

## ADMINISTRATIVE PANEL DECISION

Etex N.V, ETEX Services N.V v. Name Redacted  
Case No. D2022-1951

### 1. The Parties

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

The Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <etexgroups.com> is registered with Wild West Domains, LLC (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 June 2, 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 June 2, 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 7, 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”).

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<sup>1</sup> 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. In light of potential identity theft, the Panel has redacted the 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Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case.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](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 29, 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 of America 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 October 25, 2021. At the time of submission of the Complaint to the Center, the disputed domain name resolved to a parking page displaying sponsored links to various third-party products. At the time of this decision, 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 further submits that when registering the disputed domain name, the Respondent made unauthorized use of the contact details of an unrelated third party.

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 argues that the Respondent's use of the disputed domain name to resolve to a parking page with sponsored links signals an intent on the part

of the Respondent to derive commercial advantage from the Respondent's unauthorized use of the Complainant's trademark, and that the current non-use of the disputed domain name does not prevent a finding of 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 the Complainant's ETEX trademark as its leading element, followed by the term "groups", under the generic Top-Level Domain ("gTLD") ".com". The Panel finds that the addition of the term "groups" 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](#), section 1.8; see also *Merck KGaA v. Rylle Aldrin Mamuyac*, WIPO Case No. [D2018-0460](#) (<merckgroups.com>). 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 previously resolved to a parking page displaying sponsored links to third-party products. At the time of this decision, the disputed domain name does not resolve to an active web page. In light of the composition of the disputed domain name itself, consisting of the Complainant's ETEX trademark followed by the term "groups", 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. The Panel infers from the Respondent's use of the disputed domain name to host a parking page with sponsored links that the Respondent has done so in order to capitalize on the goodwill and reputation of the Complainant's ETEX trademark. Such use does not represent a *bona fide* offering of goods or services pursuant to paragraph 4(c)(i) of the Policy.

The Respondent appears to have registered the disputed domain name making unauthorized use of the personal contact information of an unrelated third party. 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.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

### 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 with a view to deriving click-through revenue from Internet users that had been misled to the parking page to which the disputed domain name previously resolved. The registration of the disputed domain name using the personal identifying information of an unrelated third party amounts to further evidence of bad faith. The Panel finds that the Respondent registered the disputed domain name in bad faith.

As noted under the preceding element, in light of the nature of the disputed domain name and its similarity to the Complainant's official domain names, Internet users seeking the Complainant were likely to be misled to the parking page to which the disputed domain name previously resolved. The Panel finds that by using the disputed domain name to resolve to a parking page displaying sponsored links, from which the Respondent is presumed to have derived revenue, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the web page to which the disputed domain name previously resolved, by creating a likelihood of confusion with the Complainant's ETEX trademark as to the source, sponsorship, affiliation, or endorsement of that web page and the goods and services advertised therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The fact that the disputed domain name no longer resolves to an active web page does not materially affect the Panel's findings above.

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 <etexgroups.com> be transferred to the Complainant, ETEX Services N.V.

*/David Taylor/*

**David Taylor**

Sole Panelist

Date: August 9, 2022