

WIPO Arbitration and Mediation Center  
Zaak-/rolnummer: DNL2015-0065  
Datum: 17 januari 2016

### **1. The Parties**

The Complainant is Holland Van Gijzen Advocaten en Notarissen LLP of Rotterdam, the Netherlands, internally represented.

The Respondent is [persoonsnaam] of Erfurt, Germany.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 12, 2015. On November 12, 2015, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On November 13, 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. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on November 20, 2015. The Center verified that the Complaint together with the Amended 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 the Respondent of the Complaint, and the proceedings commenced on November 23, 2015. In accordance with the Regulations, article 7.1, the due date for Response was December 13, 2015. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 14, 2015.

The Center appointed Wolter Wefers Bettink as the panelist in this matter on January 4, 2016. 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 Complainant is the owner of the following trademark registrations:

- Benelux trademark no. 0903952, wordmark HVG, registered on October 10, 2011 with a priority date of June 29, 2011;
- Benelux trademark no.0940688, word-device mark HVG, registered on October 11, 2013, with a priority date of June 28, 2013;
- Benelux trademark no.0960402, word-devicemark HVGLAW, registered on October 14, 2014 with a priority date of July 28, 2014;

together hereafter referred to as the “Trade Marks”.

The Domain Name has been registered on July 24, 2015.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant submits that it relies on both the Trade Marks and the trade name "HVG" which it alleges to be using in trade. According to the Complainant, the Domain Name is similar to the Trade Marks and the trade name HVG because it contains the dominant element "HVG", with the words "werken bij", which according to the Complainant are descriptive.

The Complainant states that the Respondent has no rights or legitimate interests in the Domain Name, as it has no permission for the registration and use of the Domain Name, while the Respondent is not known under the Domain Name or the name HVG. The Complainant alleges that in the past a website linked to the Domain Name contained advertisements for sports shoes and sneakers, but since October 5, 2015, after the Complainant allegedly sent several summons to the Respondent, the website contains links to vacancies, but not at the Complainant's firm. The Complainant states that the public may thus be led to incorrectly believe it visits a website of or affiliated with the Complainant. The sole purpose of the Respondent is, the Complainant submits, to generate traffic through the Domain Name and to attract consumers to the various linked vacancies.

According to the Complainant, the registration and use of the Domain Name is in bad faith, since:

- Given the reputation of the Complainant and the fact that the Trade Marks were registered before the Domain Name, the Respondent was or should have been aware of the Trade Marks and the trade name HVG;
- By the registration and use of the Domain Name, the Respondent prevents the Complainant from using this Domain Name for its recruitment activities;
- The Respondent achieves commercial advantage from the registration and use of the Domain Name by leading Internet users to a website and thereby generates traffic through the unauthorized use of the Trade Marks and the tradename HVG and its reputation.
- The Respondent appears to have submitted a non-existing email address as contact information to the registry when registering the Domain Name.

### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

At the outset, the Panel wishes to emphasize that the burden to establish for the three elements of article 2.1 of the Regulations is on the Complainant.

In this regard the Panel notes the WIPO Overview of WIPO Panel views on selected UDRP<sup>1</sup> Questions, Second Edition ("WIPO Overview 2.0") under paragraph 4.6:

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<sup>1</sup> While the Complaint is brought under the Regulations, and not the Uniform Domain Name Dispute Resolution Policy ("UDRP"), given the similarities between the two, where applicable the Panel considers UDRP precedent relevant to the current proceedings, and will refer to it throughout.

“a respondent’s default does not automatically result in a decision in favor of the complainant. [...] The complainant must establish each of the three elements required by paragraph 4(a) of the UDRP. Although a panel may draw appropriate inferences from a respondent’s default (e.g., to regard factual allegations which are not inherently implausible as being true), paragraph 4 of the UDRP requires the complainant to support its assertions with actual evidence in order to succeed in a UDRP proceeding”. In addition, as set out in paragraph 4.7 of WIPO Overview 2.0, the standard of proof under the UDRP requires that “an asserting party would typically need to establish that it is more likely than not that the claimed fact is true. Conclusory statements unsupported by evidence which merely repeat or paraphrase the criteria or scenarios under paragraphs 4(a), (b), or (c) of the UDRP would typically be insufficient.”

