

ADMINISTRATIVE PANEL DECISION

Gentex Corporation v. Leandre Koumassi

Case No. D2024-2098

1. The Parties

The Complainant is Gentex Corporation, United States of America (the “United States”), represented by Price Heneveld LLP, United States.

The Respondent is Leandre Koumassi, Côte d'Ivoire.

2. The Domain Name and Registrar

The disputed domain name <gentex-france.com> is registered with Ligne Web Services SARL (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 20, 2024. On May 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 22, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 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 24, 2024.

On May 22, 2024, the Center informed the parties in French and English, that the language of the registration agreement for the disputed domain name is French. On May 24, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 in English and French the Respondent of the Complaint, and the proceedings commenced on May 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 20, 2024.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on June 26, 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 supplier of automatic-dimming rearview mirrors and electronics to the automotive industry, dimmable aircraft windows, and fire protection products. The Complainant promotes its products throughout the United States but is also an international supplier with subsidiaries in China, France, Germany, Japan, Republic of Korea, Sweden, Israel, and the United Kingdom.

The Complainant has numerous presently valid trademark registrations in multiple jurisdictions for the term 'GENTEX', including in the United States, No 2956665 registered on May 31, 2005, for smoke detectors, smoke alarms, fire alarms, anti-intrusion alarms, and intrusion detectors and the like; in the United Kingdom ("UK"), No UK00908262991 on February 17, 2010, for smoke detectors and alarms, fire detectors and alarms, carbon monoxide detectors and alarms and the like; and in the European Union, No 008262991 on February 17, 2010, for smoke detectors and alarms, fire detectors and alarms, carbon monoxide detectors and alarms, audible and visual notification appliances, and combinations thereof, and similar goods.

The Complainant also owns multiple domain names that concern the word "GENTEX" including <gentex.com>.

The disputed domain name was registered on September 18, 2023, and resolves to an inactive website. At the time of the filing of the Complaint, it resolved to a website of the Registrar with information on how to create or manage a website.

The Complainant contends that the disputed domain name has been used for the purpose of phishing via fraudulent emails.

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 wholly incorporates the Complainant's GENTEX registered marks as its initial and only distinctive element, and the country name "France" separated by a hyphen. Panels have held, so the Complainant points out, that a mere geographical term is not capable of dispelling confusing similarity between a domain name and a trademark. The Complainant further contends that the Respondent has quite simply taken the Complainant's GENTEX marks in their entirety and added a non-distinctive country name where Complainant has a physical presence.

The Complainant says that in essence, the Respondent has registered the disputed domain name with no intent to use it other than to sell it to a party with a legitimate interest, such as the Complainant, or to disrupt the business of such a party, for instance by impersonating the Complainant. No other reasonable explanation for the Respondent's interest in <gentex-france.com> can be determined, particularly in view of

the Complainant's ownership of multiple domain names that include "Gentex".

The Complainant maintains that the Respondent has no connection or affiliation with it and has not been granted any consent or license, express or implied, to use GENTEX in a domain name or in any other manner. It is also the Complainant's belief that the Respondent has never been known, recognized by, or otherwise been associated with the disputed domain name.

The Complainant maintains that upon its information and belief, the Respondent's only use of the disputed domain name is associated with an inactive website and is to create an email address so as to be able to impersonate the Complainant. The Complainant believes that the Respondent attempted to purchase products from at least two companies by impersonating the Complainant and its employee R. S. The Respondent created the email addresses "[...]"@gentex-france.com", "[...]"@gentex-france.fr", and one using the name of the Complainant's subsidiary manager with "[...]"@gmail.com" so as to use the disputed domain name, the Complainant's marks, and the Complainant's employee information to impersonate the Complainant and defraud its suppliers. The Complainant points out that the Respondent falsely used the name of an employee and the Complainant's name and address in France in the signature block of multiple emails to different suppliers.

Additionally, the Complainant points out that the Respondent is passively holding the disputed domain name, which previous Panels have found not to constitute a legitimate non-commercial interest or fair use. Implying an affiliation with the Complainant by incorporating its mark without change, is also not in good faith, the Complainant says.

The Complainant contends that since its marks are distinctive, it is unlikely that the Respondent's use of the Complainant's marks is anything other than purposeful. The Respondent registered the disputed domain name in September 2023, 50 years after the Complainant was founded and 20 years after the Complainant first registered its GENTEX marks. The Complainant points out that previous Panels have found that the fact that a Complainant's trademark registrations predate the registration of a disputed domain name makes it highly unlikely that a Respondent was not aware of such marks when registering the identical name. In any case the Complainant's rights were easily discoverable.

The Complainant further contends that it is inconceivable that the Respondent's use of a disputed domain name that is nearly identical to the Complainant's registered marks and its impersonation of the Complainant by using the mark can be construed to be anything but in bad faith. No plausible good faith explanation for the Respondent's use of the disputed domain name can be provided. By impersonating the Complainant, the Respondent is taking unfair advantage of the former's trademarks and disrupting its business.

Further, the Complainant contends that resolving to an inactive webpage does not bar a finding of bad faith, as previous Panels have repeatedly held.

Additionally, the Complainant points to the fact that the Respondent has taken active steps to conceal its true identity which cannot be determined based on the Whois registration information.

B. Respondent

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

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is French. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the

registration agreement.

However, the Complaint was filed in English, and the Complainant requests that the language of the proceeding be English for several reasons, including the very fact that the Complaint has been submitted in that language. The Complainant points to the fact that the emails that the Complainant believes were sent by the Respondent were in English. Therefore, the Complainant says that it is apparent that the Respondent is familiar with the English language.

Additionally, in the upper right corner of the webpage to which the disputed domain name resolves, appear icons representing the flags of France and the UK. Selecting the flag of the UK translates the webpage into English. The ability to select both languages indicates, according to the Complainant, that the Respondent is targeting both French and English-speaking audiences. Further, it suggests that the Respondent is familiar with and works in both French and English. The Complainant also contends that the use of the “.com” generic Top Level Domain (gTLD) suggests that the Respondent was seeking a global target audience for the disputed domain name, including English speakers.

The Complainant is based in the United States and conducts business in English and says that requiring documents to be in French would cause undue delay and translation expenses.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1). The Complainant is American and works in English and it appears from the circumstances that the Respondent masters both French and English.

Having considered all the matters above, and consistent with previous panel's determinations in similar factual circumstances, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

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 entirety of the mark is recognizably 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 “-France” may bear on assessment of the second and third elements, the Panel finds the addition of this geographical 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.

Panels have held that the use of a domain name for illegal activity, here claimed phishing activities and impersonation of the Complainant, can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#), section 2.13.1).

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.

In the present case, the Panel notes that the Respondent registered a disputed domain name that clearly incorporates the registered trademark of the Complainant, at a time when the latter had a well-established reputation in many jurisdictions. The registration of a disputed domain name so closely resembling the Complainant’s trademarks is highly unlikely to have been coincidental, and in any case the Complainant’s rights in the term GENTEX are easily ascertained by a trademark or general Google search.

The subsequent use for the purpose of impersonation and phishing, by use of email addresses enabled by the registration of the disputed domain name, and so soon after registration, is further indication that the registration of the disputed domain name was in bad faith. That the disputed domain name was used in bad faith is also established by the phishing attempts engaged in by the Respondent, according to the evidence advanced by the Complainant.

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 <gentex-france.com> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: July 10, 2024