

ADMINISTRATIVE PANEL DECISION

Arkema France v. 闫家范 (YanJia Fan)

Case No. D2022-0133

1. The Parties

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

The Respondent is 闫家范 (YanJia Fan), China.

2. The Domain Name and Registrar

The disputed domain name <arkema.shop> is registered with Xin Net Technology Corp. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 14, 2022. On January 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 2022, 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.

On January 19, 2022, the Center transmitted an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on January 19, 2022. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on February 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 22, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on February 28, 2022. 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, Arkema France, was incorporated on February 24, 1981. As of 2020, the Complainant has presence in more than 55 countries worldwide including North America, with 147 production plants, over 20,000 employees and approximately EUR 7.9 billion in sales. The Complainant states that it is a leader in materials science and produces, resells and distributes a wide range of products such as paints, adhesives, coats, glue, fiber, resins, rough materials and finished materials for both industry and consumer goods. The Complainant is also involved in the research and development (R&D) of the materials. The Complainant also states that through substantial investment in financial and human resources, it has developed a large clientele and acquired reputation in the chemistry field. The Complainant further states that China its second largest market with more than 3,000 employees, 10 industrial sites and 2 R&D centers, including the Changshu platform which is the Complainant's largest industrial platform worldwide.

The Complainant or its subsidiaries own the following domain names to promote its activities and products: <arkema.com> registered on May 21, 2001; <arkema.info> registered on July 12, 2004; <arkema.eu> registered on April 29, 2006; <arkema.cn> registered on July 13, 2004; and <arkema.com.cn> registered on August 1, 2006.

The Complainant owns numerous trademark registrations of ARKEMA, including but not limited to the following:

- ARKEMA (International Registration No. 847865) registered on November 30, 2004, designating China;
- ARKEMA (European Union Trade Mark Registration No. 004181731) registered on February 9, 2006;
- ARKEMA (China Trademark Registration No. 42186968) registered on April 7, 2021;
-  (International Registration No. 1157468) registered on February 25, 2013, designating China; and
-  (International Registration No. 1156827) registered on March 1, 2013, designating China.

The disputed domain name, <arkema.shop>, was registered on December 17, 2021, and redirects to the website of Sedo.com offering the disputed domain name for sale.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered ARKEMA mark as the disputed domain name comprises of the ARKEMA mark in its entirety and the extension ".shop".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or made serious preparation for that purpose, and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith as the circumstances indicate that the Respondent has registered or acquired the disputed domain name

primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that: "(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

"Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

- (i) the disputed domain name is in Latin script, rather than Chinese characters;
- (ii) the disputed domain name comprises the Complainant's ARKEMA mark and the extension ".shop" in the English language;
- (iii) the disputed domain name redirects to a selling platform which is not in the Chinese language;
- (iv) the Complainant may be unduly disadvantaged by having to conduct the proceeding in the Chinese language; and
- (v) the Respondent did not object to the Complainant's request that English be the language of the proceeding.

Upon considering the above, the Panel determines that English be the language of the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain name <arkema.shop> comprises the Complainant's ARKEMA mark in its entirety and the extension ".shop".

It is well established that the addition of a generic Top-Level Domain ("gTLD") ".shop", as a standard registration requirement, is disregarded under the first element of confusing similarity test (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations long before the disputed domain name was registered and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)). The disputed domain name redirects to the website of Sedo.com offering the disputed domain name for sale, which does not constitute a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

There is also no evidence on record showing that the Respondent is commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name to rebut the Complainant's *prima facie* case.

Moreover, the nature of the disputed domain name, being identical to the Complainant's trademark, carries a high risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (paragraph 4(a)(iii) of the Policy). Paragraph 4(b) of the Policy provides circumstances that may

evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name redirects to the website of Sedo.com offering the disputed domain name for sale for USD1,990. Given the circumstances of this particular case, including evidence that the Respondent registered the disputed domain name long after the Complainant registered its trademarks since the year 2004, it is suggestive that the Respondent was aware of the Complainant and targeted the Complainant in registering the disputed domain name for the purpose of selling it to the Complainant or its competitor for possibly in excess of its out-of-pocket costs (see *Bayer AG v. Whois Agent, Whois Privacy Protection Service, Inc. / Syed Hussain, IBN7 Media Group*, WIPO Case No. [D2016-2354](#)).

In addition, the Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which has been considered by the Panel.

Based on the totality of evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark, the fact that the disputed domain name is being offered for sale for presumably in excess of out-of-pocket expenses and the fact that no Response was submitted by the Respondent to the Complaint, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith, and accordingly, paragraph 4(a)(iii) of the Policy is satisfied.

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.shop> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: March 14, 2022