

WIPO Arbitration and Mediation Center
Zaak-/rolnummer: DNL2011-0039
Datum: 28-07-2011

1. The Parties

Complainant is Huurcommissie of The Hague, The Netherlands, internally represented.

Respondent is Diamond Point Enterprises Limited of Antigua and Barbuda.

2. The Domain Names and Registrar

The disputed domain names <huurcommissie.nl> and <huurcommissie.nl>, hereinafter together referred to as the “Domain Names”, are registered with SIDN through Sombbrero.de GmbH.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2011. On June 9, 2011, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Names. On June 10, 2011, SIDN transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. The Center verified that the Complaint satisfied the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on June 10, 2011. In accordance with the Regulations, article 7.1, the due date for Response was June 30, 2011. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on July 1, 2011.

The Center appointed Richard C.K. van Oerle as the panelist in this matter on July 25, 2011. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

4. Factual Background

The Panel will proceed on the facts as stated by Complainant, and not contested by Respondent. Furthermore, the Panel will take account of the information provided by the Center and by SIDN.

Parties

Complainant is the “Huurcommissie” - as phrased by Complainant the “Rent Tribunal” - an independent public tribunal which is part of the legal entity Ministry of the Interior and Kingdom Relations of The Netherlands. Complainant hears disputes between tenants and landlords concerning such issues as rent and fees from rental properties.

Respondent is, according to the SIDN register, established in Antigua and Barbuda. From the

case documents, the activities of Respondent remain unknown.

Domain Names

The first date of registration of the Domain Name <huurcommissie.nl> is July 1, 2005.

The first date of registration of the Domain Name <huurcommissie.nl> is August 19, 2004.

Use of the Domain Names

The Domain Name <huurcommissie.nl> currently redirects to the website "http://ndparking.com/huurcommissie.nl". The Domain Name <huurcommissie.nl> currently redirects to the website "www.aboveredirect.com/?dmn=huurcommissie.nl". These websites contain links on their home pages. By clicking on these links Internet users are redirected to secondary pages on the website featuring pay-per-click ("PPC") advertising. These advertisements in turn link to third party websites. The PPC content appears to depend on the country in which the Internet user is situated.

5. Parties' Contentions

A. Complainant

First, Complainant contends that it is the Huurcommissie, an independent public tribunal in The Netherlands that hears disputes between tenants and landlords concerning such issues as rent and fees from rental properties and therefore meets the requirements under Article 2.1 (a) sub II of the Regulations.

Complainant further contends that the Domain Names are confusingly similar to its name "Huurcommissie" as they are misspellings of Complainant's name. The Domain Names are typographical variations of Complainant's name and domain name <huurcommissie.nl>, which are likely to be erroneously typed by Internet users who intend to access Complainant's website under its domain name <huurcommissie.nl>. The Domain Names redirect to commercial websites providing services nearly identical to those offered by Complainant. Such use is likely to mislead customers into believing that Respondent is somehow associated with Complainant.

Second, Complainant alleges that Respondent has no rights to or legitimate interests in the Domain Names. Respondent has no intellectual property or other rights in the Domain Names. There is no objective connection between the business of Respondent and the Domain Names. The specific goal of the Domain Names is no other than to benefit from typographical errors.

Third, Complainant alleges that the Domain Names were registered by Respondent in bad faith and that Respondent uses the Domain Names in bad faith. Typo-squatting itself is evidence of bad faith. Especially the redirection of traffic to commercial websites from a domain name incorporating the name of a well-known public and governmental entity is considered to be evidence of bad faith. Respondent has registered and is using the Domain Names in bad faith for commercial gain and to benefit from the goodwill associated with Complainant's website. Complainant's website is well known (22.000 visitors per month and more than 1 million previews per year).

Complainant requests the Panel to decide that Complainant shall become the registrant of the Domain Names instead of Respondent.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Article 10.3 of the Regulations provides that in the event that a respondent fails to submit a response, the panel shall rule on the basis of the complaint and the complaint shall be granted unless the panel considers it to be without basis in law or fact.

The Panel notes that Respondent has not filed a response. However, the Panel finds that this does not mean that the requested remedy should automatically be awarded. The Panel will have to determine whether Complainant's *prima facie* case meets the requirements of article 2.1 of the Regulations (*Taylor Made Golf Company, Inc. v. Lotom Group S.A.*, WIPO Case No. DNL2010-0067 and *Société Air France v. Helo Holdings LTD*, WIPO Case No. DNL2010-0082).

Based on article 2.1 of the Regulations, a claim to transfer a domain name must meet three cumulative conditions:

1. The domain name is identical or confusingly similar to:
 - I. a trademark, or trade name, protected under Dutch law in which the complainant has rights; or
 - II. a personal name registered in the General Municipal Register ("gemeentelijke basisadministratie") of a municipality in The Netherlands, or the name of a Dutch public legal entity or the name of an association or foundation registered in The Netherlands under which the complainant undertakes public activities on a permanent basis; and
2. The registrant has no rights to or legitimate interests in the domain name; and
3. The domain name has been registered or is being used in bad faith.

