

WIPO Arbitration and Mediation Center
Zaak-/rolnummer: DNL2015-0042
Datum: 28 oktober 2015

1. The Parties

Complainant is Vanguard Trademark Holdings USA, LLC of St. Louis, Missouri, United States of America ("United States"), represented by Harness, Dickey & Pierce, PLC., United States.

Respondent is [persoonsnaam] of Athens, Greece.

2. The Domain Names and Registrar

The disputed domain names <aalmo.nl>, <aamo.nl>, <alao.nl>, <almaa.nl> and <laamo.nl> ("Domain Names") are registered with SIDN through 1st Gelox GmbH.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 20, 2015. On August 21, 2015, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Names. On August 24, 2015, 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 August 31, 2015. On September 25, 2015, the Center sent an email communication to the Parties noting that the Notification of Complaint and Commencement of Proceedings was not notified to Respondent at the correct email address. On the same date, the Center re-notified the Complaint. In accordance with the Regulations, article 7.1, the due date for Response was October 15, 2015. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on October 16, 2015.

The Center appointed Willem J. H. Leppink as the panelist in this matter on October 26, 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

The following facts are undisputed.

Complainant has a long established reputation in the use of its ALAMO trademark in relation to the car rental business. Complainant, itself and through its predecessors and licensees, has been using this trademark in the course of trade since 1974. Complainant has locations in more than 42 countries worldwide, with more than 1200 car rental locations throughout the United States, Canada, Europe, Latin America, the Caribbean, Asia Pacific, Africa and Australia. Complainant owns a Benelux Trademark registration since September 28, 1988 for the ALAMO trademark (registration number 0453263) for services in classes 36 and 39. Furthermore,

Complainant owns also a Community Trade Mark registration since September 16, 2002 for the ALAMO trademark (registration number 1860592) for goods and services in classes 12, 16, 36 and 39.

The Domain Names were registered on July 25, 2012 and August 26, 2012. According to the Complaint, the Domain Names re-direct to Complainant's official website.

5. Parties' Contentions

A. Complainant

Insofar as relevant, Complainant contends the following.

The Domain Names are all common typographic errors when typing Complainant's ALAMO trademark and therefore all display significant similarity to the ALAMO trademark to which Complainant has a right.

Complainant is not making, in connection with any of the Domain Names, a *bona fide* offering of goods or services or made demonstrable preparations for such use. The Domain Names re-direct to Complainant's website "www.alamo.nl". Respondent is using the similarity of the Domain Names to obtain "click-through" fees from Complainant when Internet users are re-directed from the Domain Names to Complainant's website "www.alamo.nl". Such use at the expense of Complainant cannot give rise to rights and legitimate interests in any of the Domain Names. There is nothing in the Whois records or elsewhere to indicate that anyone affiliated with Respondent has been commonly known by any of the Domain Names.

Respondent is not making a legitimate noncommercial or fair use of the Domain Names. Respondent is not affiliated with Complainant in any way and is not authorized by Complainant to register or use the ALAMO trademark or any variation thereof in any manner, including in a domain name.

Respondent is using the Domain Names intentionally to attract, for commercial gain, Internet users to the Domain Names, by creating confusion with the ALAMO trademark respectively, as to the source, sponsorship, affiliation, or endorsement of Respondent's websites. Respondent uses the Domain Names to lure Internet users to the Domain Names so that they can be re-directed to Complainant's website so that Respondent can obtain "click-through" fees from Complainant. Such use at the expense of Complainant is clearly use in bad faith.

Respondent's business model is based upon use of infringing "typo" Domain Names that mimic Complainant's to attract users to Respondent's Domain Names. This is clear evidence that Respondent registered and used the Domain Names in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

According to article 2.1 of the Regulations, for this Complaint to be successful in relation to the Domain Names, Complainant must prove that:

- (i) the Domain Names are identical or confusingly similar to a trademark or a trade name, protected under Dutch law in which Complainant has rights; or 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
- (ii) Respondent has no rights to or legitimate interests in the Domain Names; and
 - (iii) Domain Names have been registered in bad faith or are being used in bad faith.

