ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Novamex v. Valerie Rossel, Rossel
Case No. D2024-4985

1. The Parties

The Complainant is Novamex, France, represented by Cabinet Beau de Loménie, France.

The Respondent is Valerie Rossel, Rossel, France.

2. The Domain Name and Registrar

The disputed domain name <larbreverte.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 December 3, 2024. On December 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 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 December 5, 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 December 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 6, 2025.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on January 16, 2025. 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 manufacturer of hygiene and cleaning products.

The Complainant is the owner of numerous L'ARBRE VERT trade marks including the following:

- International Trade Mark L'ARBRE VERT No. 576983 registered on October 8, 1991; and

- International Trade Mark L'ARBRE VERT No. 962891 registered on March 28, 2008.

The disputed domain name was registered on October 30, 2024.

On December 2, 2024, the disputed domain name did not point to any active website and generated the following error message: "DNS error: host not found". After the filing of the Complaint the disputed domain name was used to redirect to a page stating "Our Website is Coming Soon!" At the time of decision, the disputed domain name redirected to an Instagram account promoting Moroccan fashion and home decoration products.

The only information known about the Respondent is the information disclosed by the Registrar.

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 confusingly similar to its L'ARBRE VERT trade mark given that the only difference between the disputed domain name and the Complainant's trade mark is the addition of the letter "e".

The Complainant contends that there is no evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a corresponding name in connection with a bona fide offering of goods or services. The Complainant states that it did not license, permit or authorize the Respondent to use the L'ARBRE VERT trade mark.

The Complainant contends that the use of the disputed domain name shows that it was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's out of pocket costs directly related to the disputed domain name or to block the Complainant from registering a domain name that coincides with his trade mark.

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 trade mark or service mark for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

The Panel finds the L'ARBRE VERT trade mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the L'ARBRE VERT trade mark for the purposes of the Policy. WIPO Overview 3.0, sections 1.7 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.

Whilst the Complainant did not include any arguments substantiating registration of the disputed domain name in bad faith, as part of a panel's general powers articulated in paragraphs 10 and 12 of the Rules, the Panel has undertaken limited factual research into matters of public record as the Panel considered such information useful to assessing the case merits and reaching a decision under the third element. The Panel carried out a Google search for the term "l'arbre verte" (the Complainant's trade mark with the addition of the letter "e", like in the disputed domain name) and all first-page results obtained referred to the Complainant. In addition, the Panel notes the extensive trade mark portfolio of the Complainant in the term "L'ARBRE VERT" and the fact that the Respondent's address of record is in France where the Complainant is

headquartered and where its trade marks are particularly known to the public. In light of this, the Panel finds that at the time of registration of the disputed domain name, the Respondent knew of should have known of the Complainant's L'ARBRE VERT trade mark and thus registered the disputed domain name in bad faith.

In terms of use of the disputed domain name in bad faith, panels have found that the non-use of a domain name (including a blank or "coming soon" page as was the case in the present instance) 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 reputation of the Complainant's trade mark, especially in France where the Respondent's address is located, and the composition of the disputed domain name which reproduces the Complainant's trade mark with the mere addition of the letter "e" 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.

In addition, in relation to the recent use of the disputed domain name to redirect to an Instagram account promoting fashion and home decoration products, the Panel finds that this suggests that the Respondent registered and is using the disputed domain name in order to intentionally attempt to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

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 <larbreverte.com> be transferred to the Complainant.

/Vincent Denoyelle/
Vincent Denoyelle
Sole Panelist
Date: January 30, 2025