

ADMINISTRATIVE PANEL DECISION

**ETEX N.V, ETEX Services N.V v. Hendry Juliardian, Cross No.23
Case No. D2023-4982**

1. The Parties

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

The Respondent is Hendry Juliardian, Cross No.23, Saudi Arabia.

2. The Domain Name and Registrar

The disputed domain name <etexgr0ups.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 29, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 1, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the 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 notified the Respondent of the Complaint, and the proceedings commenced on December 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 17, 2024.

The Center appointed Anna Carabelli as the sole panelist in this matter on January 22, 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 Complainants ETEX N.V. and ETEX Services N.V. are part of the ETEX group, a global supplier founded in 1905 of lightweight interior and exterior building solutions including fire protection and high-performance insulation. The group employs over 13,500 teammates in over 160 sites around the world, and exports its products to Saudi Arabia where the Respondent is purportedly based.

The Complainant ETEX holds several registrations for the trademark ETEX in various jurisdictions including:

- The International trademark ETEX No. 652141, registered on February 1, 1996, in classes 11, 17, 19 and 25;
- The International trademark ETEX No. 788905, registered on August 28, 2002, in classes 6, 11, 17, 19, 35 and 36;
- The International trademark ETEX No. 1546890, registered on June 2, 2020, in classes 6, 17, and 19;
- The European Union trademark ETEX No. 17910895, registered on March 19, 2019, in classes 2, 6, 17, 19, 35, 37 and 42;
- The United States trademark ETEX No. 6303449, registered on March 30, 2021, classes 6, 17, and 19;
- The Singapore trademark ETEX No. 40202017384Q, registered on April 6, 2021, classes 6, 17, and 19.

The Complainants also own numerous domain names that contain the trademark ETEX, among them: <etexgroup.com> and <etexgroup.eu> which resolve to the ETEX group's official website.

The Complainant, ETEX Services N.V. is a subsidiary of ETEX N.V. and is involved in the group's management of trademarks and domain names.

The disputed domain name was registered on August 1, 2023, and resolves to an inactive webpage stating, "This site can't be reached".

On September 14, 2023, the Complainants sent a cease-and-desist letter to the Respondent informing of the Complainants' rights regarding the ETEX trademark, to which the Respondent did not reply.

5. Parties' Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that:

- Due to extensive use, advertising and revenue associated with its ETEX trademark worldwide, the Complainants and the ETEX group enjoy a high degree of renown in many regions around the world, including Saudi Arabia, country to which it exports products and where the Respondent is purportedly based;
- The disputed domain name is confusingly similar to the Complainants' trademark ETEX, since it consists of the Complainants' exact mark and a misspelled version of the term "groups", the letter "o" being replaced by the number "0";

- The Respondent has no rights or legitimate interests in the disputed domain name since: (i) the Complainants have not authorized or somehow given consent to the Respondent to register and use the disputed domain name, (ii) the Respondent is not commonly known by the disputed domain name, and (iii) the Respondent's use of the disputed domain name is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use;
- The disputed domain name was registered and is being used in bad faith. The structure of the disputed domain name shows that the Respondent registered it having in mind the Complainants' ETEX mark, and reflects the Respondent's clear intention to create an association with and take advantage of the Complainant's widely known trademark. Passive holding, which is the case here, demonstrates bad faith.

The Complainants submit that in addition to the disputed domain name, the Respondent also registered multiple trademark-abusive domain names corresponding to the distinct marks of individual brand owners. A circumstance which shows that the Respondent has engaged in a pattern of bad faith conduct, which has continued in the present case.

Based on the above the Complainants request the disputed domain name be transferred to the Complainants.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1 Preliminary Issue – Consolidation - Multiple Complainants

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.1).

In the present case, the Complainant ETEX N.V. holds rights in the relevant trademark registrations, while the Complainant ETEX Services N.V. is involved in the management of trademarks and domain names matters regarding the ETEX group. They are both in the same corporate group and have a common interest in the trademark ETEX used in both of their corporate names. The Panel finds that there is sufficient nexus to allow them to bring this Complaint as joint complainants (hereinafter collectively referred to as “Complainant”). In these circumstances consolidation would be equitable and procedurally efficient.

6.2 Substantive Issues

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove 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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

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 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's registered trademark ETEX is reproduced and recognizable 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. The addition of the generic Top-Level Domain such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms here, "gr0ups" (i.e., a misspelled form of the term "groups" where the letter "o" is replaced by the number "0"), may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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 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 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. There is no indication before the Panel of any activity in relation to the disputed domain name that would give rise to rights or legitimate interests to the Respondent.

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.

In the present case, the Panel notes that the Complainant's ETEX trademark has been continuously and extensively used for many years and have as a result acquired considerable reputation and goodwill worldwide. In view of the well-known character of the ETEX trademark, it is difficult to believe that the Respondent did not have in mind the Complainant's trademark when registering the disputed domain name. Prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#), section 3.1.4).

The Panel further notes that the disputed domain name reproduces a misspelled variation of the denomination "ETEX group", which is widely used by the Complainant (notably in its domain names <etexgroup.com> and <etexgroup.eu>). This suggests that the disputed domain name was registered in bad faith with a deliberate intent to create an impression of an association with the Complainant, and to mislead Internet users into believing the disputed domain name as an official domain name of the Complainant, due to the fact that the Complainant has similar domain names.

As to bad faith use, the evidence submitted with the Complaint shows that the disputed domain name does not point to an active website and merely resolves to a webpage stating, "This site can't be reached".

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 available 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. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the reputation of the Complainant's trademark as an international established mark, the composition of the disputed domain name as discussed above, the failure of the Respondent to submit a response, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <etexgr0ups.com> be transferred to the Complainant, ETEX Services N.V.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: February 5, 2024