Decision for dispute CAC-UDRP-107125

Case number	CAC-UDRP-107125
Time of filing	2024-12-10 08:53:45
Domain names	arkema-bv.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	ARKEMA FRANCE

Complainant representative

Organization	IN CONCRETO

Respondent

Organization	web Company

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns several trademark registrations for the mark "ARKEMA" (word), including:

- International Trademark No. 847865, registered on November 30, 2004, covering classes 1, 2, 3, 4, 5, 16, 17, 37, 38, 39, 40, 41, 42, and 45. This registration designates multiple countries, including Australia, Benelux, Switzerland, China, and the United Kingdom;
- European Union Trademark No. 4181731, applied on December 8, 2004 and registered on February 9, 2006 in int. classes 1, 2, 3, 4, 5, 7, 9, 11, 12, 16, 17, 19, 20, 22, 25, 27, 35, 36, 37, 38, 40, 41, 42;
- United States Trademark Reg. No. 3082057, applied on December 16, 2004 in int. classes 1, 2, 3, 4, 5, 16, 17, 41, 42 and 45.

FACTUAL BACKGROUND

The Complainant, ARKEMA France, is a global company operating in 55 countries as of 2023, with over 21,100 employees and approximately €9.5 billion in sales. It offers a wide range of products across domains such as paints, adhesives, coatings, glue, fibers, resins, and rough materials.

The Complainant has multiple subsidiaries, including ARKEMA BV in the Netherlands, incorporated in 2022 for the wholesale of chemical products, with its head office at Tankhoofd 10, 3196KE Vondelingenplaat, Netherlands.

The Complainant, directly or through subsidiaries, owns several domain names, including <arkema.com>.

The disputed domain name, <arkema-bv.com>, was registered on November 21, 2024.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

The Complainant has successfully demonstrated that it is the rightful owner of several trademark registrations for the mark "ARKEMA". The Panel recognises that the Complainant's trademark ARKEMA is the only distinctive element of the disputed domain name and that its inclusion in the disputed domain name leads to a confusing similarity of this domain name with the Complainant's trademarks. The word element 'BV' is a non-distinctive designation of the legal form of a company in the Netherlands, which does not prevent the confusing similarity. On the contrary, in view of the existence of the Complainant's subsidiary ARKEMA BV, the presence of the term "BV" increases the confusing similarity with the Complainant's trademarks.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

A complainant is required to establish a prima facie case that the respondent lacks rights or legitimate interests. Once such a case is made, the burden of proof shifts to the respondent to demonstrate their rights or legitimate interests in the disputed domain name. Failure to do so results in the complainant satisfying paragraph 4(a)(ii) of the Policy (as per Article 2.1 of WIPO Jurisprudential Overview 3.0 and WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

Based on the contentions of the Complainant, the Panel finds that the Complainant has successfully established a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark (see Article 3.1. of WIPO Jurisprudential Overview 3.0).

Registration in bad faith

In assessing whether the disputed domain name was registered in bad faith, the Panel specifically notes that all of the trademarks on which this Complaint is based predate the registration of the disputed domain name. The Panel also agrees with the Complainant's assertion that the Respondent registered the disputed domain name with the Complainant's prior trademark rights in mind and that this is demonstrated by the addition of the element "-bv" designating the legal form of the Complainant's subsidiary in the Netherlands, ARKEMA BV. The Panel considers that the choice of registration of the disputed domain name cannot be considered to be coincidental. Rather, the circumstances point to intentional conduct by the Respondent aimed at benefiting from the Complainant's trademark rights.

Based on these facts, the Panel concludes that it is highly probable that the Respondent was aware of the Complainant's name ARKEMA, its trademark ARKEMA, at the time of registering the disputed domain name. This conclusion is grounded not only in the circumstances of the case but also in the presumption that the ARKEMA mark is highly distinctive, as asserted by the Complainant.

Accordingly, the Panel finds that by registering the disputed domain name, the Respondent has targeted the Complainant's

trademarks and name and that this constitutes bad faith registration.

Use in bad faith

The disputed domain name is not associated with any active website. Nevertheless, evidence submitted by the Complainant shows that Mail Exchange ("MX") records have been activated for the disputed domain name, allowing e-mail to be sent and received using the disputed domain name.

The Complainant has also submitted evidence of fraudulent e-mails sent from addresses using the disputed domain name, purporting to originate from an employee of the Complainant's subsidiary, ARKEMA BV, in the Netherlands. The Panel finds such conduct to be an example of bad faith use. This aligns with Article 3.4 of WIPO's Jurisprudential Overview 3.0, which states that "use of a domain name for purposes other than hosting a website may constitute bad faith, including sending emails, phishing, identity theft, or malware distribution."

In light of these circumstances—specifically, the Respondent's use of the disputed domain name to send fraudulent e-mails impersonating an employee of the Complainant's subsidiary—the Panel concludes that the disputed domain name is being used in bad faith.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Panel has determined that the disputed domain name is confusingly similar to the Complainant's trademarks.

Based on the contentions presented by the Complainant, the Panel has found that the Complainant has satisfactorily made a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

The Panel finds that, based on the Complainant's contentions and evidence, it can be concluded that the Respondent must have been aware of the Complainant's trademarks when it registered the disputed domain name, and as such, the Respondent has registered the disputed domain name in bad faith.

Lastly, the Panel has concluded that the Complainant has successfully proven that the disputed domain name is being used in bad faith.

Therefore, for the aforementioned reasons, the Panel orders that the disputed domain name <arkema-bv.com> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **arkema-bv.com**: Transferred

PANELLISTS

Name	**Karel Šindelka**

DATE OF PANEL DECISION 2025-01-15

Publish the Decision