The Panel further notes that, apart from the Whois information of the Domain Name and a copy of the registration information on the Trade Marks, the Complainant has not submitted any evidence of its statements, in particular not those relating to (i) its use of the trade name HVG, (ii) the alleged reputation of the Trade Marks and the trade name, (iii) the websites that were allegedly at some stage connected to the Domain Name, and (iv) the summons allegedly sent to the Respondent.

The Respondent filed no response, so that the Complainant’s claims were uncontested as such. 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 fact.

#### **A. Identical or Confusingly Similar**

The Complainant has shown that it has rights in the Trade Marks.

The Trade Marks consist of or contain the name “HVG”, which is incorporated in its entirety in the Domain Name. The addition of the words “werken bij” does not change the overall impression that the Domain Name is confusingly similar to the Trade Marks. Although the Complainant does not give a translation of these words in the Complaint, they are indeed descriptive, meaning “working at”.

The country code Top-Level Domain (“ccTLD”) “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. DNL2008-0008).

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks.

#### **B. Rights or Legitimate Interests**

It is in general difficult, if not impossible, to prove a negative (i.e., that the Respondent lacks any rights to or legitimate interests in the Domain Name), especially where the Respondent, rather than the Complainant, would be best placed to have specific knowledge of rights to or interests in the Domain Name. It follows that the Complainant has to make out a prima facie case that the Respondent lacks rights to or legitimate interests in the Domain Name (see, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455). If the Complainant meets this requirement and the Respondent fails to rebut this, the required evidence is deemed to have been provided (see, e.g., *Accor v. Eren Atesmen*, WIPO Case No. D2009-0701).

The Complainant thus must make a prima facie case that the Respondent does not have a trade mark or other right corresponding to the Domain Name, was not authorized by the Complainant to use or register a domain name containing the Trade Marks and did not (i) use or prepare to use the Domain Name in connection with a bona fide offering of goods or services before it was notified of the dispute; nor (ii) as an individual, business, or

other organization has been commonly known by the Domain Name; nor (iii) is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Trade Marks.

For this purpose the Complainant has put forward that the Respondent had no permission for the registration and use of the Domain Name. The Complainant has also put forward that the Respondent is not known under the Domain Name or the name HVG and that at some stage the Domain Name was connected to different websites which might mislead the public into believing that the website was somehow affiliated with the Complainant.

In the context of this case, as these statements are not inherently implausible, the Panel accepts them as facts. The Panel concludes that the Complainant on balance with these statements has made out the prima facie case that the Respondent has no rights or legitimate interests in the Domain Name.

Although, as set out above, no supporting evidence (such as a screen print of the website) has been submitted, as no response has been filed, these statements have remained uncontested.

On the basis of all of the above the Panel concludes that the Respondent has no rights or legitimate interests in the Domain Name.

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

Under the Regulations, it is sufficient for the Complainant to show that the Domain Name either was registered or is being used in bad faith.

Evidence of bad faith registration may be found if the Complainant shows that at the time of the registration of the Domain Name the Respondent knew or was aware of the Complainant's rights in the Trade Marks (WIPO Overview 2.0, under paragraph 3.4). The Panel notes that SIDN has informed the Center the Domain Name was initially registered on January 29, 2010. Additionally, on the basis of information the Panel retrieved through the public Wayback Machine (<internetarchive.org>), which records Internet websites, the Panel found that until at least December 2014, the Domain Name linked through to the domain name <hvglaw.nl>, which connected to a website of the Complainant. It would therefore seem that the Complainant originally registered the Domain Name, which may somehow have gotten released during the year 2015 whereupon it was registered by the Respondent. Therefore, both the initial use of the Domain Name by the Complainant and the Trade Marks predate the registration of the Respondent's Domain Name by several years.

Under these circumstances, the Panel assumes that at the time of the registration of the Domain Name the Respondent was or should have been aware of the Complainant and the name "HVG", which is the main element of the Trade Marks.

Furthermore, a simple trade mark register search prior to its registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

Under these circumstances, and taking into account that the Respondent has not filed a response to counter the submissions of the Complainant, the Panel on balance concludes that the Domain Name has been registered in bad faith.

## **7. Decision**

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

Wolter Wefers Bettink  
Panelist  
Date: January 17, 2016