

ADMINISTRATIVE PANEL DECISION

Arkema France v. Cassandra Burton, DOW CHEMICAL COMPANY
Case No. D2024-1981

1. The Parties

The Complainant is Arkema France, France, represented by In Concreto, France.

The Respondent is Cassandra Burton, DOW CHEMICAL COMPANY, United States of America.

2. The Domain Name and Registrar

The disputed domain name <arkema-us.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 13, 2024. On May 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 13, 2024, 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 (N/A) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 16, 2024, 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 May 17, 2024.

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 May 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 13, 2024.

The Center appointed Alexander Duisberg as the sole panelist in this matter on June 21, 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, present in 55 countries and a leading company in the field of material science, offering a wide range of products (e.g., paints, adhesives, coats, glues, fibers, resins as well as rough and finished materials). The Complainant caters to the general industry and consumers.

The Complainant is owner of the following trademark registrations (non-exhaustive list) (“ARKEMA Trademarks”):

- The International Registration ARKEMA (verbal) No 847865 registered on November 30, 2004;
- The European Union Registration ARKEMA (verbal) No 004181731 filed on December 8, 2004, and registered on February 9, 2006;
- The United States of America Registration ARKEMA (verbal) No 3082057 filed on December 16, 2004, and registered on April 18, 2006.

The disputed domain name <arkema-us.com> was registered on April 12, 2024. The Complainant had registered all the abovementioned ARKEMA Trademarks before the disputed domain name was registered. The Complainant has submitted screenshots of the Respondent’s website under the disputed domain name which leads to an inactive website.

The Respondent did not reply to the Complaint.

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 <arkema-us.com> reproduces the Complainant’s ARKEMA Trademarks in its entirety.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interest regarding the disputed domain name since the Respondent is neither commonly known by the denomination ARKEMA nor is the Respondent licensed to use the ARKEMA Trademarks.

According to the Complainant, the disputed domain name is also registered and used in bad faith. ARKEMA is not a descriptive term, commonly used expression or word that would be instantly understood within the industry and is therefore highly distinctive. Thus, it is very unlikely the Respondent chose the disputed domain name without any knowledge of the ARKEMA Trademarks. Moreover, the Complainant remarks inconsistencies in the registration data provided by the Respondent to the Registrar, when reserving the disputed domain name. The Respondent has provided Cassandra Burton as registrant name and DOW CHEMICAL COMPANY as registrant organization which is an existing competitor of the Complainant. The Complainant notes that he has made a query and found no relevant links between Cassandra Burton and DOW CHEMICAL COMPANY. Additionally, the Respondent has provided an email address which is not consistent with the provided registrant name or organization. According to the Complainant this suggests that the data provided by the Respondent when reserving the disputed domain name are probably false.

Against this background, the Complainant requests that the Panel orders the disputed domain name to be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to 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.

The Panel acknowledges the consensus view – as set forth in paragraph 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") – that the Respondent's default to respond to the Complaint does not automatically result in a decision in favor of the Complainant. The Complainant must establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default (e.g., to regard factual allegations which are not inherently implausible as being true), paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in the UDRP proceeding. In view of the Panel, the Complainant has established sufficient evidence in its favor in the case at hand.

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 ARKEMA Trademarks 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 entirety of the Complainant's ARKEMA Trademarks is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the ARKEMA Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "-us", added to the ARKEMA Trademarks may bear on the 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.

Furthermore, the addition of the generic Top-Level Domain ("gTLD ") ".com" is viewed as a standard registration requirement and as such is disregarded under the first element and has no effect in the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1

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.

In line with previous UDRP decisions, it is sufficient for the Complainant to make a prima facie showing that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production of evidence to the Respondent (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2015-1149](#); *B-Boy TV Ltd v. bboytv.com c/o Whois Privacy Service / Chief Rocka LTD, formerly named BreakStation LTD.*, WIPO Case No. [D2012-2006](#); *Wal-Mart Stores, Inc. v. WalMart Careers, Inc.*, WIPO Case No. [D2012-0285](#); *Skipton Building Society v. skiptonassetmanagement.com, Private Registration*, WIPO Case No. [D2011-0222](#); *Evolution AB v. tom scholes*, WIPO Case No. [D2023-2030](#); *Canva Pty Ltd v. JOSE VALDIR DE LIMA*, WIPO Case No. [D2023-1736](#); *Streamotion Pty Ltd v. Ovi Khan*, WIPO Case No. [D2022-3784](#)).

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 Respondent cannot be considered to be making a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy referred to above, given that the disputed domain name is currently not being used to lead to an active website. Neither can the Respondent be said to be making a legitimate non-commercial or fair use of the disputed domain name within the meaning of paragraph 4(c)(iii), without any active usage of the disputed domain name (see *Arnold Clark Automobiles Limited v. Whois Agent, Whois Privacy Protection Service, Inc. / Arnold Clark*, WIPO Case No. [D2018-0571](#)).

It is highly unlikely that the Respondent is commonly known by the name “Arkema”. The Respondent has not filed any Response to the Complainant and, therefore, has not alleged any facts or elements to justify rights or legitimate interests in the disputed domain name.

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 distinctive and well known character of the ARKEMA Trademarks has been well established in prior decisions under the UDRP (*ARKEMA FRANCE v. Kasz-Han, Richard Hajdu*, WIPO Case No. [D2021-0149](#); *Arkema France v Paul Belmonto*, WIPO Case No. [D2014-0867](#); *Arkema France v. Swapnil S Mashalkar*, WIPO Case No. [D2021-1479](#)). Due to the well-known character and the distinctiveness of the ARKEMA Trademarks, the Panel holds that the Respondent must have been aware of the ARKEMA Trademarks and the registration of the ARKEMA Trademarks prior to the registration of the disputed domain name. The Respondent’s knowledge of the ARKEMA Trademarks is further suggested since the Respondent has provided DOW CHEMICAL COMPANY, a competitor of the Complainant, as registrant organization when reserving the disputed domain name with the Registrar.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

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. [WIPO Overview 3.0](#), section 3.3.

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. The Panel looked at the totality of the circumstances in the 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 ARKEMA Trademarks, (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 concealing its 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 available record, the Panel notes that all relevant factors under the passive holding doctrine are fulfilled. The ARKEMA Trademarks are highly distinctive (see above). Furthermore, the Respondent failed to submit a Response or provide evidence regarding good faith use. The Respondent used conflicting data during the registration of the disputed domain name by providing a registrant name and company that are in no connection to each other and therefore concealing its true identity. Finally, the composition of the disputed domain name carries an impermissible risk of implied affiliation. Therefore, the Panel 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 <arkema-us.com> be transferred to the Complainant.

/Alexander Duisberg/

Alexander Duisberg

Sole Panelist

Date: July 2, 2024