

ADMINISTRATIVE PANEL DECISION

Etex N.V, ETEX Services N.V v. RITA FELDER / Nikolai Sychev / Name Redacted¹

Case No. D2022-0405

1. The Parties

The Complainant is Etex N.V and ETEX Services N.V, Belgium, represented by BrandIT GmbH, Switzerland.

The Respondents are RITA FELDER, Germany / Nikolai Sychev, United States of America / Name Redacted, United States of America.

2. The Domain Names and Registrars

The disputed domain name <etexsgroup.com> (the “first disputed domain name”) is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com.

The disputed domain name <etexxgroup.com> (the “second disputed domain name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com.

The disputed domain name <etexgroups.com> (the “third disputed domain name”) is registered with Wild West Domains, LLC.

As more particularly described below, the Complainant requests that its complaints to these three disputed domain names be consolidated into a single proceeding.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2022. On February 7, 2022, the Center transmitted by email to the relevant registrars a request for registrar verification in connection with the disputed domain names respectively. On February 8, 2022, the registrars transmitted by email to the Center their verification responses disclosing registrant and contact

¹ The name and contact details of this Respondent appear to have been used without this person’s knowledge or authorization when registering the disputed domain name <etexgroups.com>. In light of potential identity theft, the Panel has redacted this Respondent’s name in the Decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. D2009-1788.

information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 23, 2022 providing the registrant and contact information disclosed by the registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on February 28, 2022.

On February 25, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On March 1, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the 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").

As regards the request by the Complainant to consolidate the three disputed domain names into a single proceeding, on March 4, 2022, the Center advised the Complainant that the Center noted (applying the principles and preliminary provider assessment stipulated in *Speedo Holdings B. V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#) and [WIPO Overview 3.0](#), section 4.11.2) that there appeared to be at least *prima facie* grounds sufficient to warrant accepting the Complaint for the Panel's final determination of the consolidation request on appointment and that the Center would accordingly proceed to commencement and formal Complaint notification on that basis.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Japanese of the Complaint, and the proceedings commenced on March 4, 2022.

In accordance with the Rules, paragraph 5, the due date for Response was March 24, 2022. The Respondent did not submit any response. The Center received a third party's email on March 15, 2022. The Center received a supplemental filing from the Complainant on March 24, 2022, with information that appears to confirm the potential identity theft with respect to the disputed domain name <etexgroups.com>. On March 25, 2022, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Teruo Kato as the sole panelist in this matter on April 12, 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

According to the Complainant, the Complainant, founded in 1905, and its subsidiaries "form the ETEX group, a global group offering futureproof lightweight interior and exterior building solutions including fire protection and high performance insulation" and "employs over 11,000 teammates in over 110 sites around the world and has 4 sales divisions ("Building Performance", "Exteriors", "Industry" and "New ways").

The Complainant also contends that it owns of numerous trademark registrations for the mark ETEX as a word mark and figurative mark in numerous jurisdictions including International trademark No. 652141 registered on February 1, 1996, as well as numerous domain names containing the trademark ETEX.

The outlines of the disputed domain names are as follows:

Domain Name	<etexsgroup.com>	<etexxgroup.com>	<etexgroups.com>
Creation Date	October 26, 2021	September 14, 2021	October 25, 2021
Registrar	GMO Internet, Inc. d/b/a Onamae.com	PDR Ltd. d/b/a PublicDomainRegistry.com	Wild West Domains, LLC
Registrant Name	RITA FELDER	Nikolai Sychev	Name Redacted
Registrant Address	Germany	United States of America	United States of America

The Respondent is RITA FELDER / Nikolai Sychev / Name Redacted as shown above.

As evidenced in the Complaint, the disputed domain names are inactive and resolve to error pages.

The Complainant requests that the disputed domain names be transferred to the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it is the owner of trademark ETEX.

The Complainant also contends that the disputed domain names are confusingly similar to the Complainant's ETEX trademark.

The Complainant further contends that the Respondent is not a licensee, an authorized agent of the Complainant, or in any other way authorized to use the Complainant's trademark ETEX and that the Respondent is not commonly known by the disputed domain name as an individual, business, or other organization, and that the Respondent does not make any *bona fide* use or trade under the disputed domain names.

