

ADMINISTRATIVE PANEL DECISION

ARKEMA FRANCE v. Macy Palmer, arkemahouston.com

Case No. D2024-1980

1. The Parties

The Complainant is ARKEMA FRANCE, France, represented by In Concreto, France.

The Respondent is Macy Palmer, arkemahouston.com, United States of America ("US").

2. The Domain Name and Registrar

The disputed domain name <arkemahouston.com> is registered with Squarespace Domains LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 13, 2024. On May 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 14, 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 (N/A) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 16, 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 May 21, 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 May 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2024. The Respondent did not submit any response. However, the Respondent wished to explore the settlement options as indicated in the email communications on May 24, 2024, and May 31, 2024. Accordingly, the proceeding was suspended on May 28, 2024 upon the Complainant's request. However, no settlement has been reached between the Parties. Accordingly, the Center notified the Reinstitution of Proceeding on June 26, 2024.

The Center appointed Gonalo M. C. Da Cunha Ferreira as the sole panelist in this matter on July 18, 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 incorporated in 1981 and is present in 55 countries through the world including North American continent with 44 productions plants; employing over 21,100 employees with a turnover of approximatively EUR 9.5 billion. The Complainant is a world leader of materials science offering a wide range of products for various domains such as paints, adhesives, coats, glue, fiber, resins, rough materials and finished materials for both general industry and consumer goods. Regarding the US, it is the third largest national market for the Complainant. It has more than 3500 employees and 43 sites, including 37 manufacturing facilities.

The Complainant owns a wide range of International, European Union, and national trademarks, namely:

- The International word trademark ARKEMA N° 847865 filed on November 30, 2004 in classes 1, 2, 3, 4, 5, 16, 17, 37, 38, 39, 40, 41, 42; and 45.
- The European Union word trademark ARKEMA N°004181731, filed on December 8^t, 2004 in classes 1, 2, 3, 4, 5, 7, 9, 11, 12, 16, 17, 19, 20, 22, 25, 27, 35, 36, 37, 38, 40, 41, and 42;
- The US word trademark ARKEMA N°3082057 filed on December 16, 2004 in classes 1, 2, and 17, 42.

The Complainant operates a website at “www.arkema.com”, created on May 21, 2001, to promote its products and services since.

The disputed domain name was registered on April 12, 2024, and is inactive and the Respondent has created MX records.

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:

1. the disputed domain name reproduces the earlier rights ARKEMA of the Complainant in their entirety;
2. the adjunction of the city “Houston” will create a direct link and more confusion as the Complainant is established in Houston, Texas through its subsidiary Arkema Inc;
3. therefore, it could be estimated by the users of the Internet that the disputed domain name is related to the Complainant, as it might reserve a specific domain name “arkemahouston” for this plant;
4. the disputed domain name is highly similar to the trademarks and domain names in which the Complainant has rights;
5. the Complainant has not licensed the Respondent to use its trademarks or domain names, nor has it allowed the Respondent to reserve or use a domain name incorporating the Complainant’s rights;

6. there is no evidence that the Respondent had made serious preparations or efforts for offering goods or services;
7. the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services or made serious preparation for that purpose and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name;
8. the trademark ARKEMA is not a descriptive term, a commonly used expression, or a word that would be instantly understood in the field of industry;
9. the denomination Arkema has a highly distinctive character already recognized in previous UDRP decisions;
10. the Respondent is engaged in “passive holding” of this domain name;
11. the use of the disputed domain name is likely to give the false impression that the Respondent is linked to the US business activity of the Group Arkema;
12. the disputed domain name could not ever be put to good faith use by the Respondent;
13. the Respondent has created MX records for this domain name, it is possible that the registration of this domain name was done with the intention to make some fraudulent use through emails;
14. the disputed domain name has been registered and is used in bad faith.

B. Respondent

After receiving the Notification of Complaint and Commencement of Administrative Proceeding, the Respondent indicated in the email communication on May 24, 2024 “I did not create the domain name and have tried to cancel it multiple times. I have no interest in using the domain name”, and on May 31, 2024, the Respondent declares “[...] I would like to consent to the remedy requested by the Complainant and I agree to transfer the disputed domain name. I didn’t even realize what this email was, I was simply trying to create a junk email to use. Is this resolved?” Despite the Complainant’s multiple replies to this informal communication, requesting the Respondent’s cooperation via the Rules’ provisions for settlement under paragraph 17(a), the Respondent did not reply.

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 trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, “houston” 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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. On the contrary, the Respondent’s assertion “I didn’t even realize what this email was, I was simply trying to create a junk email to use” cannot support a finding of rights or legitimate interests on the part of the Respondent. The Panel, moreover, notes that the disputed domain name incorporating the Complainant’s trademark together with the name of the city in which the Complainant operates a production plant carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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, it is implausible to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant’s mark.

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 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.

Moreover, and independently of the reasons presented by the Respondent in his email of May 31, 2024, the Panel notes the Respondent’s declaration “I would like to consent to the remedy requested by the Complainant and I agree to transfer the disputed domain name.”

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 <arkemahouston.com> be transferred to the Complainant.

/Gonçalo M. C. Da Cunha Ferreira/

Gonçalo M. C. Da Cunha Ferreira

Sole Panelist

Date: July 30, 2024