

## **ADMINISTRATIVE PANEL DECISION**

**TEXEN v. John Nelson, Humanity Right Organisation**  
**Case No. D2023-3661**

### **1. The Parties**

The Complainant is TEXEN, France, represented by Nameshield, France.

The Respondent is John Nelson, Humanity Right Organisation, Poland.

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

The disputed domain name <texenpoland.com> is registered with Key-Systems GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2023. On August 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 1, 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 (c/o whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 7, 2023, 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 September 7, 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 September 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 1, 2023. The Respondent’s informal communication was received on September 11, 2023. Accordingly, the Center notified the Commencement of Panel Appointment Process to the Parties on October 10, 2023.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on October 18, 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**

Founded in 1984, Texen, the Complainant, is a key player in luxury and beauty packaging, with a presence in five countries. The Complainant works for major players in the world of beauty and spirits, such as Chanel, L'Oréal, and Hermès.

The Complainant is the owner of the International trademark TEXEN, No. 1444485 registered since October 15, 2018; and the French trademark TEXEN No. 4447818 registered since April 20, 2018.

The Complainant also owns a number of domain names comprising the same wording "texen", such as the domain name <texen.com>, registered since December 20, 1999, and used for its official website.

The disputed domain name <texenpoland.com> was registered on May 10, 2023, and resolves to the online shop allegedly operated by Texen Poland, which sells various products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant argues that the trademark TEXEN appears in its entirety in the disputed domain name. As a result, the disputed domain name is to be considered identical to the Complainant's trademarks and domain name.

The Complainant also alleges that the addition of "Poland" does not prevent the finding of confusion and similarity with its trademarks and domain name.

Moreover, the addition of the term "Poland" to the trademark TEXEN worsens the likelihood of confusion, as the Complainant operates in Poland through its subsidiary Texen Poland.

The disputed domain name resolves to a website impersonating the Complainant and promoting online retail services of several products.

Therefore, there is no evidence that the Respondent has made demonstrable preparations to use the disputed domain name for legitimate purposes, nor is there any evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. That being the case, the Complainant finds that the disputed domain name is used to take unfair advantage of the Complainant's rights for commercial gain, since Internet users and the Complainant's clients would inevitably associate the content of the website at the disputed domain name with the Complainant's prior trademarks and domain name.

Moreover, the Complainant stresses that the Respondent is not commonly known by the disputed domain name. According to the Complainant, it has prior rights over the trademark TEXEN, and has not authorized the registration and use of the disputed domain name, nor the use of its trade name and trademarks by the Respondent.

The Respondent is not affiliated to or authorized by the Complainant to use or register the disputed domain name.

The Complainant's intellectual property rights for TEXEN trademarks predate the registration of the disputed domain name.

The Complainant also argues that the Respondent was aware of the Complainant's rights and has clearly registered the disputed domain name to target the Complainant's trademark, and that the registration of the disputed domain name was conducted in bad faith.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

On September 11, 2023, the Respondent, identified as John Nelson, replied the following:

"Hello Please I don't know what this is all about. I have talked to the owner of this domain name I purchased, and he is ready to provide all his companies details."

No further official replies to the Complainant's contentions were made.

## **6. Discussion and Findings**

As per paragraph 4(a) of the Policy, the Complainant must prove that:

- (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 has been registered and is used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

### **A. Identical or Confusingly Similar**

The evidence demonstrates that the Complainant is the owner of several trademark registrations for TEXEN.

The disputed domain name incorporates the Complainant's trademark TEXEN in its entirety, with the addition of the geographical term "Poland". The addition of this term does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark, since TEXEN remains recognizable in the disputed domain name; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Also, the addition of this term gives the idea that the disputed domain name refers to an authorized store of the Complainant in Poland. It is the general view among UDRP panels that the addition of merely dictionary, descriptive or geographical words to a trademark in a domain name does not prevent a finding of confusing similarity under the first element of the UDRP (for example, *Ansell Healthcare Products Inc. v. Australian Therapeutics Supplies Pty, Ltd*, WIPO Case No. [D2001-0110](#)).

As numerous prior UDRP panels have recognized, the incorporation of a trademark in its entirety or a dominant feature of a trademark in a domain name is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark. See section 1.7 of the [WIPO Overview 3.0](#).

The Panel finds that paragraph 4(a)(i) of the Policy has been proved by the Complainant, *i.e.*, the disputed domain name is identical or confusingly similar to the Complainant's trademark TEXEN.

### **B. Rights or Legitimate Interests**

There is no evidence that the Respondent has any authorization to use the Complainant's trademarks or to register domain names containing the Complainant's trademark TEXEN.

There is no evidence that the Respondent is commonly known by the disputed domain name.

Furthermore, the Complainant has provided evidence that the disputed domain name is used in connection with a fraudulent practice leading the users into believing that the Complainant is behind it.

Such use can never confer rights or legitimate interests onto the Respondent. See section 2.13 of the [WIPO Overview 3.0](#).

For the above reasons, the Panel finds that the Complainant has made out an unrebutted *prima facie* case and the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain name.

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

The Respondent John Nelson sent an email to the Center stating that it has no idea of what the disputed domain name is about and that it was not aware of trademark rights over the mark TEXEN by the Complainant.

The Panel notes though, that the trademark TEXEN is registered by the Complainant in many jurisdictions and has been used for years. The Complainant's trademarks predate the registration of the disputed domain name. The disputed domain name reproduces the Complainant's TEXEN trademark in its entirety together with the geographical term "Poland".

The disputed domain name reproduces the Complainant's trademark TEXEN, and the Respondent has no rights or legitimate interests in the disputed domain name. Nor has the Respondent explained why this domain name was registered.

It has been established in prior UDRP decisions that when the respondent knew or should have known a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

The Complainant demonstrates that there is no other reason for the use and registration of the disputed domain name than to take advantage of the reputation of the Complainant's trademarks, with the intent to deceive Internet users into believing that the disputed domain name is associated with the Complainant.

The Panel finds that the Respondent obviously was aware of the Complainant's marks when registering the disputed domain name, since the Respondent impersonates the Complainant's trademark and online services, in a clear reference to the Complainant's business.

Therefore, this Panel finds that the disputed domain name was inherently likely to mislead Internet users, and the Respondent's use of the disputed domain name in this manner indicates neither a *bona fide* offering of goods or services under Policy, nor a noncommercial or fair use of the domain name under Policy.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, the disputed domain name has been registered and is being used in bad faith.

## 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 <texenpoland.com> be transferred to the Complainant.

*/Mario Soerensen Garcia/*

**Mario Soerensen Garcia**

Sole Panelist

Date: November 1, 2023