name (though the burden of proof remains on the Complainant at all times).

If the Respondent does not satisfy its burden of coming forward with some evidence to rebut the Complainant's *prima facie* case, or if the Respondent fails to file a response at all, the Complainant's *prima facie* case will be sufficient to meet its burden of demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the ACTEON trademarks or to seek registration of any domain name incorporating the trademarks. The Respondent is also not known to be associated with the ACTEON trademarks, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name.

In addition, the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

The Panel finds that the disputed domain name is deliberately being used in connection with this fraudulent scam to impersonate the Complainant. Such fraudulent use cannot constitute fair use of the disputed domain name. Further, the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's mark.

None of such uses constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and, under the circumstances, cannot confer any rights or legitimate interests in the domain name upon the Respondent. See, e.g. *Capitec Bank Limited v. Rakesh Gajjar*, WIPO Case No. [D2019-0609](#).

Moreover, section 2.13 of [WIPO Overview 3.0](#) states:

"Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."

Finally, the nature of the disputed domain name is inherently misleading Internet users, as it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Complainant has provided evidence supporting its *prima facie* claim that the Respondent lacks any rights or legitimate interests in the disputed domain name. The Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the disputed domain name.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrates that the Respondent registered and is using the disputed domain name in bad faith.

On the issue of registration, the Panel notes that the Complainant's ACTEON trademarks substantially predates the Respondent's registration of the disputed domain name. The disputed domain name wholly incorporate the ACTEON trademark. The Respondent registered the disputed domain name in 2023, more than 70 years after the Complainant registered its trademarks. Therefore, the Respondent knew or should

have known of the Complainant's trademarks at the time of registering the disputed domain name (see [WIPO Overview 3.0](#), section 3.2.2).

Further, the mere registration of the disputed domain name that is confusingly similar to the Complainant's widely-known trademarks by the Respondent, who is unaffiliated with the Complainant, can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

Moreover, the Respondent's knowledge of the Complainant and its trademarks can be readily inferred from the Respondent's use of the disputed domain name. The composition of the disputed domain name, including the Complainant's ACTEON trademark along with the term "groups", and its previous use for sending emails impersonating an employee of the Complainant, clearly indicate that the Respondent was aware of the nature of the business associated with the Complainant's ACTEON trademarks. This evidence all gives the Panel reason to find that the Respondent knew of the Complainant's mark at the time he registered the disputed domain name.

On the issue of use, the record shows that the Respondent's fraudulent email scam indicates that the Respondent was deliberately using the disputed domain name for the Respondent's financial benefit by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and emails. [WIPO Overview 3.0](#), section 3.4.

More recently, the Respondent has used the disputed domain name as a landing page with PPC links to a number of other websites. Each of these uses represented a bad faith attempt to confuse consumers. See generally [WIPO Overview 3.0](#), section 3.1.4.

In the absence of any evidence to contend against the Complainant's evidence and claims, this Panel accepts the Complainant's evidence and finds that the Respondent has registered and used the disputed domain name to target the Complainant for its own commercial gain.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <acteongroups.co>, be transferred to the Complainant.

/Alissia Shchichka/

Alissia Shchichka

Sole Panelist

Date: November 21, 2023