

ADMINISTRATIVE PANEL DECISION

Arkema France v. Shful wise

Case No. D2023-3826

1. The Parties

The Complainant is Arkema France, France, represented by Fross Zelnick Lehrman & Zissu, PC, United States of America (“United States”).

The Respondent is Shful wise, United States.

2. The Domain Name and Registrar

The disputed domain name <arkcma.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2023. On September 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 14, 2023, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and its 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 sent notification to the Respondent of the Complaint, and the proceedings commenced on September 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2023. The Respondent did not submit any response. Accordingly, the Center sent notification of the Respondent’s default on October 19, 2023.

The Center appointed Petra Pecar as the sole panelist in this matter on November 14, 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 established in 2004, operating globally with offices in 55 countries and over 21,000 employees. The Complainant conducts business across 148 industrial facilities in Europe, North America, and Asia, with sales subsidiaries worldwide, organized into three business segments: Adhesive Solutions, Advanced Materials, and Coating Solutions. The Complainant manufactures and markets various products, including fluorochemicals, technical polymers, thiochemicals, functional additives, industrial coatings, acrylics, hydrogen peroxide, organic peroxides, and molecular sieves.

The Complainant holds trademark registrations for the ARKEMA trademark worldwide, including United States Registration No. 3,082,057 for word ARKEMA, registered on April 18, 2006.

The disputed domain name was registered on July 30, 2023 and at time of the Complaint filing it resolved to an inactive website.

The Respondent is an individual based in the United States.

5. Parties' Contentions

A. Complainant

The Complainant asserts that their significant investments of time, financial resources, and effort have resulted in considerable goodwill for the ARKEMA trademark, thereby establishing it as a distinguished and broadly acknowledged brand within the industry.

The Complainant asserts that the disputed domain name is confusingly similar to their ARKEMA trademark and trade name. This assertion is based on the fact that the disputed domain name merely replaces the letter "e" in ARKEMA with "c," adding a generic ".com" Top-Level Domain ("gTLD"). The Complainant argues that several UDRP panel decisions establish that incorporating a trademark in its entirety is usually enough to establish that a domain name is identical or confusingly similar to a registered mark, which is supported by various precedents where domain names were found to be confusingly similar due to minor alterations from the original trademarks.

Furthermore, the Complainant contends that the registration of the disputed domain name <arkcma.com> is a clear case of typo-squatting, a practice widely condemned in URDP decisions. By replacing "e" with "c," it attempts to capitalize on common typing errors, leading to confusion among users seeking information related to ARKEMA brand. The mentioned strategy has been consistently recognized in prior cases as creating confusing similarity.

The Complainant also highlights that in assessing confusing similarity, the gTLD, such as ".com," is not taken into consideration. This is grounded in past UDRP panel decisions, where the focus was solely on the confusing similarity between the disputed domain name and the trademark, excluding the gTLD.

The Complainant maintains that, in the absence of any contrary evidence from the Respondent, the disputed domain name is confusingly similar to the Complainant's validly registered ARKEMA trademark, based on the established legal principles and precedents.

The Complainant contends that the Respondent has no legitimate interests or rights to the disputed domain name. This stance is grounded in the fact that the Complainant's use and adoption of the ARKEMA trademark predate the Respondent's registration of the disputed domain name.

Further, the Complainant points out that the Respondent has neither a connection nor affiliation with them and has not been granted any form of permission to use the ARKEMA trademark in domain names or any other manner. The Complainant believes, based on the information, that the Respondent has not used the

disputed domain name for any legitimate purpose, including a *bona fide* offering of goods or services. There is also no indication that the Respondent is commonly known by the disputed domain name or has been making any legitimate noncommercial or fair use of it without intent for commercial gain, to mislead consumers, or to tarnish the Complainant's trademark.

The Complainant asserts that there is no basis for the Respondent to claim that they have legitimately registered the disputed domain name, which prominently incorporates the dominant element of the Complainant's ARKEMA trademark.

The Complainant argues that the Respondent's registration and use of the disputed domain name is in bad faith, given the widespread recognition of their ARKEMA trademark in the industrial, high-performance materials, and coating solutions industries. The Complainant assert that it is inconceivable for the Respondent to be unaware of the ARKEMA trademark at the time of the disputed domain name registration, drawing parallels to previous UDRP cases where the fame of a trademark precluded innocent registration of a confusingly similar domain name.

Furthermore, the Complainant points out that the disputed domain name is not currently linked to an active website. Previous UDRP cases have demonstrated that non-use or inaction can also constitute bad faith registration and use. This includes the possibility that inactivity by the Respondent could be interpreted as the disputed domain name being used in bad faith.

