

## **ADMINISTRATIVE PANEL DECISION**

Arkema France v. Steven Smith, Web company  
Case No. D2023-4959

### **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 Steven Smith, Web company, United States of America.

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

The disputed domain name <arkema-europe.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2023. On November 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 18, 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 December 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 January 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 24, 2024.







The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on January 29, 2024. 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 Arkema France, a French company formed in 2004 which has offices in 55 countries, and over 20,000 employees.

The Complainant operates 136 industrial facilities in Europe, North America, and Asia, and has sales subsidiaries in every region of the world.

The Complainant is the owner of several trademark registrations around the world, among others, the following:

Trademark	No. Registration	Jurisdiction	Date of Registration
	7103733	United States	July 11, 2023
	7103734	United States	July 11, 2023
	3082057	United States	April 18, 2006
	1665655	African Intellectual Property Organization, Algeria, Armenia, Australia, Azerbaijan, Belarus, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Cambodia, China, Colombia, Cuba, Egypt, Georgia, India, Indonesia, Iran, Israel, Japan, Kazakhstan, Kyrgyzstan, Liechtenstein, Malaysia, Mexico, Monaco, Montenegro, Morocco, New Zealand, North Macedonia, Norway, Oman, Pakistan, Philippines, Republic of Korea, Russian Federation, Serbia, Singapore, Switzerland, Tajikistan, Tunisia, Türkiye, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, Viet Nam, Canada, Thailand	April 21, 2022
	18593819	European Union	February 23, 2022
	18593816	European Union	February 23, 2022

The Complainant owns the domain name <arkema.com>, which resolves to the Complainant's official website.

The Respondent registered the disputed domain name <arkema-europe.com> on November 8, 2023. The disputed domain name resolves to an inactive website.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant argued the following:

#### **I. Identical or Confusingly Similar**

That the disputed domain name is confusingly similar to the Complainant's ARKEMA trademark.

That the disputed domain name consists of nothing more than the ARKEMA trademark with the additional geographic term "europe" and the generic top level domain ("gTLD") ".com" extension.

That the incorporation of its trademark in the disputed domain name is sufficient to establish that it is identical or confusingly similar to said mark.

That the addition of the geographic term "europe" adds to rather than diminishes the likelihood of confusion.

That the fact of including a hyphen does not make a sufficient difference between the disputed domain name and the Complainant's trademark.

#### **II. Rights or Legitimate Interests**

That the Respondent has no connection to or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademark in the disputed domain name.

That the Respondent has made no actual use of the disputed domain name in connection with an active, independent website.

That there is no evidence suggesting that the Respondent has made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services.

That there is also no evidence suggesting that the Respondent has been commonly known by the disputed domain name or that the Respondent is or has been making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or tarnish the Complainant's trademark.

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

That the ARKEMA trademark is well-known within the industrial specialties, high performance materials, and coating solutions industries, and enjoy widespread international recognition.

That the mere fact that the Respondent registered the disputed domain name which is confusingly similar to the Complainant's trademark without authorization is, in and of itself, evidence of its bad faith registration.

That the disputed domain name is not currently associated with an active website, and that therefore, under the factual circumstances of this case, non-use and inaction can constitute bad faith registration and use.

## B. Respondent

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

## 6. Discussion and Findings

Given the Respondent's failure to submit a formal response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations under paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#), and *Encyclopaedia Britannica, Inc. v. null John Zuccarini, Country Walk*, WIPO Case No. [D2002-0487](#)).

### 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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name <arkema-europe.com> is confusingly similar to the ARKEMA trademark since the incorporation of a hyphen and the geographical term "europe" does not prevent a finding of confusing similarity, because the Complainant's trademark ARKEMA is recognizable in the disputed domain name (see section 1.8 of the [WIPO Overview 3.0](#); see also *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#); *InfoSpace.com, Inc. v. Hari Prakash*, WIPO Case No. [D2000-0076](#); *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) and *Six Continents Hotels, Inc., Inter-Continental Hotels Corporation v. South East Asia Tours*, WIPO Case No. [D2004-0388](#)).

The addition of the gTLD ".com" to the disputed domain name constitutes a technical requirement of the Domain Name System ("DNS"). Thus, it has no legal significance in assessing identity or confusing similarity in the present case (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights to or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights to or legitimate interests in a domain name may result in the difficult 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 to or legitimate interests in the domain name (although the burden of proof always remains on the complainant). 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.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Complainant has asserted that there is no evidence of the Respondent's use of the disputed domain name in connection with a bona fide offering of goods or services, and that the Respondent has not been licensed or otherwise permitted by the Complainant to use the ARKEMA trademark, or to register the disputed domain name (see *Amdocs Development Ltd. and Amdocs Software Systems Ltd. v. cenk erdogan*, WIPO Case No. [D2023-3044](#); *Amdocs Development Ltd. and Amdocs Software Systems Ltd. v. Nick Lamba*, WIPO Case No. [D2023-2573](#) and *Autodesk, Inc. v. Brian Byrne, meshIP, LLC*, WIPO Case No. [D2017-0191](#)). The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights to or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant has ascertained its rights over the ARKEMA trademark. The dates of registration of the Complainant's trademarks significantly precede the date of registration of the disputed domain name.

In the present case, the Panel notes that the Respondent registered the disputed domain name on November 8, 2023, long after the Complainant registered and began using the ARKEMA trademarks. The Respondent's bad faith registration is evidenced by the fact that (1) the ARKEMA trademark is registered in several jurisdictions, including the United States, being that the Respondent has declared to be domiciled in the United States; (2) the disputed domain name is confusingly similar to the ARKEMA trademark, as it incorporates the entirety of said mark, and is also similar to the Complainant's own official domain name <arkema.com>; and (3) the Complainant has submitted evidence of extensive use of the ARKEMA trademark many years prior to the date of registration of the disputed domain name. On the uncontroverted evidence, the Panel finds that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); and *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#)).

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While UDRP panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing his identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the goodwill and distinctiveness of the Complainant's trademark, as well as the confusingly similar composition of the disputed domain name, and thus finds that, under the circumstances of this case, the passive holding of the disputed domain name constitutes bad faith under the Policy.

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

## 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 <arkema-europe.com> be transferred to the Complainant.

*/Kiyoshi Tsuru/*

**Kiyoshi Tsuru**

Sole Panelist

Date: February 12, 2024