

ADMINISTRATIVE PANEL DECISION

Exel Industries v. New Ventures Services, Corp.

Case No. D2023-2140

1. The Parties

The Complainant is Exel Industries, France, represented by Domgate, France.

The Respondent is New Ventures Services, Corp., United States of America.

2. The Domain Name and Registrar

The disputed domain name <sames-kremlin.com> is registered with Register.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 15, 2023. On May 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name, and on May 22 and 24, 2023, the Center sent reminders to the Registrar. On May 25, 2023, 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 May 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 20, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on June 28, 2023. 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, in the agricultural and industrial spraying business, owns several trademarks SAMES KREMLIN registered in several countries, among others:

- The French trademark SAMES KREMLIN (LOGO) N° 4356179 was registered on August 11, 2017, and covers classes 7, 8, 9 and 19;
- The International trademark SAMES KREMLIN (LOGO) N° 1398350 was registered on September 5, 2017, and covers classes 7, 8, 9 and 19 and designates several countries, including United States of America.

The disputed domain name was registered on February 1, 2023, and currently resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant is an international family group created in France in 1952 and listed on the Paris stock exchange since 1997.

After successive mergers and acquisitions, the Complainant remains a leader in agricultural and industrial spraying, with an international presence, brand recognition, and know-how.

The Complainant employs over 3,546 permanent employees in 27 countries and 23 production sites. Its turnover was EUR 877 million in 2020, out of which 81 percent was generated outside of France. The Company is among the top three medium-sized patent filers in France.

The only difference between the domain name in dispute and the Complainant's trademarks is the replacement of a letter "i" by a letter "l", and the adjunction of the generic Top-Level Domain ("gTLD") suffix, in this case ".com". It is a case of a homoglyph domain name that exploits the similarities between alpha-numeric characters to create a legitimate appearance.

The mere replacement of one letter in a trademark is a typosquatting attempt, which has obviously been made by the Respondent to impersonate the Complainant's SAMES KREMLIN trademark.

The Complainant's representative sent a cease-and-desist letter to the Respondent and successive reminders in order to be transferred to the domain name owner.

The disputed domain name was redirected to a pay-per-click ("PPC") website containing commercial links to third party websites selling products competing with the Complainant. Currently, no website is attached to the disputed domain name.

The Complainant has never authorized the Respondent to use its trademarks.

The Respondent is not the owner of any SAMES KREMLIN trademarks and is certainly not known by the disputed domain name. Consequently, the Respondent is clearly not making any legitimate *bona fide* or fair use of the disputed domain name, nor is it making any noncommercial use.

The Respondent has registered the disputed domain name for the purpose of selling it to the Complainant or to a third party for a price exceeding the Respondent's out-of-pocket costs directly related to the registration of the disputed domain name.

The Respondent is clearly engaging in a cybersquatting pattern. No fewer than 41 UDRP complaints have been filed against the Respondent.

The Respondent is using the disputed domain name to earn click-through revenue from the misdirection of Internet users to its website caused by the confusing similarity of disputed domain name to the Complainant's trademark

The Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").).

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely 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

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.

The Complainant has provided evidence of its rights in the trademark SAMEKREMLIN on the basis of its multiple trademark registrations. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see [WIPO Overview 3.0](#), section 1.2.1). Mere replacement of the letter "i" by the letter "l" does not prevent a finding of confusing similarity with the Complainant's marks.

Similarly, the gTLD ".com" is viewed as a standard registration requirement, and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark (see section 1.11 of [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While 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 often impossible 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.

If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, including by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name.

The Panel notes that the Respondent has not filed any response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests. Moreover, the Respondent did not answer the Complainant's cease and desist letter and the reminders to it.

Accordingly, the Panel finds that the Complainant satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online 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.

With regard to the bad faith at the time of registration, the Panel notes that it is not likely that the Respondent was not aware of the Complainant and its trademark. On the contrary, the Panel finds that it is likely that the Respondent was aware of the Complainant and its rights and reputation in the SAMES KREMLIN mark at the time the disputed domain name was registered. Bad faith can be presumed based on the widely evidenced recognition of the Complainant's marks and moreover can be imputed from the use made of the disputed domain name, such that the Respondent was aware or should have been aware of the Complainant's well known marks and claims of rights thereto. Moreover, according to the search of previous UDRP cases submitted by the Complainant, the Respondent has repeatedly registered domain names and in all these proceedings it was found that the Respondent had no rights to register the domain names.

The Panel finds that the Respondent has registered the disputed domain name that contains the Complainant's trademark SAMES KREMLIN, merely replacing the letter "i" by the letter "l". This kind of conduct is considered as an act of typosquatting or registering a domain name that is a common misspelling of a mark in which a party has rights and has often been recognized as evidence of bad faith registration. See *Paragon Gifts, Inc. v. Domain.Contact*, WIPO Case No. [D2004-0107](#) (citing *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)); and *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) (finding that the practice of "typosquatting" is evidence of bad faith). The Panel concurs with this approach.

In the Panel's view, the Complainant's mark is widely known and registration by the unrelated Respondent creates a presumption of bad faith in this case. On this subject, section 3.1.4 of the [WIPO Overview 3.0](#) says: "Panels have consistently found that the mere registration of a domain name that is identical or

confusingly similar [...] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

The Panel finds that Respondent, through this scheme, has intentionally attempted to attract for commercial gain Internet users by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, and endorsement of Respondent's scheme.

The disputed domain name resolved to a website that displayed various PPC commercial links. The Panel finds that the Respondent has attempted to mislead the Internet users for clicks and to gain commercial revenue by the PPC system. At the time of the filing of the Complaint, the disputed domain name does not resolve to an active. The fact that the disputed domain name no longer resolves to an active page does not prevent a finding of bad faith.

The Panel concludes that the disputed domain name was registered and is being used in bad faith and that consequently, the Complainant has satisfied the requirement 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, <sames-kremln.com>, be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: July 12, 2023