

WIPO Arbitration and Mediation Center  
Zaak-/rolnummer: DNL2015-0028  
Datum: 27 juli 2015

### 1. The Parties

Complainant is Kik Interactive Inc. of Waterloo, Canada, represented by Currier + Kao LLP, Canada.

Respondent is Versio B.V. of Almere, the Netherlands.

### 2. The Domain Name and Registrar

The disputed domain name <kikdate.nl> (the “Domain Name”) is registered with SIDN through AXC.

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 3, 2015. On June 3, 2015, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On June 4, 2015, SIDN 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 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 9, 2015. In accordance with the Regulations, article 7.1, the due date for Response was June 29, 2015. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 30, 2015.

The Center appointed Gregor Vos as the panelist in this matter on July 7, 2015. 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

Complainant is Kik Interactive Inc., established in Waterloo, Canada. Complainant provides an instant messaging software application under the name “KIK Messenger”.

Complainant is the owner of, *inter alia*, the following trademark registrations:

- Community Trademark Registration for the wordmark KIK (no. 10192151), registered January 12, 2012;
- Community Trademark Registration for the word/device mark (no.11235694) registered February 13, 2013;



These trademarks will jointly be referred to as “the Trademarks”.

Respondent is Versio B.V. of Almere, the Netherlands. Respondent registered the Domain Name <kikdate.nl> on October 18, 2014. The Domain Name resolves to an adult dating website.

## 5. Parties' Contentions

### A. Complainant

#### The Domain Name is identical or confusingly similar to Complainant's Trademarks

Complainant argues that it uses the Trademarks in connection to its real-time instant messaging software application "KIK Messenger". Complainant notes that the Trademarks were registered prior to the Domain Name. Complainant also notes that the registration of the Domain Name occurred subsequent to the registration and use of Complainant's own domain name <kik.com>. According to Complainant, the Domain Name is identical and confusingly similar to its wordmark KIK. Complainant argues that its Trademarks are being used on the website connected to the Domain Name, further enhancing confusion on the part of the public.

#### Respondent has no rights to or legitimate interests in the Domain Name

Complainant argues that Respondent is not commonly known by the Domain Name. According to Complainant, the only reason for Respondent to incorporate the Trademarks in the Domain Name is to exploit the recognition of the famous Trademarks and to divert Internet traffic to the website connected to the Domain Name, which shows that Respondent has no rights to or legitimate interests in the Domain Name. Further to this, Complainant argues that the style of the website connected to the Domain Name is similar to Complainant's website "www.kik.com". Complainant further argues that the website connected to the Domain Name shows explicit sexual content, which disparages the Trademarks. According to Complainant, Respondent is not making a legitimate noncommercial use of the Domain Name. Rather, the Domain Name is being used for commercial gain, as users of the website connected to the Domain Name have to pay for the adult dating services offered through the website.

#### Respondent has registered or is using the Domain Name in bad faith

Complainant contends that the incorporation of the Trademarks in (the first three characters of) the Domain Name, the use of the Trademarks by Respondent on the website at the Domain Name, and the matched style of said website with Complainant's own website "www.kik.com" are obviously intended to profit from Complainant's accrued goodwill. Complainant further argues that Respondent's actions of driving Internet traffic to a website by creating and exploiting confusion between the Domain Name on the one hand and the Trademarks on the other, amounts to bad faith.

### B. Respondent

The Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

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

- a. a domain name is identical or confusingly similar to a trademark, or trade name, protected under Dutch law in which the complainant has rights, or other name by means of article 2.1(a) under II of the Regulations; and
- b. the registrant has no rights to or legitimate interests in the domain name; and
- c. 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*

There are two requirements that a complainant must establish under the first criterion, namely i) that it has rights in a trademark or trade name, and ii) that the domain name is identical or confusingly similar to such trademark or trade name. The Panel has established that the Trademarks are protected under Dutch law, and that Complainant is the owner of the Trademarks. It is established case law under the Regulations that the Top-Level Domain “.nl” may be disregarded in assessing the similarity between the relevant trademark(s) on the one hand, and a disputed domain name on the other (see, *inter alia*, *Pieter de Haan v. Orville Smith Ltd.*, WIPO Case No. DNL2008-0017). The Domain Name incorporates Complainant’s wordmark KIK in its entirety. It is established case law that the addition of purely descriptive or generic elements – such as the element “date” – to a trademark is insufficient to avoid a finding of confusing similarity.<sup>1</sup>

The Panel finds that the Domain Name is confusingly similar to the Trademarks.

### *B. Rights or Legitimate Interests*

Complainant has made out a *prima facie* case that Respondent lacks any rights to or legitimate interests in the Domain Name. Complainant submitted screenshots of the website connected to the Domain Name, from which follows that Respondent uses the Trademarks not only in the Domain Name, but also on its website. Further to this, the website connected to the Domain Name also matches the style of Complainant’s website “www.kik.com”. The Panel finds that Respondent deliberately chose to use the Trademarks for the purposes of attracting traffic to its adult dating website. This cannot be considered as a *bona fide* offering of goods and services.

The Panel finds that Respondent has no rights to or legitimate interests in the Domain Name.

### *C. Registered or Used in Bad Faith*

Based on the use of the Trademarks on the website connected to the Domain Name (and the similarities between said website and Complainant’s website “www.kik.com”), it seems unlikely that Respondent registered the Domain Name without knowledge of the (existence of the) Trademarks. Respondent is using the Domain Name in bad faith, by attracting Internet users to an adult dating website, through the likelihood of confusion with the Trademark. Therefore, the Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel finds that the third requirement of article 2.1(c) of the Regulations has been met.

## **7. Decision**

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

Gregor Vos  
Panelist  
Date: July 27, 2015

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<sup>1</sup> See *Microsoft Corporation v. S.L. Mediaweb*, WIPO Case No. D2003-0538; *Academy of Motion Picture Arts and Sciences v. Chego Nado*, WIPO Case No. D2003-0541; *Nokia Corporation v. Nokiagirls.com a.k.a IBCC*, WIPO Case No. D2000-0102; *Hyves B.V. v. Private registrations co ltd.*, WIPO Case No. DNL2012-0058