

ADMINISTRATIVE PANEL DECISION

Arkema France v. Josep Banjac

Case No. D2022-1127

1. The Parties

The Complainant is Arkema France, France, represented by Fross Zelnick Lehrman & Zissu, PC, United States of America (“United States”).

The Respondent is Josep Banjac, United States.

2. The Domain Name and Registrar

The disputed domain name <arkemaa.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2022. On April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 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.

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 of the Complaint, and the proceedings commenced on April 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 4, 2022.

The Center appointed Taras Kyslyy as the sole panelist in this matter on May 9, 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 is a French company formed in 2004, having offices in 55 countries, and employing over 20,000 employees. The Complainant makes and sells a wide variety of products including fluorochemicals, technical polymers, thiochemicals, functional additives, industrial coatings, acrylics, hydrogen peroxide, organic peroxides, and molecular sieves.

The Complainant owns a number of registrations for its ARKEMA trademark in various jurisdictions, including for instance the United States registration No. 3,082,057 registered on April 18, 2006.

The Complainant also owns the domain name <arkema.com>, where its official website is placed.

The disputed domain name was registered on March 8, 2022 and does not resolve to any active webpage. Someone falsely claiming to be the “Market Manager – ARKEMA Molecular sieves” and its purported colleague, have used those respective email addresses “[...]@arkemaa.com” placed at the disputed domain name in an attempt to divert payments to a bank account not related to the Complainant.

5. Parties’ Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant’s trademark. The disputed domain name consists of nothing more the Complainant’s trademark with an additional “a”, and the generic Top-Level Domain (“gTLD”) extension. The Respondent’s registration of the disputed domain name attempts to take advantage of a common typo-squatting mistake, namely adding a second “a” at the end of the Complainant’s trademark, likely to be made by users seeking information and resources relating to the Complainant. A gTLD indicator such as “.com” cannot be taken into consideration when judging confusing similarity.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant’s trademark in domain names or in any other manner. The Respondent’s only use of the disputed domain name is in connection with an email server used to send fraudulent emails in an attempt to divert payment to bank accounts that are not affiliated with the Complainant. Such use demonstrates neither a *bona fide* offering of goods or services nor a legitimate interest. The Respondent has made no actual use of the disputed domain name in connection with an active website.

The disputed domain name was registered and is being used in bad faith. The Complainant’s trademark is well-known within the industrial specialties, high performance materials, and coating solutions industries and enjoys widespread international recognition. It is therefore inconceivable that the Respondent was unaware of the Complainant’s trademark when it registered the disputed domain name. Given the fact that the Respondent used the disputed domain name to impersonate the Complainant’s employees makes clear that the Respondent was aware of the Complainant and its trademark rights. Because the ultimate effect of any use of the disputed domain name will be to cause confusion with the Complainant, the use and registration of the disputed domain name must be considered to be in bad faith. The Respondent’s exploitation of the Complainant’s goodwill for financial gain by perpetrating a fraud on the Complainant demonstrates the Respondent’s bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)"), the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.9 of the [WIPO Overview 3.0](#) a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The Panel considers the disputed domain name consisting of intentional misspelling of the Complainant's trademark.

Considering the above, the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The Complainant did not license or otherwise agree for use of its prior registered trademark by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name which is a typo of this mark could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The Respondent has intentionally and fraudulently attempted to pass itself off as the Complainant and / or an affiliate of the Complainant by using an email address associated to the disputed domain name in an effort to obtain money from Internet users. Past UDRP panels confirmed that such actions prove registrant has no rights or legitimate interests in a disputed domain name (see *Allianz SE v. Whois Privacy Protection Service, Inc. / Allianz Survey*, WIPO Case No. [D2016-1658](#)).

The Respondent has no rights or legitimate interests in the disputed domain name resolving to an inactive website (see, e.g., *Philip Morris USA Inc. v. Daniele Tornatore*, WIPO Case No. [D2016-1302](#)).

Considering the above, the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.2.2 of the [WIPO Overview 3.0](#) further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark. In the present case, the Respondent shortly after registration of the disputed domain name incorporating the Complainant's trademark used it for

sending fraudulent emails pretending to be from the Complainant. The Panel finds that the nature of the disputed domain name and its use confirms the Respondent knew of the Complainant's prior trademark rights, which confirms the bad faith.

According to section 3.4 of the [WIPO Overview 3.0](#), panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. The Panel finds that in the present case use of the disputed domain name to send fraudulent emails constitutes bad faith.

Considering the above, the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under paragraph 4(a)(iii) 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 <arkemaa.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: May 23, 2022