

ADMINISTRATIVE PANEL DECISION

Arkema France v. ANAYO UWA

Case No. D2024-2762

1. The Parties

The Complainant is Arkema France, France, represented by Cabinet Regimbeau, France.

The Respondent is ANAYO UWA, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <arkamagroup.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 8, 2024. On July 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 8, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 9, 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 12, 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 July 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2024. The Respondent sent an email communication to the Center on July 31, 2024, to which the Complainant replied on August 5, 2024.

The Center appointed Alfred Meijboom as the sole panelist in this matter on August 14, 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 French company, which is part of the Arkema Group which was established in 2004 in the course of a reorganization of the chemical branch of the Total group. In 2023, the Arkema Group generated sales of EUR 9.5 billion, had a presence in 55 countries, and had 21,100 employees worldwide.

The Complainant is owner of many registered trademarks for ARKEMA throughout the world, including:

- French trademark with registration No. 3048573 of August 28, 2000 for goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 16, 17, 18, 19, 20, 21, 22, 24, 25, 27, 28, 31, 35, 36, 37, 38, 40, 41, 42, 43, 44 and 45; and
- International trademark with registration No. 1665655 of April 21, 2022, claiming priority of November 5, 2021, for goods and services in classes 1, 16, 17 and 42.

The Complainant is also owner of domain names which include the ARKEMA trademark, including <arkema.com> and <arkema.fr>, which were created in 2001 and 2006, respectively.

The disputed domain name was registered on June 24, 2024, and is passively held. It remained uncontested that mail servers have been configured on the disputed domain name.

By email of July 31, 2024, the Center received an email which was allegedly sent on behalf of the Respondent, which contended that the Respondent is “not interested in this domain anymore”, and offered the disputed domain name to be “deleted or suspended”. On the Center’s question if the procedure should be suspended to explore settlement options, the Complainant replied on August 5, 2024 that it did not wish to do so.

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 is confusing similar to the Complainant’s ARKEMA trademark because said trademark and the disputed domain name are made up of the same letters in the same order and in the same rank, with the exception of one, which gives them very strong phonetic similarities, combined with the word “group” in the disputed domain name, which is not distinctive and will not attract the public’s attention.

Further, the Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name because the Respondent is not an authorized dealer, distributor or licensee of the Complainant, and has not been authorized by the Complainant to use its ARKEMA trademark or any other similar signs, the Respondent is not known by the disputed domain name, has not acquired rights in a corresponding trademark, and the Respondent did not use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services, nor did it make any serious preparations to do so.

According to the Complainant, the Respondent has also registered the disputed domain name in bad faith because the Complainant's ARKEMA trademark has a very high level of recognition and renown in the world and as the disputed domain name imitates the Complainant's ARKEMA trademark, the Respondent could not have been unaware of the Complainant's prior rights in the ARKEMA trademark and therefore knowingly registered the disputed domain name in order to attract, for profit, Internet users to a website or other online space belonging to it, by creating a likelihood of confusion with the Complainant's ARKEMA trademark. The Complainant alleges that the Respondent is also using the disputed domain name in bad faith as the disputed domain name does not resolve to any active website and generates an error page, so that the Respondent has not used or made preparations to use the disputed domain name in connection with a bona fide offering of goods and/or services, while the presence of an error page may let the users think that when they visit this website, thinking they are visiting the Complainant's website, the Complainant is not updating it and is therefore neglecting its online communication. Further, the Complainant contends that mail servers have also been configured on the disputed domain name, which means that the Respondent is likely to send fraudulent e-mails with the address "@arkamagroup.com" with malicious intent.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions, but claimed that it is no longer interested in the disputed domain name.

6. Discussion and Findings

The Respondent did not file a formal Response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view of UDRP panels is that the respondent's default does not automatically result in a decision in favor of the Complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. The Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in this proceeding. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) 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 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 Complainant's ARKEMA trademark only differs one letter from the disputed domain name, is an obvious misspelling and is recognizable within the disputed domain name. Although the addition of the term "group" 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

Complainant's ARKEMA trademark for the purposes of the Policy. Accordingly, the disputed domain name is confusingly similar to the Complainant's ARKEMA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7, 1.8 and 1.9.

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.

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 is satisfied that the Complainant's ARKEMA trademark "achieved certain reputation and fame in the chemistry sector" (*Arkema France v. Qian Xie, Valueway Global Logistics Inc.*, WIPO Case No. [D2021-2847](#)), and, in absence of an explanation to the contrary which the Respondent did not offer, that it is therefore likely that the Respondent must have had the ARKEMA trademark in mind when it registered the disputed domain name, which was therefore made in bad faith.

Further, Panels have found that the non-use of a domain name 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 or reputation of the Complainant's ARKEMA 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.

Panels have also held that the use of a domain name for illegal activity, such as undisputedly claimed here as sending emails from the address "@arkamagroup.com" with malicious intent, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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 <arkamagroup.com> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Sole Panelist

Date: August 25, 2024