

WIPO Arbitration and Mediation Center
Zaak-/rolnummer: DNL2015-0066
Datum: 16 december 2015

1. The Parties

Complainant is Parfumerie Douglas Nederland B.V. of Nijmegen, the Netherlands, represented by Dirkzwager advocaten en notarissen N.V., the Netherlands.

Respondent is [persoonsnaam] of Berlin, Germany.

2. The Domain Name and Registrar

The disputed domain name <dougl.nl> ("Domain Name") is registered with SIDN through EPAG Domainservices GmbH.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 16, 2015. On November 16, 2015, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On November 17, 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 November 18, 2015. In accordance with the Regulations, article 7.1, the due date for Response was December 8, 2015. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on December 9, 2015.

The Center appointed Richard C.K. van Oerle as the panelist in this matter on December 15, 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 holder of several trademarks for the wordmark DOUGLAS, including the Benelux wordmark No. 0629132 registered for, inter alia, cosmetics and hair products, which trademark was filed on November 21, 1971 (the "Trademark").

Complainant claims having used the tradename "Douglas" actively in commerce. As evidence of this use Complainant provided copies of its (current and past) Internet website on which the tradename Douglas is visible, pictures of storefronts of a few of its stores on which Douglas is visible as name of the store and articles in which Complainant was identified by third parties as "Douglas" (the "Tradename").

The Domain Name was registered by Respondent on October 31, 2014. The Domain Name resolves to a pay-per-click parking page website ("PPC-parking page").

5. Parties' Contentions

A. Complainant

Identical or Confusingly Similar

According to Complainant the Domain Name is confusingly similar to both its Trademark and Tradename, since the Domain Name contains a common or obvious misspelling from Complainant's Trademark and Tradename, where the misspelling remains the dominant factor or prominent element of the Domain Name, <dougla.nl>. The only difference between both is the removal of the last letter "s" of Complainant's Trademark and Tradename.

No Rights or Legitimate Interests

The website connected to the Domain Name is a "PPC-parking page" which according to Complainant further indicates the lack of legitimate interests of Respondent in the Domain Name. The PPC-parking page shows hyperlinks directing to, amongst others, websites on which goods are offered that compete directly with the goods Complainant offers.

Complainant states that Respondent is not using the Domain Name in connection with a bona fide offering of goods and services, noting that it is offered for sale on the domain name auction site SEDO for USD 799.

Registered or Used in Bad Faith

According to Complainant, the Domain Name was registered and is being used in bad faith as Respondent was aware of, or must have been aware of, Complainant's established rights in both the Trademark and the Tradename. Further, Complainant states that this is a clear case of typo-squatting. Respondent has registered the Domain Name with the intention of causing confusion with the Trademark and the Tradename, and in attempt to divert Internet traffic otherwise rightfully bound for Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Panel has ascertained that the Center has employed reasonably available means to achieve actual notice to Respondent in accordance with article 16.4 of the Regulations.

In accordance with article 10.3 of the Regulations, since no response has been filed by Respondent, the Panel will have to decide on the basis of the Complaint. Based on this article, the Panel will have to grant the Complaint unless it seems unlawful or without merit. Therefore, the Panel will proceed on the facts and circumstances as stated by Complainant and will take into account the information provided to the Center by SIDN.

Pursuant to article 2.1 of the Regulations, Complainant's request to transfer the Domain Name must meet three cumulative conditions:

- a. the Domain Name is identical or confusingly similar to a trademark or tradename protected under Dutch law in which Complainant has rights, or other name by means of article 2.1(a) under II of the Regulations; and
- b. Respondent 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

Complainant sufficiently established that it is the holder of the Trademark. Complainant has also submitted sufficient documents evidencing that it has used the Tradename to identify its business. Complainant therefore has rights in the tradename Douglas. Both the Trademark and the Tradename are protected under Dutch law.

It is a well-established rule that a domain name which contains a common or obvious misspelling of a trademark/tradename (so-called "typo-squatting") will normally be found to be confusingly similar to such trademark/tradename, where the misspelled trademark/tradename remains the dominant or prominent element of the domain name (Thuisbezorgd.nl B.V. and Takeaway.com B.V. v. Heather Briggs, WIPO Case No. DNL2015-0013).

In this case, the only difference between the Domain Name, <dougla.nl>, and Complainant's Trademark and Tradename is the removal of the letter "s".

The Panel therefore finds that the Domain Name is confusingly similar to Complainant's Trademark.

B. Rights or Legitimate Interests

Complainant must demonstrate that Respondent has no rights to or legitimate interests in the Domain Name. This condition is met if Complainant makes a prima facie case that Respondent has no such rights or interests, and Respondent fails to rebut this (see: Technische Unie B.V. and Otra Information Services v. Technology Services Ltd., WIPO Case No. DNL2008-0002).

The record does not include any indication that Respondent has any relevant trademark or tradename rights regarding the term "dougla". Complainant has not licensed or otherwise permitted Respondent to use the Trademark/Tradename.

As a result of its failure to submit a response, Respondent did not use the opportunity to show rights to or legitimate interests in the Domain Name. It may be assumed that Respondent was and is not commonly known by the Domain Name.

Based on the foregoing, the Panel is of the opinion that Respondent has no rights to or legitimate interests in the Domain Name.

C. Registered or Used in Bad Faith

It is difficult to conceive that Respondent chose to register the Domain Name by accident. Respondent was obviously aware of Complainant's established rights in the Trademark and Tradename when it registered the disputed Domain Name. Respondent's website under the Domain name is a PPC-parking page that contains links to Complainant's website as well as websites of competitors' products. This supports a finding of bad faith registration (Thuisbezorgd.nl B.V. and Takeaway.com B.V. v. Heather Briggs, WIPO Case No. DNL2015-0013).

The Panel finds that the Domain Name was registered in bad faith and with the intention of causing confusion with the Trademark and Tradename in an attempt to divert Internet traffic from Complainant's website (Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No. D2006-1043).

Therefore, the Panel finds that Complainant has also 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 Name, <dougla.nl>, be transferred to Complainant.

Richard van Oerle

Panelist

Date: December 16, 2015