

ADMINISTRATIVE PANEL DECISION

Etex N.V. and ETEX Services N.V. v. Too Tire
Case No. D2022-4709

1. The Parties

The Complainants are Etex N.V., Belgium, and ETEX Services N.V., Belgium, represented by BrandIT GmbH, Switzerland.

The Respondent is Too Tire, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <etexgroop.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 December 8, 2022. On December 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 8, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on December 21, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainants filed an amended Complaint on December 23, 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 December 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 20, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on February 8, 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

ETEX N.V. and its subsidiaries, including ETEX Services N.V., form the ETEX group, offering futureproof lightweight interior and exterior building solutions including fire protection and high performance insulations. The group has been trading under the ETEX trademark for over 110 years, and currently employs over 11,000 teammates in over 110 sites around the world.

ETEX N.V. owns numerous registrations of its ETEX trademark in numerous jurisdictions, including International Registration number 652141, registered on February 1, 1996, European Union registration number 017910895, registered on March 19, 2019, and United States registration number 6303449, registered on March 30, 2021.

The disputed domain name was registered on August 30, 2022, and resolves to a website offering a pay-per-click links, referencing, *inter alia*, the Complainants' group.

5. Parties' Contentions

A. Complainants

The Complainants allege that the disputed domain name is confusingly similar to their ETEX trademark, containing the ETEX trademark in its entirety, with the mere addition of a descriptive or non-distinctive element.

The Complainants allege that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that there is no evidence that the Respondent is generally known by the disputed domain name, and the Complainants have never granted permission to the Respondent to use their ETEX trademark in connection with the registration of a domain name, or otherwise.

The Complainants allege that the disputed domain name was registered in bad faith, and is being used in bad faith in connection with the website referred to above.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainants must prove to merit a finding that the disputed domain name be transferred to the Complainants:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (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. Confusing Similarity

The Panel finds that the Complainants have rights to the ETEX trademark for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain (“gTLD”) may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the “.com” gTLD to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

The Complainants’ ETEX trademark is clearly recognizable in the disputed domain name, rendering the disputed domain names confusingly similar to the Complainants’ trademark. The addition of the word “groop” does not prevent this finding.

Accordingly, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain name at issue.

B. Rights or Legitimate Interests

The Panel considers that the Complainants’ allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

In the Panel’s opinion, the disputed domain name carries a risk of implied affiliation to the Complainants, and this is reinforced by the use of the disputed domain name as mentioned above. In the Panel’s opinion, this is clearly not *bona fide* use of the disputed domain name and, in the circumstances of the present case, the Panel concludes that the Complainants have made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstances of the present case, in which the Panel regards it as self-evident that the Complainants’ ETEX trademark was deliberately appropriated in the disputed domain name are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with a pay-per-click website referencing the trademark at issue in the case constitutes use of the disputed domain name in bad faith, and, in the circumstances of the present case, the Panel so finds.

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, <etexgroop.com>, be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: February 22, 2003