

## **ADMINISTRATIVE PANEL DECISION**

### **ARKEMA FRANCE v. Andrew James**

### **Case No. D2024-3037**

#### **1. The Parties**

The Complainant is ARKEMA FRANCE, France, represented by In Concreto, France.

The Respondent is Andrew James, United States of America.

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

The disputed domain name <arkemna.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 July 25, 2024. On July 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 July 30, 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 July 30, 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 August 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 12, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on September 18, 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, based in France and operating since 1981, provides a wide range of products such as paints, adhesives, coatings, glue, fiber, resins, rough and finished materials for both general industry and for consumers. It is present in 55 countries including the North American continent and has 44 production plants, over 21,100 employees and approximately EUR 9.5 billion in sales per annum. It owns various trade mark registrations for its ARKEMA mark including European Union trade mark registration number 004181731 registered on February 9, 2006 and International trade mark registration number 1665655 for ARKEMA in a fancy font registered on April 21, 2022 which is designated in 51 countries. It also owns various domain names that incorporate its ARKEMA mark including <arkema.com> registered on May 21, 2001.

The disputed domain name was registered on July 9, 2024. At the date of this decision it does not resolve to an active website.

#### **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 it owns registered trade mark rights for its ARKEMA mark as noted above. Its ARKEMA mark is wholly incorporated into the disputed domain name and only differs from it by the addition of the letter "n" after the letter "m" which the Complainant says is similar visually and amounts to a sort of typosquatting. The Complainant submits that the disputed domain name is therefore confusingly similar to its ARKEMA mark.

The Complainant submits that it has not licensed the Respondent to use its trade marks or domain names and neither has it allowed the Respondent to reserve or use a domain name incorporating the Complainant's rights. It further says that as the disputed domain name is used to impersonate the Complainant and for fraudulent activities, it is not using the disputed domain name in connection with a bona fide offering of goods or services and neither has it made serious preparations for that purpose and that the Respondent is also not making a legitimate noncommercial or fair use of the disputed domain name. Accordingly, the Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name.

Based upon the substantial degree of worldwide reputation attaching to the ARKEMA mark and its high level of distinctiveness as a coined term (which the Complainant notes has been recognised in previous decisions) the Complainant submits that it is very unlikely that the Respondent chose the disputed domain name without any knowledge of the Complainant's business or marks. It notes also that a simple Google search would have immediately brought the Respondent to the Complainant's website.

The Complainant notes that although the website at the disputed domain name is inactive, MX records have been created. The Complainant has provided evidence of a fraudulent email campaign that has been launched from the disputed domain name through the address "arkema.usph-collections@arkemna.com". One of the Complainant's customers received an email impersonating the Complainant and seeking payment for goods. The email featured the logo and trade mark of the Complainant in France as well as its domain name in the email signature. The email was forwarded to the Complainant by the customer to put it on notice of the fraud. This says the Complainant is evidence of the Respondent's use in bad faith.

The Complainant also asserts that the address information provided by the Respondent during the registration process for the disputed domain name is false and that this information is quite different from any of the contact information set out in the fraudulent emails. According to the Complainant this suggests that the Respondent did not wish to be identified and is further confirmation of its bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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 Panel finds the mark is 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 letter "n" after the letter "m" amounts to a misspelling or typosquatting of the Complainant's ARKEMA trade mark and does not prevent a finding of confusing similarity (see section 1.9, [WIPO Overview 3.0](#)).

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.

Panels have held that the use of a domain name for illegal activity here, claimed to be using the disputed domain name to create and use email addresses impersonating the Complainant for the purpose of fraudulently attempting to seek payments from third parties (as further described under Part C below) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 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 disputed domain name was registered some years after the Complainant registered its trade mark rights and many decades after the Complainant commenced business. Based upon what appears to be a substantial degree of international reputation attaching to the ARKEMA mark and also its high level of distinctiveness (which the Complainant notes has been recognised in previous decisions) the Panel agrees with the Complainant that it is very unlikely that the Respondent chose the disputed domain name without any knowledge of the Complainant's business or marks. This finding is only reinforced by the evidence on the record that a simple Google search would have immediately taken the Respondent to the Complainant's website.

Panels have held that the use of a domain name for illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. While the website at the disputed domain name is inactive it appears that MX records have been created and the Complainant has provided evidence of a fraudulent email campaign launched from the disputed domain name through the address "arkema.usph-collections@arkemna.com". There is evidence on the record that one of the Complainant's customers received an email impersonating the Complainant and seeking payment for goods. The email featured the logo and trade mark of the Complainant in France as well as its domain name in the email signature.

This amounts to evidence of the Respondent's use in bad faith. The evidence put forward by the Complainant that the address information provided by the Respondent during the registration process for the disputed domain name is false and that this information is quite different from any of the contact information set out in the fraudulent emails, only reinforces the Panel's view of the Respondent's bad faith.

Having reviewed the record, the Panel finds that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. The Panel therefore 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 <arkemna.com> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: September 21, 2024