The Complainant also contends that the Respondent registered and is using the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue

A. Request for Consolidation

The Complainant requests its complaints relating to the three disputed domain names be consolidated in the present proceeding. To this end it contends, among others, that "[t]he fact that the disputed domain names are deliberately highly similar to the Complainant's domain name <etexgroup.com>, have been registered at very close dates and share many commonalities - such as IP address, name servers, hosting provider (regarding <etexxgroup.com> and <etexsgroup.com>) or the alleged location of the Registrant's country (regarding <etexxgroup.com> and <etexgroups.com>) - clearly show that the disputed domain names have been subject of the same domain name registration strategy operated by a single individual or entity".

In this connection the Panel notes that the following sections of the UDRP Rules are relevant to considering such request for consolidation.

Rule 3 (The Complaint)

(c) The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

Rule 10 (General Powers of the Panel)

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

The Panel further notes the following sections of the [WIPO Overview 3.0](#), which relate to the application of the above Rules:

4.11 How do panels address consolidation scenarios?

The WIPO Center may accept, on a preliminary basis, a consolidated complaint where the criteria described below are *prima facie* met. Any final determination on consolidation would be made by the appointed panel, which may apply its discretion in certain circumstances to order the separation of a filed complaint. In all cases, the burden falls to the party seeking consolidation to provide evidence in support of its request.

4.11.2 Complaint consolidated against multiple respondents

Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

In the present case, the Panel notes that there exist a degree of similarities relating to the three disputed domain names as contended by the Complainant. However, the Panel also notes that there exist factors highlighting differences which in the Panel's view should be taken into consideration.

For example, the Panel notes that (a) the three disputed domain names were registered with three different registrars (two located in the United States and one located in Japan), (b) proxy service appears to have been used for <etexgroups.com>, but this is not the case with <etexxgroup.com> and <etexsgroup.com>, (c) the apparent impersonation by the Respondent, referred to in the footnote 1 to this Decision, was found in respect of <etexgroups.com> only, (d) use of the common IP addresses and Name Servers are found with <etexsgroup.com> and <etexxgroup.com>, but this does not apply to <etexgroups.com>, (e) the international courier sent by the Center notifying the commencement of the proceeding was received by the Respondent for <etexsgroup.com>, but the same for <etexxgroup.com> was not delivered for bad address, and the same for <etexgroups.com> was delivered to the addressee, who then reported the apparent impersonation. The Panel find that these facts do not support the contention by the Complainant that they "clearly show that the disputed domain names have been subject of the same domain name registration strategy operated by a single individual or entity".

Having carefully examined the evidence submitted by the Complainant in accordance with the Rules and sections of the [WIPO Overview 3.0](#) quoted above, the Panel holds that, on balance, there is insufficient evidence present in the record that indicates that they are subject to common control, which, if proved, would warrant the consolidation requested by the Complainant.

Accordingly, the Panel disallows the request for consolidation and decides to retain the first disputed domain name, namely <etexsgroup.com>, and to remove the second and third disputed domain names, namely <etexxgroups.com> and <etexgroups.com>, from the scope of the Complaint. Consequently, the remainder of this Decision will deal exclusively with the first disputed domain name, being <etexsgroup.com>, for which RITA FELDER is the Respondent.

The Panel notes that it remains open to the Complainant, if it wishes, to consider submitting new complaints in respect of the second and third disputed domain names so removed.

B. Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to authority of the Panel to determine otherwise having regard to the circumstances of the administrative proceeding. The Panel notes that in the present case the registrar has confirmed that the language of the Registration Agreement is Japanese.

The Complainant has filed the Complaint in English, and requests that the language of the proceeding be English on the grounds, among others, that the Respondent registered its postal address in the United States of America and that the use of Japanese “would entail significant additional costs for the Complainant and delay in the proceedings”.

On February 25, 2022, the Respondent was invited by the Center, in both Japanese and English, to indicate any objection to the proceeding being conducted in English by March 2, 2022. The Respondent did not indicate any objection by the specified deadline nor later.

On March 4, 2022, the Center informed the Respondent, in both Japanese and English, that the Center has decided, under the circumstances of this case, to: 1) accept the Complaint as filed in English; 2) accept a Response in either English or Japanese; 3) appoint a Panel familiar with both languages mentioned above, if available. Accordingly, the Panel would have accepted a Response in Japanese, but none was submitted by the Respondent.

In the circumstances, in accordance with paragraph 11(a) of the Rules, the Panel decides that English be the language of the proceeding. The Panel further finds that such determination would not cause any prejudice to either Party and would ensure that the proceeding takes place with due expedition.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel must determine whether (a) the Complainant has a trademark or service mark; and (b) whether the disputed domain name is identical or confusingly similar to that trademark or service mark.

