

ADMINISTRATIVE PANEL DECISION

Etex N.V. and ETEX Services N.V. v. Privacy service provided by Withheld for Privacy ehf / maggi numi
Case No. D2022-2637

1. The Parties

The Complainants are Etex N.V., Belgium and ETEX Services N.V., Belgium, represented by BrandIT GmbH, Switzerland.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / maggi numi, United States of America (hereinafter “United States or USA”).

2. The Domain Name and Registrar

The disputed domain name <etexgr0up.com> (“the Domain Name”) 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 19, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 22, 2022, 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 27, 2022.

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 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 2, 2022.

The Center appointed Dawn Osborne as the sole panelist in this matter on September 23, 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.

Preliminary Issue: Multiple Complainants

The Panel finds that the two complainants are both in the same corporate group and have a common interest in the trade mark ETEX used in both of their corporate names. There is sufficient nexus to allow them to bring this Complaint as joint complainants. They will be hereinafter referred to together as "Complainant".

4. Factual Background

The Complainant is the owner of the trade mark ETEX registered, *inter alia*, as international trade mark 652141 registered on February 1, 1996 and United States trade mark 6303449 registered on March 30, 2021 for building materials. It owns <etexgroup.com>.

The Domain Name registered in 2022 has been used for commercial pay per click links including competitors of the Complainant, but currently does not point to an active web site following service of the UDRP Complaint on the Respondent. The Respondent appears to have provided a false name to the WhoIS database, has used a privacy service and did not reply to the Complainant's cease and desist letter.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarised as follows:

The Complainant is the owner of the trade mark ETEX, registered, *inter alia*, as international trade mark 652141 registered February 1, 1996 for building materials. It owns etexgroup.com.

The Domain Name registered in 2022 is confusingly similar to the Complainant's mark, adding a misspelled version of the dictionary word group, namely "gr0up" (replacing the letter 'o' with a number "0"), and the generic Top Level Domain ("gTLD") ".com" which is a standard element in a domain name. None of this is enough to prevent confusing similarity between the Domain Name and the Complainant's mark.

The Respondent is not commonly known by the Domain Name and has not been authorised by the Complainant to use the Complainant's mark. The Domain Name has been used to point to commercial pay per click links including links to competing services aiming to cause confusion and suggesting an affiliation with the Complainant, but since the filing of the UDRP Complaint does not point to an active web site. The Domain Name is a typosquatting registration differing from the Complainant's domain name <etexgroup.com> by one character replacing the letter "o" by the visually similar number "0" which is an indication of a lack of legitimate interest, as is a use of a registrant name that does not relate to the name in the registrant's e-mail address given in the WhoIS database (once that was revealed when the privacy shield had been removed). There is no *bona fide* offering of goods or services or legitimate noncommercial or fair use.

Typosquatting is bad faith with actual knowledge of the Complainant's rights. Use for pay per click links is causing confusion for financial gain and has commonly been held to be bad faith, as is changing the use of a domain name after filing of the UDRP Complaint in this case to an inactive web page. Passive holding of a domain name containing a widely known trade mark such as the Domain Name which could not be actively used in a legitimate fashion is bad faith. The Respondent has used false contact details in the WhoIS

database, used a privacy service and did not reply to the Complainant's cease and desist letter which are also indications of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name consists of the Complainant's ETEX mark (registered in the USA for building materials since 2021), adding only a misspelling of the generic term "group" as "gr0up" using a number "0" instead of the letter "o" and the gTLD ".com".

Previous panels have found confusing similarity when a respondent merely adds a generic term and a gTLD to a complainant's mark. This includes a misspelling of a generic term. The Panel agrees that the addition of a misspelling of the generic term "group", namely "gr0up" and the gTLD ".com" does not prevent confusing similarity between the Domain Name and the Complainant's registered trade mark which is still recognisable in the Domain Name.

Accordingly, the Panel holds that the Domain Name is confusingly similar for the purpose of the Policy to a mark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has not authorised the use of its mark. There is no evidence or reason to suggest the Respondent is, in fact, commonly known by the Domain Name.

The web site attached to the Domain Name pointed to commercial competing pay per click links which is not legitimate noncommercial or fair use. The site attached to the Domain Name did not make it clear that there was no commercial connection with the Complainant. The Panel finds this use was confusing. As such it could not amount to the *bona fide* offering of goods and services.

The Domain Name is currently not being used and so there continues to be no *bona fide* offering of goods or services or legitimate noncommercial or fair use.

Further the Domain Name differs by only one letter from the domain name owned by the Complainant and, therefore, appears to be a typosquatting registration. Typosquatting is also an indication of a lack of rights or legitimate interests. False contact details also appear to have been provided to the Whois database which also shows a lack of legitimacy.

The Respondent has not replied to this Complaint or offered any explanation. The Respondent did not reply to the Complainant's cease and desist letter.

As such the Panel finds that the Respondent does not have rights or legitimate interests in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

Typosquatting is evidence of relevant bad faith registration and use and indicates the Respondent was aware of the Complainant and its rights, business and services.

In the opinion of the panelist the use made of the Domain Name in relation to the Respondent's site was confusing and disruptive in that visitors to the site might reasonably have believed it was connected to or approved by the Complainant as it used the Complainant's mark for commercial competing pay per click links. Use of a domain name containing a third party trade mark for pay per click links has commonly been held in UDRP decisions to be bad faith. The Panel holds that the Respondent intentionally attempted to attract for commercial gain Internet users to her website by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the web site or services offered on it likely to disrupt the business of the Complainant.

The Domain Name is currently not been used. Passive holding can evidence registration and use in bad faith where a domain name contains a mark with a reputation that could not be legitimately used by a third party. The Domain Name contains the Complainant's registered mark ETEX which is distinctive for building materials and so it is more likely than not that the Domain Name is being passively held by the Respondent in bad faith. The use of the Domain Name changed to an inactive site after the UDRP Complaint was filed which also can suggest bad faith.

A false name also appears to have been provided to the WhoIS database which has been commonly been held in UDRP decisions to be bad faith. The Panel also notes that a privacy shield was used and that the Respondent did not reply to the Complainant's cease and desist letter.

As such, the Panel holds that the Complainant has made out its case that the Domain Name was registered and used in bad faith under Policy 4(b)(iii) and (iv).

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, <etexgr0up.com>, be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: October 6, 2022