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Tecme out: panel refuses to transfer 'tecme.com' and enters finding of RDNH

International - [Hogan Lovells](#)

- **Gainvest Legal Corporation sought the transfer of 'gainvest.com' under the UDRP**
- **The panel noted that the domain name was registered 20 years before the complainant obtained trademark rights in GAINVEST and 19 years before it first used this term**
- **The panel also made a finding of RDNH, finding that the complaint was seriously inadequate and doomed to failure**

In a recent [decision](#) under the [Uniform Domain Name Dispute Resolution Policy](#) (UDRP) before WIPO, a panel has refused to transfer the disputed domain name 'tecme.com', finding that the complainant had failed to prove that the respondent had registered and used the domain name in bad faith, and entering an unsolicited finding of reverse domain name hijacking (RDNH).

Background

The complainant was Tecme SA, an Argentinian manufacturer of mechanical ventilators used in hospital intensive care units. It registered several trademarks for TECME between 2010 and 2020.

The respondent was Stephen Bougourd, an individual based in Jersey, who once operated a computer training business called Technology Made Easy, abbreviated as 'Tecme'. He registered the disputed domain name in March 2000. At the time of the proceedings, the domain name resolved to a parking page.

The complainant initiated proceedings under the UDRP for a transfer of ownership of the domain name. To be successful under the UDRP, a complainant must satisfy the requirements of Paragraph 4(a) of the UDRP:

- the disputed domain name is identical, or confusingly similar, to a trademark or service mark in which the complainant has rights;
- the respondent has no rights or legitimate interests in the disputed domain name; and
- the disputed domain name was registered and is being used in bad faith.

Decision

Paragraph 4(a)(i)

The panel found that the complainant had established rights in the TECME trademark, and that the domain name incorporated the complainant's registered mark in its entirety.

Paragraph 4(a)(ii)

The panel considered that the complainant had established a *prima facie* case that the respondent had no rights or legitimate interests in the domain name, and the respondent had failed to rebut that case. Specifically, the panel found that, although the respondent had plausibly acquired the domain name as the abbreviated form of a business name that he had previously registered, it was now no longer active. The panel stressed that, in order for respondents to prevail under this paragraph, their rights or legitimate interests must generally be current at the time of UDRP proceedings.

Paragraph 4(a)(iii)

The panel held that the complainant had failed to establish bad-faith registration and use by the respondent. The complainant argued that it had been using Tecme as its company name since 1996 and that the respondent, seeking to exploit the complainant's reputation, had parked the domain name for speculative gain. The respondent countered that he had never heard of the complainant, that he registered and used the domain name in relation to his previous business and kept it for potential future use. The panel underlined that the complainant did not have a trademark for TECME at the time that the domain name was registered and had failed to submit evidence supporting a case for common law protection. The panel further found that the respondent may not have been aware of the existence of the complainant because he worked in an entirely different industry. Finally, the panel held that the respondent had a plausible reason to register and use the domain name as an abbreviation of his business name and, as such, had proved that he had not registered nor used the domain name in bad faith.

RDNH

The panel concluded by entering an unsolicited finding of RDNH on the basis that the complaint concerned a domain name registered over 20 years ago, but no persuasive evidence of prior trademark rights or prior knowledge of the complainant by the respondent (on the other side of the world) had been submitted. The panel also underlined that the complainant had omitted or failed to discover that the domain name had previously resolved to a corporate website for a business with a name for which the domain name was a logical abbreviation, even though the complainant had submitted evidence that the respondent had parked the domain name for many years. In the panel's opinion, this indicated that, overall, the complainant lacked realism as to the success of its complaint.

Comment

This decision illustrates, once again, the importance for complainants to convincingly establish the existence of their trademarks or their reputation at the time the domain name was registered in order to prove bad faith. This is especially true when the businesses conducted by both parties have nothing in common, so that prior knowledge by a respondent cannot be easily inferred. As seen in this case, failure to do so will often lead to a finding of RDNH by a panel.

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