The Complainant also contends that any use of the disputed domain name would inevitably lead to confusion with their ARKEMA trademark, further reinforcing the stance of bad faith registration and use. Such use would inherently cause confusion regarding the source, sponsorship, affiliation, or endorsement of the website, an activity deemed in direct violation of the Policy in similar UDRP cases.

The Complainant argues that the Respondent appears to be a serial cybersquatter, having registered at least 38 other domain names, most of which incorporate well-known trademarks of other companies.

B. Respondent

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

6. Discussion and Findings

Even if the Respondent did not file a Response to the Complainant's contentions, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

"A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable", as indicated in paragraph 15(a) of the Rules.

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 being used by the Respondent in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A trademark registration provides a clear indication that the rights in the trademark belong to the complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.2.1).

In the present case, the Panel finds that the Complainant has established its rights in the ARKEMA trademark based on the United States registration.

The Panel further finds that the disputed domain name incorporates the ARKEMA trademark with a difference in only one letter, where the letter “e” is substituted with the letter “c” and gTLD “.com”. The gTLD “.com” does not generally preclude a finding of confusing similarity between the disputed domain name and the Complainant’s trademark in accordance with the well-established practice of previous UDRP panels.

Registering domain names with a difference of one letter to a famous brand name often exemplifies typosquatting. Since the difference between the disputed domain name and the Complainant’s ARKEMA trademark is in the substitution of the letter “e” with the letter “c”, the Panel considers this difference to be typosquatting. When the disputed domain name contains an obvious misspelling of the Complainant’s trademark, it is considered to be confusingly similar to the relevant trademark for the purposes of the first UDRP element, also in accordance with section 1.9 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence to rebut that presumption. If the respondent fails to do so, a complainant is generally deemed to have satisfied the second element, as set out in paragraph 4(a)(ii) of the Policy (see also [WIPO Overview 3.0](#), section 2.1).

The Respondent failed to provide any evidence of authorization to use the ARKEMA trademark or to register a domain name containing the ARKEMA trademark.

According to the Complainant, the Respondent is not associated or connected with the Complainant in any way, and the Complainant has not granted the Respondent any license or authorization to use or register any domain name that includes the Complainant’s ARKEMA trademark. The Respondent has further failed to provide a response to the Complaint, thereby failing to present any information or factors that could potentially justify prior rights or legitimate interests in the disputed domain name. Additionally, there appears to be no evidence of the Respondent engaging in any legitimate or genuine use of the disputed domain name, whether for noncommercial or *bona fide* activities. The Panel finds that the minor misspelling of the Complainant’s trademark in the disputed domain name signals an intention on the part of the Respondent to confuse users seeking or expecting the Complainant.

Based on the above, the Panel finds that the second element of paragraph 4(a)(ii) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires a complainant to demonstrate that the respondent registered and is using the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1, states that “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”.

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or 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) circumstances indicating that the respondent 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) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt 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 its website or location.

The registration of the Complainant’s ARKEMA trademark predates the disputed domain name registration by at least 17 years.

The Panel believes, that at the time of the disputed domain name’s registration, the Respondent was aware of the Complainant and its ARKEMA trademark, and intentionally targeted ARKEMA trademark when registering the disputed domain name with a difference in one letter. The Respondent had the opportunity to check if the disputed domain name is violating any third-party rights before registering it, and if the Respondent had done so, he would have noticed that all results of an Internet or trademark search are related to the Complainant and its ARKEMA trademark.

The disputed domain name was at the time of the Complaint filing inactive. The Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding.

Further, the Complainant has provided evidence that the Respondent appears to be engaged in a cybersquatting pattern of conduct indicative of bad faith registration and use of domain names incorporating third parties’ trademarks. A reverse Whois search of the Respondent’s email address reveals domain names registered by the Respondent, many of which incorporate famous and well-known trademarks. The Complainant provided evidence of 38 domain names, some of which incorporate well-known trademarks with minimal difference in its appearance. In accordance with paragraph 3.1.2 of [WIPO Overview 3.0](#), a pattern of abuse is being found where the respondent registers, simultaneously or otherwise, multiple trademark-abusive domain names corresponding to the distinct marks of individual brand owners. Having in mind that the Respondent has registered numerous domain names that incorporate distinctive trademarks of third parties, the Panel finds that the Respondent has engaged in a cybersquatting pattern of abuse.

The Panel concludes that the disputed domain name was registered and used in bad faith and that consequently, the Complainant has satisfied the requirement under paragraph 4(a)(iii) 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, <arkcma.com>, be transferred to the Complainant.

/Petra Pecar/

Petra Pecar

Sole Panelist

Date: November 28, 2023