

## **ADMINISTRATIVE PANEL DECISION**

**ETEX N.V, ETEX Services N.V v. Francis Plat**  
**Case No. D2024-4293**

### **1. The Parties**

The Complainants are ETEX N.V and ETEX Services N.V, Belgium, represented by Abion AB, Switzerland.

The Respondent is Francis Plat, France.

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

The disputed domain name <etex-groupe.com> is registered with eNom, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 17, 2024. On October 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 18, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 October 25, 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 October 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 18, 2024. The Center received an email communication from a third party on November 15, 2024. On November 25, 2024, the Center notified the Parties that it will proceed with panel appointment.

The Center appointed Gill Mansfield as the sole panelist in this matter on December 2, 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 companies ETEX N.V. and ETEX Services N.V., are part of the same group of companies (the "ETEX Group"). ETEX N.V. has registered trademark rights in the name ETEX. ETEX Services N.V. is a subsidiary of ETEX N.V. and is involved in the management of trademarks and domain name matters relating to the ETEX group. The ETEX group is a global group offering interior and exterior building solutions including fire protection and high performance insulation. It was founded in 1905 and now employs 13,500 people in over 160 sites across the world. The Complainant companies are referred to collectively as "the Complainant" hereafter for the reasons set out in paragraph 6.1 below.

The Complainant holds numerous registered ETEX trademarks, including inter alia the following:

- International trademark registration number 652141 for ETEX (word mark) registered on February 1, 1996 in classes 11, 17, 19, and 25.
- European Union trademark registration number 017910895 for ETEX (figurative mark) registered on March 19, 2019 in classes 02, 06, 17, 19, 35, 37, and 42.
- United States of America trademark registration number 6303449 for ETEX (word mark) registered on March 30, 2021 in classes 06, 17, and 19.

The Complainant also owns various domain names containing the ETEX trademark including inter alia <etexgroup.com> and <etexgroup.eu>. These domain names resolve to the ETEX group's official website through which it informs Internet users and potential consumers about its products and services.

The disputed domain name was registered on July 16, 2024 and resolves to an inactive website.

#### **5. Parties' Contentions**

##### **A. Complainant**

As a preliminary point, ETEX N.V. and ETEX Services N.V. request the Panel to consolidate the Complainant parties for the purposes of the present proceedings to allow for a single Complaint on the basis that they have a sufficient common legal interest in the ETEX trademark and hence a common grievance in respect of the disputed domain name.

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 the Complainant's ETEX trademark. The Complainant refers to its various trademark registrations for ETEX. It also points out that the disputed domain name incorporates the Complainant's registered ETEX trademark combined with the French term "groupe" which means "group" in English.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that the disputed domain name was registered many years after the first registration of the Complainant's ETEX trademark. The Complainant asserts that it has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to

the Complainant in any form. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks.

The Complainant states that the Respondent has not been using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services, nor making a legitimate noncommercial or fair use of the disputed domain name. It asserts that the structure of the disputed domain name, incorporating the ETEX trademark and the term "groupe" reflects an intention to create an association with the Complainant and its ETEX trademark in the minds of Internet users such as to create a likelihood of confusion. The structure of the disputed domain name refers to the Complainant's group of companies as well as the Complainant's own domain name. The Complainant states that the disputed domain name does not resolve to an active website. It further states that the disputed domain name has been used in a phishing scheme to attempt to perpetrate a fraud - the disputed domain name being used to send a fraudulent email (impersonating an employee of the ETEX Group) to a third party. It submits that this fraudulent activity clearly shows that the Respondent registered the disputed domain name with the Complainant and the ETEX Group in mind and for the purpose of conducting a phishing scheme. It contends that such illegal activity can never confer rights or legitimate interests on a respondent.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. It repeats its assertions in relation to the earlier registration of the ETEX trademarks and its arguments that the structure of the disputed domain name shows that the Respondent registered the disputed domain name with the Complainant and the ETEX trademark in mind. It also reiterates its contention that the structure of the disputed domain name reflects a clear intention on the part of the Respondent to create an association, and likelihood of confusion, with the Complainant's trademark in the minds of Internet users. It submits that the Respondent registered the disputed domain name to take advantage of the Complainant's widely known trademark. The Complainant further states that Mail Exchange ("MX") records are associated with the disputed domain name and that the disputed domain name has been used to engage in a phishing scheme and hence is being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Consolidation**

Paragraph 10(e) of the 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.