The Complainant submitted evidence of its ETEX trademark registrations, and the Panel is satisfied that the Complainant is the owner of the trademark registrations, including:

- The International trademark ETEX No. 652141, registered on February 1, 1996, covering goods and services in classes 11, 17, 19 and 25;
- The International trademark ETEX No. 788905, registered on August 28, 2002, covering goods and services in classes 6, 11, 17, 19, 35 and 36;
- The International trademark ETEX No. 1546890, registered on June 2, 2020, covering goods and services in classes 6, 17 and 19;
- The European Union Trade Mark ETEX No. 017910895, registered on March 19, 2019, covering goods and services in classes 2, 6, 17, 19, 35, 37 and 42; and
- The United States of America trademark ETEX No. 6303449, registered on March 30, 2021, covering goods and services classes 6, 17 and 19.

As to the confusing similarity element for the purposes of the Policy, the Panel has proceeded to compare the disputed domain name to the trademark rights which have been provided.

Section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) states that “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘info’, ‘.com’, ‘.club’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”. The Panel finds no reason why this established practice should not be applied to the present case.

Apart from the TLD “.com”, the Panel finds that the disputed domain name contains the Complainant’s trademark ETEX in its entirety, followed by the letter “s” and the word “group”.

The Panel notes that section 1.7 of the [WIPO Overview 3.0](#) states that “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

The Panel also notes that section 1.8 of the [WIPO Overview 3.0](#) states that “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

In the circumstances, the Panel sees no reason why this established practice should not be applied to the present case.

Accordingly, the Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate a respondent’s rights or legitimate interests in a domain name:

- (i) before any notice to it of the dispute, the 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the 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 consensus view of UDRP panels is that the burden of proof in establishing no rights or legitimate interests in respect of a domain name rests with the complainant in making out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie case* is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant contends with relevant evidence, among others, that “[t]he Complainant has not licensed or authorized the Respondent to register or use the disputed domain names, nor is the Respondent affiliated to the Complainant in any form. There is no evidence that the Respondent is known by the dispute domain name or owns any corresponding registered trademarks. The disputed domain names do not reflect the Registrants’ name ... “Rita Felder”.”

Further, the Complainant contends with relevant evidence that [t]he Respondent has not been using, or preparing to use, the disputed domain names in connection with a *bona fide* offering of goods and services, nor making a legitimate noncommercial or fair use of the disputed domain names”.

Having examined the contentions and evidences submitted by the Complainant, the Panel is satisfied that the Complainant has established a *prima facie* case of no rights or legitimate interests.

By not submitting a Response, the Respondent has failed to overturn such *prima facie* case and has also failed to invoke any of the defenses as set out in paragraph 4(c) of the Policy.

Accordingly, the Panel finds that the Respondent has no rights nor legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

To fulfill the third requirement, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

To this end the Complainant contends with evidence that “[t]he Respondent registered the disputed domain names many years after the first registrations of the Complainant’s ETEX trademark. The ETEX trademark is widely known. Moreover, the ETEX group has a strong presence online. It is very active online via its official website and on social medias (LinkedIn and Youtube) to promote its mark, products and services.”

Having examined the evidence submitted by the Complainant, the Panel holds that the Respondent was most likely to have known of the Complainant, its products, and trademarks prior to registering the disputed domain name on October 26, 2021. (See section 3.2.2 of the [WIPO Overview 3.0](#).)

In the circumstances, the Panel holds that the Respondent registered the disputed domain name in bad faith.

As to the use in bad faith, the Complainant acknowledges that the Respondent is not currently using the disputed domain name and contends that the so-called doctrine of “passive holding” should apply and refers to section 3.3 of the [WIPO Overview 3.0](#), which states:

From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In respect of the factor (iii) above, the Panel notes that, according to the registrar, the Respondent’s phone number filed with the registrar starts with “+1” (which is the country code of the United States of America) and that this does not match with the country code of Germany (“+49”), in which the Respondent is apparently located.

Having considered all the evidences in front of the Panel, the Panel is satisfied that the facts of this case are in support of the Complainant’s contentions in respect of all of the factors (i) to (iv) above, and finds no evidence to indicate otherwise, and that no counter-argument has been submitted by the Respondent.

Taking all matters into careful consideration, the Panel holds that the Respondent is also using the disputed domain name in bad faith.

The Panel therefore concludes that the third requirement of the Policy has been met.

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 <etexsgroup.com> be transferred to the Complainant.

/Teruo Kato/

Teruo Kato

Sole Panelist

Date: April 26, 2022