Considering these conditions, the Panel rules as follows.

A. Identical or Confusingly Similar

The name "Huurcommissie" is the name of a Dutch public legal entity under which Complainant undertakes public activities on a permanent basis. The Complaint therefore meets the element of art 2.1 (a) sub II of the Regulations.

The Domain Names are nearly identical to Complainant's name. They differ only by a single letter which in this case does not make any relevant difference. The Domain Names are misspellings of the name and domain name of Complainant. The Panel finds that Complainant's name on the one hand and the Domain Names that are registered and used by Respondent on the other are confusingly similar.

Therefore, the Panel finds that the Domain Names are confusingly similar to Complainant's name within the meaning of article 2.1 (a) of the Regulations.

B. Rights or Legitimate Interests

Pursuant to article 2.1 (b) of the Regulations, Complainant must demonstrate that Respondent has no rights to or legitimate interests in the Domain Names. This condition is met if Complainant makes at least a *prima facie* case that Respondent has no such rights or interests, and Respondent fails to rebut this. Complainant is then deemed to have satisfied the second criterion (see for example *Technische Unie B.V. and Otra Information Services v. Technology Services Ltd.*, WIPO Case No. DNL2008-0002; *Decho Corporation v. Backupsonline*, WIPO Case No. DNL2009-0058; and *Nutri-Akt B.V. v. Edoco LTD.*, WIPO Case No. DNL2011-0003).

While the overall burden of proof is on Complainant, the element of possible rights or legitimate interests of Respondent in the Domain Names is in fact specifically within the knowledge of Respondent. This may put Complainant in the often impossible position of

proving a negative. This should, as indicated correctly in *Julian Barnes v. Old Barn Studios Limited*, WIPO Case No. D2001-0121, be approached as follows: “the [c]omplainant makes the allegation and puts forward what he can in support of these allegations (e.g. he has rights to the name, the [r]espondent has no rights to the name of which he is aware, he has not given any permission to the [r]espondent)”. See also *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110. Unless the allegation is manifestly misconceived, Respondent has to demonstrate its rights to or legitimate interests in the Domain Names under article 3.1 of the Regulations.

As Complainant alleges, and as the Panel’s review of the websites to which the Domain Names redirect establishes, Respondent has not used the Domain Names in connection with a *bona fide* offering of goods or services, nor has Respondent made a legitimate noncommercial or fair use of the Domain Names, without intent to commercial gain. Instead, it appears that Respondent, for commercial gain, has sought to confuse Internet users so that those users searching for Complainant’s website will mistakenly reach a PPC website.

PPC websites are not *per se* legitimate or illegitimate; rather, the panel must consider the nature of the domain name and the advertising on the website. In this case the Domain Names consist only of a misspelling of the name of Complainant. The name of Complainant is the name of the public tribunal.

The Domain Names on the other hand lead to PPC websites with, amongst others, links to commercial websites. The Panel concludes that this use by Respondent is not a legitimate use.

As Respondent has failed to file a Response or any other communication, Respondent has not provided any evidence on its behalf. In the absence of such evidence, the Panel could not establish any indications that any of the circumstances as described in article 3.1 of the Regulations apply, nor that Respondent has any rights to or legitimate interests in the Domain Names in any other way.

Considering all of the above, the Panel is of the opinion that there is nothing in the record that evidences Respondent’s rights to or legitimate interest in the Domain Names. The Panel does not find that Complainant’s claims come across as unlawful or unfounded.

The Complaint meets the second element of article 2.1 of the Regulations.

C. Registered or Used in Bad Faith

Based on these facts and taking into consideration that it was not contested that the name of Complainant is longstanding and well known, the Panel deems it likely that Respondent was aware of Complainant’s name when registering the Domain Names.

Under these circumstances, the Panel concludes that the Domain Names have been registered in bad faith.

Complainant relies also on use of the Domain Names in bad faith. The Domain Names currently redirect to PPC websites. As stated above, these PPC websites may - under the circumstances of this case - be considered as being used for commercial gain within the meaning of article 3.2 (d) of the Regulations. Respondent uses the Domain Names to attract Internet users through the likelihood of confusion which may arise with Complainant’s name (*Société Air France v. Helo Holdings LTD*, WIPO Case No. DNL2010-0082; *Delta Lloyd N.V. v. Lotom Group S.A.*, WIPO Case No. DNL2010-0043; and *Nutri-Akt B.V. v. Edoco LTD.*, *supra*).

Given the above, the Panel holds that the Domain Names are being used in bad faith. The third criterion of article 2.1 of the Regulations is therefore also met.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the Domain Names <huurcomissie.nl> and <huurcommisie.nl> be transferred to Complainant.

Richard C.K. van Oerle

Panelist

Dated: July 28, 2011

DomJur.nl Met bronvermelding is overname toegestaan. Aansprakelijkheid wordt niet aanvaard.