

ADMINISTRATIVE PANEL DECISION

Tarkett GDL S.A. v. Denis Kemp, Denis Kemp
Case No. D2024-0587

1. The Parties

The Complainant is Tarkett GDL S.A., Luxembourg, represented by AtlantIP, France.

The Respondent is Denis Kemp, Denis Kemp, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <tarkett-groupe.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 8, 2024. On February 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2024, 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 February 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 4, 2024.

The Center appointed Daniel Kraus as the sole panelist in this matter on March 12, 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 a leading multinational corporation specialized in the production of floor and wall for 140 years, operating in more than 100 countries, having 34 industrial sites, employing 12,000 persons and selling 1.3 million square meters of flooring everyday.

The Complainant is the owner of numerous trademarks worldwide that were registered before the disputed domain name, especially:

- European Union Trademark registration N° 018652400 TARKETT in classes 1, 2, 9, 17, 19, 27, 35, 37, 40, 41 and 42 filed on February 10, 2022 and registered on June 17, 2022;
- International trademark registration N° 1737630 TARKETT in classes 9, 35, 38 and 42, filed and registered on April 21, 2023, by claiming priority of Benelux Trademark registration N° 1472245 registered on January 4, 2023, and designating in particular Brazil, Canada, China, the European Union, the United Kingdom, the United States of America.

The Complainant is also the owner of several domain names such as:

- <tarkett.com> registered on February 27, 1996; and
- <tarkett-group.com> registered on November 18, 2021.

The disputed domain name was registered on July 1, 2023 and redirects to a parking page.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its marks. The addition of the word "groupe" does not alter the fact that the disputed domain name is confusingly similar to the mark. The Complainant's trademarks are immediately identifiable in the disputed domain name and the conjunction of TARKETT and "groupe" increases the confusing similarity between the signs at stake.

The Complainant further asserts that no legitimate noncommercial or fair use is being made of the disputed domain name; that the Respondent was never commonly known by the mark or disputed domain name. The Complainant asserts that all of these support a finding that the disputed domain name's registrant possesses no rights or legitimate interests in the disputed domain name. Finally, the Complainant alleges that the Respondent registered and is using the disputed domain name in bad faith,

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed 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; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

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.

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 entirety of the TARKETT 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.

Although the addition of other terms, here "groupe", 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.

The disputed domain name is parked with a message, "looking to buy a similar domain to Tarkett-groupe.com". While the Complainant assesses such message as an offer for sale, there is no evidence to concretely establish this. However, the composition of the disputed domain name, namely the incorporation of the Complainant's well-known trademark along with the descriptive term "groupe", indicative of a group of companies such as that of the Complainant, is such to carry a risk of implied affiliation that cannot constitute fair use since it effectively impersonates or suggests endorsement by the Complainant, contrary to the fact. [WIPO Overview 3.0](#), section 2.5.1.

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.

Panels have found that the non-use of a domain name, (including a parked 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 distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, 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.

Moreover, it appears that the Respondent provided incomplete or false contact information for purposes of registration of the disputed domain name, in view of the courier's inability to deliver the Center's written communication to the details disclosed by the Registrar for the Respondent. Such provision of false information is further inference of the Respondent's general bad faith conduct.

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 <tarkett-groupe.com> be transferred to the Complainant.

/Daniel Kraus/

Daniel Kraus

Sole Panelist

Date: March 26, 2024.