As Respondent has not filed a response, the Panel shall rule on the basis of the Complaint. In accordance with article 10.3 of the Regulations, the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or in fact.

A. Identical or Confusingly Similar

Pursuant to article 2.1(a) of the Regulations, Complainant must establish that the Domain Names are identical or confusingly similar to a trademark or trade name in which Complainant has rights. Complainant takes the position that the Domain Names are instances of "typosquatting" based on common typographical mistakes. Indeed, the Domain Names are variations on Complainant's trademark that are likely to be the result of typing errors by Internet users seeking to locate Complainant's website. All appear calculated to take advantage of Internet user confusion or error and none of the changes is sufficiently distinctive to avoid the likelihood confusion.

Therefore, the Panel finds that the Domain Names are confusingly similar to the ALAMO Trademark.

Complainant has therefore established the first element of article 2.1 of the Regulations.

B. Rights or Legitimate Interests

Pursuant to article 3.1 of the Regulations, Complainant must demonstrate that Respondent has no rights to or legitimate interests in respect of the Domain Names. Respondent may demonstrate such rights or legitimate interests on its part *inter alia* through the following circumstances:

- a. before having any notice of the dispute, Respondent made demonstrable preparations to use the Domain Names (or a name corresponding to the Domain Names) in connection with a *bona fide* offering of goods and services;
- b. Respondent as an individual, business or other organization is commonly known by the Domain Names;
- c. Respondent is making a legitimate noncommercial use of the Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish or otherwise damage the relevant trademark, trade name, personal name, name of a Dutch public legal entity or name of an association or foundation located in the Netherlands.

Complainant has established a *prima facie* case that Respondent lacks any rights or legitimate interests in the Domain Names.

Respondent is not commonly known by the Domain Names. Furthermore, Respondent is not making a legitimate noncommercial or fair use of the Domain Names without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark of Complainant, since it appears that Respondent is only using the Domain Names to re-direct Internet users to Complainant's website.

Finally, given the circumstance of this case, the Panel finds that Respondent's lack of rights to or legitimate interests in the Domain Names may further be inferred by the fact that no response was filed by Respondent. According to previous UDRP¹ decisions "non-response is indicative of

¹ The mechanism of the Regulations is in part comparable to the Uniform Domain Name Dispute Resolution Policy ("UDRP").

a lack of interests inconsistent with an attitude of ownership and a belief in the lawfulness of one's own rights" (see *Pomellato S.p.A. v. Richard Tonetti*, WIPO Case No. D2000-0493 and *GA Modefine S.A. and Giorgio Armani S.p.A. v. Yoon-Min Yang*, WIPO Case No. D2005-0090). Under these circumstances, and considering article 10.3 of the Regulations, the Panel finds that Respondent has no rights to or legitimate interests in the Domain Names. Complainant has therefore established the second element of article 2.1 of the Regulations.

C. Registered or Used in Bad Faith

The Panel finds that the Domain Names are registered and used in bad faith.

In light of the evidence filed by Complainant and the absence of any evidence to the contrary by Respondent, the Panel considers that the ALAMO trademark and Complainant's activities are well-known throughout the world. Accordingly and also in light of the combination of the five Domain Names, the Panel finds that Respondent must have been aware of Complainant's existence and rights when it registered the Domain Names. Furthermore, the fact that the Domain Names are used to re-direct Internet users to Complainant's website is clear evidence that Respondent must have been aware of Complainant's existence and rights.

The Panel finds it furthermore highly likely that by using the Domain Names as described above, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a products or services on Respondent's website or other location.

The Panel reiterates that Respondent has not filed a response, and has therefore not provided any evidence to rebut Complainant's allegations.

Under these circumstances, and considering article 10.3 of the Regulations cited above, the Panel finds that Complainant has established the third element of article 2.1 of the Regulations.

7. Decision

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

Willem J. H. Leppink
Panelist