

ADMINISTRATIVE PANEL DECISION

ETEX N.V and ETEX Services N.V v. Mark L Smith
Case No. D2023-2730

1. The Parties

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

The Respondent is Mark L Smith, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <etexgroup.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 June 26, 2023. On June 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 27, 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. The Center sent an email communication to the Complainants on June 28, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on July 3, 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 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2023.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on August 15, 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

For reasons stated hereunder, both of the Complainants will be jointly referred to as the “Complainant”. The Complainant is based in Belgium and part of a global group offering futureproof lightweight interior and exterior building solutions.

The Complainant is the owner of trademark registrations worldwide consisting of or including the mark ETEX, such as:

- European Union trademark no. 17910895 ETEX (stylized), filed on May 30, 2018, and registered on March 19, 2019, for goods and services in Classes 2, 6, 17, 19, 35, 37, and 42;
- International trademark ETEX (word) no. 652141, filed and registered on February 1, 1996, for goods and services in Classes 11, 17, 19, and 25;
- International trademark ETEX (word) no. 788905, filed and registered on August 28, 2002, for goods and services in Classes 6, 11, 17, 19, 35, and 36; and
- United Kingdom trademark ETEX (stylized) no. UK00917910895, filed on May 30, 2018, and registered on March 19, 2019, for goods and services in Classes 2, 6, 17, 19, 35, 37, and 42.

In addition, the Complainant owns domain names including the mark ETEX, such as the domain names <etexgroup.com> and <etexgroup.eu>, which the Complainant uses to resolve to the ETEX group’s official website.

The disputed domain name was registered on December 12, 2022. It is inactive.

5. Parties’ Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is established in the present case:

The Complainant argues that the disputed domain name is confusingly similar to a trademark, in which it owns rights.

The disputed domain name incorporates, in its second-level portion, the Complainant’s trademark ETEX and the term “grroup”, which is a misspelled version of the word “group”, to which an “r” has been added. This does not prevent a finding of confusing similarity to the Complainant’s trademark. In addition, the Complainant puts forth that the addition of the generic Top-Level-Domain (“gTLD”) “.com” is a standard domain registration requirement which can be disregarded.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant asserts that it has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to it in any way. Furthermore, the Respondent is not known by the disputed domain name, nor does its clear name correspond to the disputed domain name. A person by the name of the Respondent does not own any trademarks in the term “etexgrroup” either. In

contrast, by using a privacy shield, the Respondent hides its true identity rather than being known by the disputed domain name. In addition, the Respondent has not been using, or prepared to use, the disputed domain name in connection with a *bona fide* offering or goods or services or making a legitimate noncommercial or fair use of the disputed domain name, given that it is merely passively held. Finally, the structure of the disputed domain name reveals that it was intentionally registered in order to refer to the Complainant, so that Internet users may be led to believe that it is connected to or authorized by the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith.

According to the Complainant, the disputed domain name was registered in bad faith in the first place. It was registered many years after the first of the Complainant's ETEX trademarks, which - so the Complainant claims - are widely known. The Complainant claims to have a strong online presence with ETEX, being very active through its website and social media. A simple online search using the term "etex" would - alone or in combination with "group" - invariably lead to the Complainant. The Complainant stresses its particular presence in the United Kingdom, where the Respondent is seated. In addition, the structure of the disputed domain name shows that the Respondent aims at creating a direct association with the Complainant and its domain name <etexgroup.com>. This, so the Complainant, shows clear knowledge of the Respondent of the Complainant.

On the use in bad faith, the Complainant points to the disputed domain name being passively held. The Complainant argues that, according to previous UDRP panels, inactivity by a respondent may not prevent a finding of use in bad faith, when it is inconceivable that any legitimate use could be made of the disputed domain name. The Complainant finds that the circumstances leading to such conclusion be met in the present case. On this, it put forth that the trademark ETEX of the Complainant is widely known. Further, there is no evidence of any good faith use. In addition, the Complainant points to mail exchange ("MX") records that are associated to the disputed domain name, indicating there could be a scheme of the Respondent of sending fraudulent emails making Internet user believe to be addressed by the Complainant to be intended. Finally, the Respondent not replying to the cease and desist letter sent by the Complainant is - according to the Complainant - a further sign of bad faith.

B. Respondent

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

6. Discussion and Findings

6.A. Procedural Issues - Consolidation

Both entities named as the Complainant expressly requested the Panel to allow for consolidation of complainants for the purposes of the present proceeding. They have demonstrated a common grievance against the Respondent, a corporate connection and a shared interest in the trademarks, on which the Complaint is based, and they are represented by a single authorized representative. On these grounds, the Panel has allowed the requested consolidation of both ETEX N.V and ETEX Services N.V into a single complainant.

6.B. Substantive Issues

Pursuant to paragraph 4 (a) of the Policy, a complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has 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. Identical or Confusingly Similar

On the first element, the Complainant has to establish that there is a trademark or service mark, in which it has rights.

The Complainant has demonstrated registered trademark rights in and use of trademarks consisting of or comprising the mark ETEX.

Further, the test for identity or confusing similarity under the Policy, paragraph 4(a)(i) is limited in scope to a direct comparison between the Complainant's trademarks and the textual string which comprises the disputed domain name.

