

## **ADMINISTRATIVE PANEL DECISION**

Etex N.V, ETEX Services N.V v. Jim Wilson  
Case No. D2023-2612

### **1. The Parties**

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

The Respondent is Jim Wilson, United States of America (“United States”).

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

The disputed domain name <etexgruop.cam> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2023. On June 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 19, 2023, 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. As a response, the Center sent an email communication to the Complainants on June 20, 2023, providing the registrant and contact information disclosed by the Registrar. In the same communication, the Center invited the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on June 24, 2023.

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 July 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 7, 2023.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on August 21, 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 ETEX N.V and ETEX Services N.V are parent companies, part of the ETEX group. The Complainant ETEX Services N.V is a subsidiary of ETEX N.V. The Complainant ETEX N.V. has registered trademark rights on the term "ETEX". ETEX Services N.V is involved in the management of trademarks and domain names matters regarding the ETEX group, a global group offering futureproof lightweight interior and exterior building solutions including fire protection and high-performance insulation. The Panel will refer to the Complainants as "the Complainant".

The ETEX group employs over 11,000 teammates in over 110 sites around the world and has 4 sales divisions ("Building Performance", "Exteriors", "Industry" and "New ways"). Founded in 1905, for over 110 years the ETEX group has provided innovative products and solutions.

The ETEX group has an active business presence in the United States where it employs 65 persons. ETEX owns numerous trademark registrations for the mark ETEX as a word mark and figurative mark in numerous jurisdictions. The vast majority of these trademark registrations predate the registration of the disputed domain name.

The ETEX group enjoys a strong online presence via its official website and social media platforms. Due to the extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown in almost every continent around the world.

The Complainant also owns numerous domain names containing the trademark ETEX, the company also 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 Complainant owns numerous trademarks ETEX, registered in several jurisdictions including in the United States, which were registered many years before the creation of the disputed domain name, such as:

1. The United States trademark ETEX Registration No. 6303449, registered on March 30, 2021, classes 6, 17, and 19;
2. The International trademark ETEX Registration No. 652141, registered on February 1, 1996, in classes 11, 17, 19 and 25;
3. The International trademark ETEX Registration No. 788905, registered on August 28, 2002, in classes 6, 11, 17, 19, 35 and 36;
4. The International trademark ETEX Registration No. 1546890, registered on June 2, 2020, in classes 6, 17, and 19;
5. The European Union Trade Mark ETEX Registration No. 17910895, registered on March 19, 2019, in classes 2, 6, 17, 19, 35, 37 and 42.

The disputed domain name was registered on April 4, 2023.

The disputed domain name does not resolve towards an active webpage. Notwithstanding, the disputed domain name <etexgruop.cam> has been used for fraudulent and phishing purposes sending emails in order to obtain fraudulent payments.

## 5. Parties' Contentions

### A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its ETEX trademark due to the fact that the disputed domain name includes the complete trademark with the addition of the misspelled term "gruop" instead of "group". Additionally, the Complainant argues that the Respondent has no rights or legitimate interests with respect to the disputed domain name and finally, that the Respondent registered and is using the disputed domain name in bad faith. As a result, the Complainant requested the transfer of the disputed domain name.

### B. Respondent

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has established that it has registered trademark rights in the ETEX trademark. As noted in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1: "Where the Complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case."

In order to establish the confusing similarity test, panels typically do a side-by-side comparison between the trademark and the domain name to establish if the complainant's trademark is recognizable within the domain name.

In this case, the disputed domain name <etexgruop.cam> includes the trademark ETEX in its entirety with the term "gruop". The term "gruop" is an evident misspelled version of the term "group" where the letters "o" and "u" are reversed. The addition of such term does not prevent a finding of confusing similarity with the trademark.

In the present case, the disputed domain name comprises the Complainant's ETEX trademark in its entirety. As stated in [WIPO Overview 3.0](#), section 1.7: "[...] 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."

Additionally, it is well established that the generic Top-Level Domain ("gTLD"), in this case ".cam", is generally disregarded when considering whether a disputed domain name is confusingly similar to the trademark in which the complainant has rights (see section 1.11.1 of the [WIPO Overview 3.0](#)).

For all the foregoing reasons, the Panel finds that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a disputed domain name by demonstrating any of the following:

- (i) before any notice to you 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.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), a complainant is required to make 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 allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent does come forward with evidence of relevant rights or legitimate interests, the Panel weighs all the evidence, with the burden of proof always remaining on the complainant.

In the present case, the Complainant contends that the Respondent is not referred to or commonly known by the disputed domain name or any related trademark. It claims it has not licensed or authorized the Respondent to use the trademark in any way including use in a domain name.

The Complainant argues that there is no evidence that the Respondent is known by the dispute domain name or owns any corresponding registered trademarks. The Complaint has established that when conducting searches on online trademark databases regarding the terms “etexgruop” or “etexgruop.cam”, no information is found in relation with trademarks corresponding to the aforementioned terms. Moreover, the Respondent appears not to own any trademark rights in publicly available trademark databases.

