

ADMINISTRATIVE PANEL DECISION

ETEX N.V, ETEX Services N.V v. Chris Chill

Case No. D2023-1903

1. The Parties

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

The Respondent is Chris Chill, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <etexgroups.net> 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 April 27, 2023. On April 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 May 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 24, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on May 30, 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 Complainants are Belgian companies engaged in the manufacturing and sale of interior and exterior building materials, including fire protection and insulation. The companies ETEX N.V and ETEX Services N.V are parent companies, part of the ETEX group. ETEX Services N.V is a subsidiary of ETEX N.V. Thereafter, the Panel will refer to them as the Complainant. 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 International Registration No. 788905, ETEX, registered on August 28, 2002, for goods and services in International classes 6, 11, 17, 19, 35 and 36; European Union Trade Mark No. 017910895, ETEX, registered on March 19, 2019, for goods and services in International classes 2, 6, 17, 19, 35, 37 and 42; and United States of America Trademark Registration No. 6303449, ETEX, registered on March 30, 2021, for goods in International classes 6, 17 and 19.

The Complainant also owns numerous domain names containing the trademark ETEX, among them: <etexgroup.com> and <etexgroup.eu>. The Complainant uses these domain names to resolve to the ETEX group's official website through which it informs Internet users and potential consumers about its ETEX mark and its products and services.

The disputed domain name was registered on January 19, 2023. The disputed domain name not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is therefore confusingly similar to the Complainant's trademark ETEX since it incorporates the Complainant's registered and widely known trademark ETEX, the descriptive term "groups" and the generic Top-Level Domain ("gTLD") extension ".net" which is a standard registration requirement.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. Furthermore, the Respondent has not been using, or preparing to use, the disputed domain name in connection with a *bona fide* offering of goods and services, nor has the Respondent been making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant finally contends that the Respondent has registered and used the disputed domain name in bad faith. The ETEX trademark is widely known and the Etex Group has a commercial presence in Nigeria, the country where the Respondent is based, so the Respondent must have had knowledge of the Complainant and the ETEX trademark at the time of the registration of the disputed domain name. The disputed domain name has been passively held, but previous UDRP Panels have held, under the doctrine of passive holding, that the non-use of a domain name would not prevent a finding of bad faith use.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Panel finds that under the Policy, the disputed domain name <etexgroups.net> is confusingly similar to the Complainant's registered trademark ETEX because it contains the mark in its entirety, with the addition of the term "groups". The gTLD ".net" is typically disregarded under the confusing similarity test.

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not produced, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings. Moreover, the Panel finds that the composition of the disputed domain name is such that it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Consequently, the Panel finds that the condition in paragraph 4(a)(ii) of the Policy is also fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs

directly related to the domain name; or

- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the evidence on record of the use of the Complainant's ETEX mark, the distinctive nature of this mark, and the fact that the Complainant has a commercial presence in the country Nigeria in which the Respondent apparently is located it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's marks.

Further, the Panel finds that the Respondent could not have been unaware of the fact that it chose a domain name, which based on its composition could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website. However, as first stated in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and repeated in many subsequent decisions under the UDRP: "the concept of a domain name 'being used in bad faith' is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith." See section 3.3 of the [WIPO Overview 3.0](#).

Noting that the disputed domain name incorporates the Complainant's distinctive trademark ETEX and is almost identical to the Complainant's domain name <etexgroup.com>, that no Response has been filed, and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name, and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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.net> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: June 13, 2023