The Panel agrees that the disputed domain name includes the trademark ETEX in its entirety, merely adding the misspelled term "group" as well as the gTLD ".com". Pursuant to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, in cases where a domain name incorporates the entirety of a trademark, said domain name will be found to be identical or confusingly similar for purposes of the UDRP. Also, for the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, the Panel typically ignores the gTLD (section 1.11.1 of [WIPO Overview 3.0](#)).

Therefore, the disputed domain name is confusingly similar to the Complainant's trademark.

In view of the above, the Panel finds that the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

On the second element, under paragraph 4 (a)(ii) of the Policy, the Complainant bears the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is consistent case law of UDRP panels that it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that, with respect to paragraph 4(c)(i) of the Policy, there is no evidence in the record that the Respondent before any notice of the dispute, used or prepared to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

The Panel further notes that, with respect to paragraph 4(c)(ii) of the Policy, there is no evidence indicates that the Respondent has ever been commonly known by the disputed domain name.

Additionally, with respect to paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent has made, and is making, a legitimate noncommercial or fair use of the disputed domain name. On the contrary, given that the disputed domain name is inactive, the Respondent is not making any use whatsoever of the disputed domain name. In light of this, and considering that the disputed domain name contains the entirety of the Complainant's trademark together with an obvious and intentional misspelling of the term "group", the Panel finds that it is clear that the Respondent intentionally sought to mislead unsuspecting Internet users expecting to find the Complainant through the confusingly similar disputed domain name.

Moreover, the Respondent is not known to the Complainant, nor has the Complainant authorized, licensed, or permitted in any other way the Respondent to register or use the disputed domain name or its trademark.

Therefore, the Panel finds that the Complainant has provided sufficient evidence to hold that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has satisfied the requirement of paragraph 4 (a)(ii) of the Policy.

C. Registered and Used in Bad Faith

On the third element, under paragraph 4(a)(iii) of the Policy, the Complainant has to establish that the Respondent registered and is using the disputed domain name in bad faith.

As to registration in bad faith, the Panel notes that the disputed domain name was registered many years after the registration of the Complainant's first ETEX trademark, and accepts that the disputed domain name was chosen by reference to this trademark. The Panel holds the Complainant's trademark to be sufficiently distinctive to assume that it is inconceivable that the disputed domain name with its specific addition and misspelling "group" could have been chosen and registered without actual knowledge and even targeting of the Complainant's trademark, particularly in light of the Complainant use of the domain name <etexgroup.com>. Consequently, the Panel finds that the Respondent registered the disputed domain name in bad faith.

As to use in bad faith, according to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use in bad faith: (i) circumstances indicating registration or acquisition of the domain name primarily for the purpose of selling, renting, or otherwise transferring to the complainant who is the owner of the trademark for valuable consideration or to one of its competitors, or (ii) registration of the domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, or (iii) registration of the domain name primarily for the purpose of disrupting the business of a competitor, or (iv) by using the domain name, intentionally attempting to attract, for commercial gain, Internet users to the respondent's 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 its website or location.

Here, the disputed domain name is inactive. With comparative reference to the circumstances set out in paragraph 4(b) of the Policy, it is consensus view of UDRP panels that, nevertheless, the apparent lack of so-called active use of a disputed domain name does not prevent such finding of bad faith. Rather, a panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith, such as the complainant having a well known trademark, no response of the respondent, or the registrant's concealment of its identity (see section 3.3 of the [WIPO Overview 3.0](#)).

In the present case, whether or not the materials referred to by the Complainant in the Amended Annex 1 to the Complaint allow the conclusion that its trademark is well known in the strict sense of the trademark law, does not need to be answered. A quick Internet search conducted by the Panel shows that the top search results returned for the search phrase "etex" with or without combination with "group" lead to the Complainant's website or third party websites providing information relating to the Complainant's business. Taking this into consideration, together with the obvious and intentional misspelling of the added term "grroup", make it inconceivable to assume that the disputed domain name could be but to any use that would not amount to use in bad faith (see *Artemis Marketing Corp. v. Admin Contact, c/o PrivateName Services Inc. / Amir Cohen and Registration Private, Domains by Proxy, LLC / VMI INC*, WIPO Case No. [D2021-3480](#)). Given also the evidence of the active MX records associated with the disputed domain name as per Annex 9 to the Complaint, the Complainant's assumption of a fraudulent scheme of the Respondent to make Internet users believe they are personally contacted by the Complainant is an implied ongoing threat hanging over the Complainant. In addition, the Respondent did not respond to the Complainant's contentions. Further, the Panel finds that the Respondent's efforts to conceal its identity through the use of a Whols proxy service, as well as, finally the fact that the Respondent has not participated in the proceeding

can be construed as further evidence that the disputed domain name was registered in bad faith and its non-use does not prevent a finding of bad faith (*TTT Moneycorp Limited. v. Diverse Communications*, WIPO Case No. [D2001-0725](#)).

In the circumstances, the Panel finds that the requirement of paragraph 4(a)(iii) of the Policy has been satisfied.

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 <etexgroup.com> be transferred to the Complainant.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: August 29, 2023