The Respondent is also using a privacy shield service, masking its identity on the publicly available Registrar’s whols. Therefore, it appears that the Respondent aims at hiding its true identity rather than being known by the disputed domain name.

Also, according to the Complainant, 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 making a legitimate noncommercial or fair use of the disputed domain name. In the present case the disputed domain name has been used for fraudulent purposes.

According to the Complainant the disputed domain name has been used in an email address (“[...][@etexgruop.cam](#)”) to send a fraudulent phishing email, impersonating the Complainant and one of its employees, to one of the Etex group’s customer. In the fraudulent phishing email, the sender pretends to be an employee of the Complainant. To give the impression its fraudulent email is genuine, the Respondent used the name of one of the Etex group’s employee by including it in the fraudulent email address itself (“[first name].[family name][@etexgruop.cam](#)”). The name of the ETEX group’s employee has also been inserted in the body of the fraudulent email in the signature. The same signature also includes the ETEX trademark as well as the references to the ETEX group’s website “[etexgroup.com](#)” and Euronit Fachadas y Cubiertas, S.L., which is a company part of the ETEX group.

The fact of sending an email originating from the email address associated with the disputed domain name has aimed at impersonating ETEX group and its employee to divert payments. To achieve such fraudulent purpose, the sender lured the ETEX group’s customer by claiming that a due invoice remained unpaid and provided banking information, not related to the ETEX group, to proceed to the corresponding payment. Being deceived, the client’s customer made a payment to the aforementioned banking information. The aforementioned use of the disputed domain name to commit an illegal activity “can never confer rights or legitimate interests on a respondent”. See [WIPO Overview 3.0](#), section 2.13.1; *SAP SE v. Anuoluwapo Akobi*, WIPO Case No. [D2018-0624](#); and *Ingenico Group v. Sammi Wilhi, Lng Group Pty Ltd*, WIPO Case No. [D2019-1079](#).

The Respondent has not responded, and based on the record, the Panel is unable to conceive any basis upon which the Respondent could have any rights or legitimate interests in respect of the disputed domain name due to the actions shown.

This Panel finds that the Respondent is not known under the disputed domain name and does not make any *bona fide* use, neither commercial nor noncommercial, of the same, being emphasized that the disputed domain name has been used for phishing and fraudulent purposes.

In the present case, the Complainant made a *prima facie* case that the Respondent lacks rights or legitimate interests to which the Respondent failed to respond.

For the foregoing reasons the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and the requirements of paragraph 4(a)(ii) of the Policy therefore are fulfilled.

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

In order to prevail under the Policy, the Complainant must show that the disputed domain name has been registered and is being used in bad faith.

The Complainant's ETEX trademark has been continuously and extensively used for many years and have as a result acquired considerable reputation and goodwill worldwide. Also, if the user goes to the official website of the company, it will find an extensive history of the company, which has been active for more than a hundred years, creating fame and a well-respected name worldwide. Accordingly, the Panel is satisfied that the Respondent must have been aware of the trademarks ETEX when it registered the disputed domain name, noting also that the disputed domain name contains the trademark ETEX, with the addition of the misspelled term "gruop" instead of "group".

The Panel accepts the Complainant's submissions that the Respondent registered the disputed domain name with the intention of referring to the Complainant's trademark and the services associated. The Panel further notes, that the disputed domain name was acquired long after the Complainant's ETEX trademarks became well-known. In view of the well-known character of the ETEX trademarks, it is difficult to believe that the Respondent was not aware of the Complainant and its activities, at the time it registered the disputed domain name.

Also, the disputed domain name reproduces the denomination "ETEX group", which is widely used by the Complainant, in a misspelled way, obviously a typo-squatting act. The misspelling of the expression "ETEX Group" could lead the Internet users to fall on the website referring to the disputed domain name as an official domain name of the Complainant, due to the fact that the Complainant has a similar domain name and uses it as their server addresses. Additionally, Internet users, clients or public in general could receive emails from the disputed domain name's address and could be confused, and may not be able to see the difference with the Complainant's address.

In the present case, the Panel finds that the disputed domain name is being used in bad faith due to the following factors: (i) the reputation of the Complainant's trademark, as an international established mark, with a network of loyal clients (ii) the failure of the Respondent to submit a response, and (iii) considering the totality of the circumstances of this case, including actively phishing clients, the implausibility of any good faith uses to which the disputed domain name may be put.

For all the foregoing reasons the Panel finds that the disputed domain name <etexgruop.cam> has been registered and used in bad faith.

In summary, this Panel finds that the Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to the Complainant's well-known trademark, in the absence of convincing evidence and rebuttal to the contrary from the Respondent, the choice of the disputed domain name and the conduct of the Respondent are indicative of registration and use of the disputed domain name in bad faith.

For all the foregoing reasons the Panel sustain that the Complaint fulfils the third condition of paragraph 4(a) 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 <etexgruop.cam> be transferred to the Complainant.

*/Ada L. Redondo Aguilera/*

**Ada L. Redondo Aguilera**

Sole Panelist

Date: September 4, 2023