

ADMINISTRATIVE PANEL DECISION

TEXEN v. Robert Scott, robertrose885

Case No. D2023-3666

1. The Parties

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

The Respondent is Robert Scott, robertrose885, United States of America.

2. The Domain Name and Registrar

The disputed domain name <texenpolandspzoo.com> is registered with Nicenic International Group Co., Limited (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:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on September 20, 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 20, 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 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 18, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on October 23, 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 Complainant is a French company, founded in 1984.

It provides luxury and beauty packaging for "major players" such as Chanel, L'Oreal and Hermès.

The Complainant employs some 1,400 permanent members of staff and in 2022 generated revenues of some EUR 190 million. The Complainant's LinkedIn account has some 10,000 followers.

The Complainant promotes its products and services through, amongst other things, a website at "www.texen.com", which has been registered since 1999 and is its main website.

The Complaint includes evidence that the Complainant owns:

- (a) French Registered Trademark No. 4447818, TEXEN, which was registered on August 10, 2018 in respect of relevant goods and services in International Classes 20, 21, 40 and 42; and
- (b) International Registration No. 1444485, TEXEN, which was registered on October 15, 2018 in respect of goods and services in International Classes 20, 21, 40 and 42 also. The International Registration designated the European Union, the United States of America, Mexico and China.

Amongst other things, the Complainant has a subsidiary in Poland named Texen Poland SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ, the Polish equivalent of a limited liability company, which can be abbreviated to Texen Poland Sp. z o.o., the registered address of which is in Mielec, Poland.

The disputed domain name was registered on August 16, 2023.

It resolves to a website which purports to offer for sale electronic products such as mobile phones, laptops, headphones, radios and gaming accessories under the name "Texen Poland Electronic". Underneath the banner heading, the landing page begins with the following text:

"Welcome to Texen Poland Sp. z o.o, Mielec, your ultimate destination for the latest and most innovative electronic gadgets and devices. Our meticulously curated collection features a wide range of cutting-edge electronics to cater to your every need."

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

In the present case, the Complainant has proven ownership of registered trademarks for TEXEN in several jurisdictions including France, the European Union and the United States of America.

Disregarding the generic Top Level Domain (gTLD) component of the disputed domain name as a functional requirement of the domain name system, the entirety of the Complainant's trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.11.

Based on the available record, therefore, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations 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; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name after the Complainant began using its trademark and also after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent’s name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The disputed domain name appears to be in use to offer for sale electronics products. Accordingly, the circumstances in paragraph 4(c)(iii) are not applicable.

“Texen” is not a word directly descriptive of, or otherwise naturally suggested by, electronic products. Further, the website to which the disputed domain name resolves falsely presents itself as being the website of the Complainant’s Polish subsidiary. That kind of misrepresentation is not the sort of conduct capable of qualifying as rights or a legitimate interest under the Policy.

Moreover, as the disputed domain name is effectively the the Complainant’s Polish subsidiary would often or ordinarily be represented according to Polish common usage, the Panel readily infers that the disputed domain name is being used to target the Complainant and its trademark. Such targeting does not qualify as an offering of goods and services in good faith under the Policy.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint. See e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As discussed in section 5B above, the disputed domain name does not appear to have any connection with the Respondent or the products apparently being offered for sale from the website to which the disputed domain name resolves. On the contrary, the website to which the disputed domain name resolves purports to be the website of the Complainant’s Polish subsidiary. Indeed, the disputed domain name comprises a common form of usage of the name of the Complainant’s Polish subsidiary and the website represents that

the Respondent's business is based in the very Polish town the Complainant's Polish subsidiary is in fact located.

It appears clear, therefore, that the Respondent adopted the disputed domain name with knowledge of the Complainant's trademark and has sought to take advantage of the resemblance of the disputed domain name to the Complainant's trademark without the Complainant's permission or any connection with the Complainant and its products.

Bearing in mind the short time between the registration of the disputed domain name and the commencement of the website to which it resolves, the Panel readily infers that the disputed domain name was registered for the purposes to which it has been put.

Accordingly, the disputed domain name appears to have been registered in bad faith. Correspondingly, the manner of use constitutes use in bad faith under the Policy.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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, <texenpolandspzoo.com>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: November 6, 2023