

WIPO Arbitration and Mediation Center
Zaak-/rolnummer: DNL2016-0006
Datum: 18 april 2016

1. The Parties

The Complainant is Koninklijke KPN N.V. of The Hague, the Netherlands, internally represented.

The Respondent is Gaststaette Rasthaus of Winterfeld, Germany.

2. The Domain Names and Registrar

The disputed domain names <knpmail.nl> and <kpnnet.nl> are registered with SIDN through EuroDNS S.A.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 8, 2016. On March 8, 2016, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On March 9, 2016, 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 the Respondent of the Complaint, and the proceedings commenced on March 14, 2016. In accordance with the Regulations, article 7.1, the due date for Response was April 3, 2016. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 4, 2016.

The Center appointed Alfred Meijboom as the panelist in this matter on April 11, 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 a leading telecommunication and IT service provider in the Netherlands, and owns the following registered trademarks:

- Benelux trademark KPN with registration number 529431 of March 2, 1993;
- Community trademark KPN with registration number 310099 of August 26, 2006; and
- Benelux trademark HET NET with registration number 548545 of July 2, 1994.

The above trademark registrations were registered for goods and services in different classes, inter alia, relating to telecommunications and IT aspects.

The disputed domain names <knpmail.nl> and <kpnnet.nl> were registered by the Respondent on October 12, 2010.

5. Parties' Contentions

A. Complainant

The Complainant had been providing telecommunication services to the Dutch public under the trade name Koninklijke PTT Netherlands between 1913 and 1989, and currently as a privatized company is still providing telecommunication services to the Dutch public, amongst others under the trademarks KPN, which have a reputation in the Netherlands.

The disputed domain name <knpmail.nl> consists of a misspelling of the trademarks KPN, plus the addition of "mail". Many of the Complainant's customers have an email address with the domain "@knpmail.nl". According to the Complainant "knp" is probably one of the most common misspellings for KPN and this disputed domain name creates a likelihood of confusion with the trademarks KPN. The disputed domain name <kpnnet.nl> consists of the trademarks KPN, plus the addition of "net" which generally refers to the Internet. "Net" may also refer to the Complainant's HET NET trademark, which it used in the period 1997-2005 for Internet service provider services. Many of the Complainant's customers have an email address with the domain "@hetnet.nl". The Complainant alleges that the Dutch public still thinks of the Complainant when hearing "Het Net", so that consumers believe that the disputed domain name <kpnnet.nl> is owned by the Complainant as a result of the combination of the KPN trademarks and "net" in a domain name. According to the Complainant, the disputed domain names infringe the Complainant's trademarks.

The Respondent was not authorized by the Complainant to register and/or use the disputed domain names. Also there is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain names or corresponding names in connection with a bona fide offering of goods or services. Additionally, the Respondent is not commonly known by the disputed domain names. Finally, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names.

The disputed domain name <knpmail.nl> is used in bad faith as it is used to generate advertisements through bounce messages every time an Internet user misspells the domain "@knpmail.nl" as "@knpmail.nl" of a Complainant's customer, for which the Respondent receives a fee. The Complainant believes that the disputed domain name <kpnnet.nl> was registered with the same intent to generate fees through bounce messages, and may be used for the same in the future. In this respect the Complainant claims that the HET NET trademark was used the period of 1997 to 2005 and acquired a reputation in the Netherlands, so that it is expected that the Respondent intentionally attempted to attract for commercial gain Internet users to its website or other on-line location by creating a likelihood of confusion with the Complainant's trademarks. Furthermore, the Respondent should have been and probably was aware of the fact that the trademarks KPN were very well-known by briefly searching the Internet and the fact that the Respondent still chose to register the disputed domain names without a good reason, which also establishes bad faith registration.

B. Respondent

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

6. Discussion and Findings

As the 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 panelist considers it to be without basis in law or in fact.

The Panel notes that, in accordance with article 16.4 of the Regulations, the Center has fulfilled its obligation to employ reasonably available means to achieve actual notice of the Complaint to the Respondent.

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 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.

A. Identical or Confusingly Similar

It is established case law that the Top-Level Domain “.nl” may be disregarded in assessing the similarity between the Complainant’s trademarks on the one hand, and the disputed domain names on the other hand (see, e.g., Roompot Recreatie Beheer B.V. v. Edoco LTD, WIPO Case No. DNL2008-0008).

The Panel finds that the disputed domain name <knpmail.nl> is confusingly similar to the Complainant’s Trademarks KPN. The disputed domain name <knpmail.nl> consists of “knp” and “mail”. As the Complainant uses the combination of its trademarks KPN and the suffix “mail” as its e-mail domain, and in absence of a response establishing otherwise, the Panel finds that the element “knp” has been used by the Respondent as a misspelling of the Complainant’s trademarks KPN. The use of the suffix “mail” is insufficient to differentiate this disputed domain name and the trademarks KPN, and actually even adds to the confusion between the disputed domain name and the trademarks KPN as the word “mail” is used by the Complainant in combination with “KPN” as the Complainant’s popular e-mail domain.

Further, the Panel finds that the disputed domain name <kpnnet.nl> is confusingly similar to the Complainant’s trademarks KPN. The Respondent has taken the trademarks KPN in their entirety and merely added the descriptive word “net”. The added word is insufficient to differentiate the disputed domain name and the Complainant’s trademarks, and actually even adds to the confusion between the disputed domain names and the trademarks KPN as the word “net” is commonly understood to refer to the Internet, where the Complainant is active as Internet service provider. Moreover, the disputed domain name <kpnnet.nl> is comprised of a combination of the Complainant’s trademarks KPN and HET NET (albeit without the non-distinct article “het”), which reinforces the finding of confusing similarity.

Consequently, the Panel finds that the Complainant has satisfied the requirement of article 2.1(a) of the Regulations.

B. Rights or Legitimate Interests

Article 2.1(b) of the Regulations requires that the Complainant demonstrates that the Respondent has no rights to or legitimate interests in the disputed domain names. This condition is met if the Complainant makes a prima facie case that the Respondent has no such rights or interests, and the Respondent fails to rebut this (see, e.g., Technische Unie B.V. and Otra Information Services v. Technology Services Ltd., WIPO Case No. DNL2008-0002).

The Panel is satisfied that the Complainant has made such prima facie case that the Respondent has not made demonstrable preparations to use the disputed domain names or names corresponding to the disputed domain names in connection with a bona fide offering of goods or services before the Respondent having received the notice of this dispute, and that the Respondent was not commonly known by the disputed domain names or similar names. This was not rebutted by the Respondent.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of article 2.1(b) of the Regulations.

C. Registered or Used in Bad Faith

The Complainant is the owner of the trademarks KPN and HET NET which have been valid in the Netherlands since 1993 and 1994, respectively, and the Complainant has shown actual use of the trademarks. The registration and use of the trademarks KPN and HET NET therefore significantly predate the Respondent's registration of the disputed domain names. The Panel is further satisfied that the Trademarks KPN and HET NET have a reputation and in absence of evidence to the contrary, the Panel finds that the Respondent must have been aware of the trademarks KPN and HET NET when it registered the disputed domain names.

As it has been established that the disputed domain names were registered in bad faith, the Panel finds that the requirements of article 2.1(c) of the Regulations have also been met.

7. Decision

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