The Panel finds that it is fair and equitable for the Complaint to proceed in the name of both of the named Complainants since they have a common legal interest in the trademark rights on which the Complaint is based and it is procedurally efficient to proceed in a single Complaint.

### **6.2. Substantive Matters**

Under paragraph 4(a) of the Policy the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and

(iii) that the disputed domain name has been registered and is being used in bad faith.

### **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 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, the addition of "-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.

In particular, the Respondent is not licensed or authorized by the Complainant to register or use the disputed domain name or the Complainant's trademark, and the Respondent is not affiliated with the Complainant in any way. There is no evidence that the Respondent is commonly known by the disputed domain name. There is also no evidence of use, or demonstrable preparations to use, the disputed domain name for a bona fide offering of goods and services, or of any legitimate noncommercial or fair use of the disputed domain name.

The Panel notes that the disputed domain name comprises the Complainant's ETEX trademark with the addition of the term "-groupe" (which is the French word for "group"). This creates the impression that the disputed domain name is a domain name of the Complainant or the ETEX Group, or related, linked to or affiliated with the Complainant or the ETEX Group. This impression is further reinforced by the fact that the disputed domain name closely corresponds to the Complainant's own domain name <etexgroup.com> with only the addition of a dash ("-") after "etex" and the addition of an "e" after the term "group".

The Panel finds that the construction of the disputed domain name is such as to create a risk of implied affiliation which cannot constitute fair use ([WIPO Overview 3.0](#), section 2.5.1).

Further, the record shows evidence that the disputed domain name has been used in a phishing scheme in an attempt to perpetrate a fraud. The disputed domain name was used to send a fraudulent email purporting to be from an employee of the ETEX Group with an email footer that gives the company name as “ETEX BULDING PERFORMANCE” to a third party supplier in an attempt to obtain goods with a value of EUR 550,000 on credit from that third party.

Panels have held that the use of a domain name for illegal activity (such as the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that the use of the disputed domain name for illegal activity in the form of phishing, impersonating the Complainant and attempted fraud falls squarely within [WIPO Overview 3.0](#), section 2.13.1.

Further, according to paragraph 14(b) of the Rules, the Panel may draw from the lack of response of the Respondent such inferences as it considers appropriate. The Panel is of the view that the lack of response from the Respondent corroborates the absence of any rights or legitimate interests of the Respondent 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.

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.

In the present case, the Panel notes that the disputed domain was registered over 28 years after the Complainant's first registration of the ETEX trademark. In addition, the Panel notes the structure and composition of the disputed domain name comprising of the Complainant's ETEX trademark and the addition of the descriptive term “groupe”, which translates into English as group. The disputed domain name therefore directly corresponds to the Complainant's field of activity.

Having regard to the reputation in the Complainant's trademark, it is highly implausible that the Respondent was unaware of the Complainant and the Complainant's trademark at the time that the dispute domain name was registered. Further, having reviewed the available record the Panel notes that there are MX records associated with the disputed domain name. The Panel also notes the evidence provided by the Complainant, that an email was sent from the disputed domain name to a third party supplier in a phishing scheme whereby goods of a substantial value were requested from that third party on credit in an email message purporting to be from “ETEX BUILDING PERFORMANCE” and using the name of an employee of the ETEX Group with the aim of deceiving the recipient into believing that he was dealing with someone from the Complainant or the ETEX Group. The Panel finds that the Respondent in registering the disputed domain name not only had the Complainant's company and ETEX trademark in mind but specifically targeted it.

The record shows that the disputed domain name does not resolve to an active website.

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 notes the distinctiveness and 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.

Further, and as noted above, the record shows that disputed domain name has also been used in a phishing scheme.

Panels have held that the use of a domain name for illegal activity (such as in this case phishing, impersonation of the Complainant and / or its group of companies and fraudulent activity) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel also notes that the Respondent provided a false identity and false contact details in addition to using a privacy service when registering the disputed domain name which is a further indicator of bad faith.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes 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 <etex-groupe.com> be transferred to ETEX Services N.V.

*/Gill Mansfield/*

**Gill Mansfield**

Sole Panelist

Date: December 16, 2024