

## **ADMINISTRATIVE PANEL DECISION**

Etex N.V, ETEX Services N.V v. Nikolai Sychev  
Case No. D2022-1949

### **1. The Parties**

The Complainants are Etex N.V and ETEX Services N.V, Belgium (collectively referred to as the “Complainant”), represented by BrandIT GmbH, Switzerland.

The Respondent is Nikolai Sychev, United States of America (“United States”).

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 27, 2022. On May 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 2022, 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 June 3, 2022.

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 June 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 28, 2022.

The Center appointed David Taylor as the sole panelist in this matter on July 18, 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**

Founded in 1905, the Complainant is a Belgian company engaged in the manufacturing and sale of interior and exterior building materials, including fire protection and insulation. According to the Complainant, it employs over 11,000 people in over 110 sites around the world.

The Complainant is the owner of a number of trademark registrations for ETEX, including the following:

- International Registration No. 652141, ETEX, registered on February 1, 1996;
- European Union Trade Mark No. 017910895, ETEX, registered on March 19, 2019; and
- United States Trademark Registration No. 6303449, ETEX, registered on March 30, 2021.

The Complainant is also the registrant of the domain names <etexgroup.com> and <etexgroup.eu>, which resolve to the Complainant's public-facing website.

The disputed domain name was registered on September 14, 2021. The disputed domain name does not resolve to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts rights in the ETEX trademark. The Complainant submits that the disputed domain name is confusingly similar to the ETEX trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant argues that there is no evidence of the Respondent having used, or having made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services, nor has the Respondent made any legitimate noncommercial or fair use of the disputed domain name. The Complainant asserts that the structure of the disputed domain name is such that it reflects the Respondent's intention to create an association and subsequent likelihood of confusion with the Complainant and its ETEX trademark in the minds of Internet users.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant asserts that the Respondent must have had knowledge of the Complainant's rights in the ETEX trademark when registering the disputed domain name, and did so with the intent to create a likelihood of confusion with the Complainant amongst Internet users. The Complainant submits that the Respondent's non-use of the disputed domain name amounts to use of the disputed domain name in bad faith, under the doctrine of passive holding. The Complainant notes that the Respondent appears to be associated with a substantial number of domain names comprising misspellings of third-party trademarks, amounting to further evidence of the Respondent's bad faith.

The Complainant requests transfer of the disputed domain name.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 6.1. Procedural issues

#### A. Refiling of the Complaint

On February 3, 2022, the Complainant submitted a UDRP Complaint to the Center regarding the domain names <etexsgroup.com>, <etexxgroup.com>, and <etexgroups.com>. With regard to consolidation of the Complaint, the panel held that:

“Having carefully examined the evidence submitted by the Complainant in accordance with the Rules and sections of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, “[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 <etexxgroup.com>, and <etexgroups.com>, from the scope of the Complaint. [...]

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.”

See *Etex N.V., ETEX Services N.V v. RITA FELDER / Nikolai Sychev / Name Redacted*, WIPO Case No. [D2022-0405](#). In light of the above, the Panel finds there to be no bar to the refiling of the present Complaint.

#### B. Consolidation of the Complainant

In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation; see [WIPO Overview 3.0](#), section 4.11.1.

The Complainant states that “ETEX Services N.V is a subsidiary of ETEX N.V. The Company ETEX N.V has registered trademark rights on the term ‘ETEX’. ETEX Services N.V is involved in the management of trademarks and domain name matters regarding the ETEX group.”

The Panel accepts that the Complainant companies have a common grievance against the Respondent. The consolidation of the Complainant would be equitable and procedurally efficient, and would not have any unfairly prejudicial effect on the Respondent. The Panel accepts the Complainant’s request for consolidation in the present proceeding, and has referred to the Complainant companies collectively as the “Complainant”.

### 6.2. Substantive Matters

In order to prevail, the Complainant must demonstrate that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) the disputed domain name is identical or confusingly similar to a 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 was registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has established rights in the ETEX trademark, the registration details of which are provided in the factual background section above.

The disputed domain name comprises a close variant of the Complainant's ETEX trademark as its leading element, whereby an additional letter "x" is added to the Complainant's trademark, followed by the term "group", under the generic Top-Level Domain ("gTLD") ".com". The Panel finds that the addition of the letter "x" and of the term "group" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's ETEX trademark, which remains clearly recognizable in the disputed domain name; see [WIPO Overview 3.0](#), sections 1.8 and 1.9; see also *Volvo Trademark Holding Aktiebolag v. Nanci Nette*, WIPO Case No. [D2022-0299](#) (<volvogroup.net>). The gTLD ".com" may be disregarded for purposes of comparison under the first element; see [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the disputed domain name to be confusingly similar to the Complainant's ETEX trademark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

As noted above, the disputed domain name does not resolve to an active website. The Panel finds that the Respondent's non-use of the disputed domain name does not amount to use of the disputed domain name in connection with a *bona fide* offering of goods or services, as contemplated by paragraph 4(c)(i) of the Policy. Nor is there any evidence of the Respondent having engaged in demonstrable preparations to use the disputed domain name for any such *bona fide* purpose.

There is no evidence to suggest that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. Nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain name as contemplated by paragraph 4(c)(iii) of the Policy.

In light of the composition of the disputed domain name itself, consisting of a close variant of the Complainant's ETEX trademark followed by the term "group", and further noting the similarity between the disputed domain name and the Complainant's domain names <etexgroup.com> and <etexgroup.eu>, the Panel considers the disputed domain name to carry risk of implied affiliation with the Complainant. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner; see [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not come forward with any evidence to rebut the Complainant's *prima facie* case. As such, the Complainant is deemed to have satisfied the requirements of paragraph 4(a)(ii) of the Policy; see [WIPO Overview 3.0](#), section 2.1.

### **C. Registered and Used in Bad Faith**

The registration of the Complainant's ETEX trademark predates the registration of the disputed domain name by over 25 years. The Complainant has made longstanding and widespread use of its ETEX trademark. The Panel finds that the Respondent likely knew of the Complainant, its ETEX trademark, and its official domain names, when registering the disputed domain name, and did so in order to create a misleading impression of association between the disputed domain name, the Complainant, the Complainant's trademarks, and the Complainant's domain names.

It is well established that the non-use of a domain name would not prevent a finding of bad faith, under the doctrine of passive holding; see [WIPO Overview 3.0](#), section 3.3; see also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The Complainant's ETEX trademark is a coined term,

and enjoys substantial reputation in the building-materials sector in which the Complainant operates. The Respondent has not come forward to file a Response in this proceeding, nor is there any evidence of actual or contemplated good-faith use of the disputed domain name. In light of the nature of the disputed domain name itself, which carries a risk of implied affiliation with the Complainant, there is no apparent plausible good-faith use that the Respondent could make of the disputed domain name that would not have the effect of creating confusion with the Complainant.

The Panel finds that the disputed domain name was registered and is being used in bad faith. 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 <etexxgroup.com> be transferred to the Complainant, ETEX Services N.V.

*/David Taylor/*

**David Taylor**

Sole Panelist

Date: August 12, 2022