

WIPO Arbitration and Mediation Center
Zaak-/rolnummer: DNL2016-00020
Datum: 17 juni 2016

1. The Parties

The Complainants are [Eiser 1] of Macerate, Italy, [Eiser 2] of Ascoli Piceno, Italy and [Eiser 3] of Montemonaco, Italy, represented by Ing. Claudio Baldi Srl, Italy.

The Respondent is Registration Private, Domains By Proxy, LLC of Scottsdale, Arizona, United States of America.

2. The Domain Name and Registrar

The disputed domain name <jeanpaulmyne.nl> is registered with SIDN through GoDaddy.com.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 2, 2016. On May 3, 2016, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On May 4, 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 May 11, 2016. In accordance with the Regulations, article 7.1, the due date for Response was May 31, 2016. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2016.

The Center appointed Alfred Meijboom as the panelist in this matter on June 7, 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.

The Respondent sent an e-mail to the Center with a brief response to the Complaint on June 10, 2016. The Center acknowledged receipt on the same date and informed the Respondent that the Panel shall determine the admissibility of any further submission in accordance with article 11.2 of the Regulations. The Complainants responded to the Respondent’s e-mail on June 10, 2016, and the Respondent sent an e-mail reply to the Center on June 13, 2016.

4. Factual Background

The Complainants are joint owners of cosmetics company [achternaam] S.A.S. [achternaam] & C., which is the holder of International trademark registration 1102229 for JEAN PAUL MYNE', which was registered on October 25, 2011 for, inter alia, cosmetics and nutritional supplements (the "Trademark").

The disputed domain name was first registered on November 22, 2012. The disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainants

The Complainants argue that the disputed domain name is identical to the Trademark and the first Complainant's domain name <jeanpaulmyne.com> which was registered on October 2, 2011, considering that the Top-Level Domain should be ignored.

The Complainants further argue that the Respondent has no rights or legitimate interests in the disputed domain name as the disputed domain name does not correspond to his family name or a trademark of the Respondent. Furthermore the Respondent is also not a licensee or an authorized agent of the Complainants or in any other way authorized to use the Trademark. The Complainants also allege that the Respondent has not provided any evidence of his use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute. The Respondent has been and is currently holding the disputed domain name passively, which non-use is insufficient to establish a legitimate interest in respect of a domain name.

Moreover, the Complainants argue that the disputed domain name was registered in bad faith as the first Complainant's company Dima Cosmetics SRL, which owns several JEAN PAUL MYNE' trademarks which were not used in these proceedings, had a customer Kappers Groothandel Apeldoorn B.V. as of 2013, which was never authorized to register the disputed domain name. According to the Complainants, the disputed domain name was registered on behalf of the owner of Kappers Groothandel Apeldoorn B.V. ("Mr. [achternaam]"). When the business relationship ended in 2016, Dima Cosmetics SRL asked Mr. [achternaam] for assignment of the disputed domain name, which he refused. In his email message of March 31, 2016, Mr. [achternaam] was only prepared to assign the disputed domain name in consideration of a huge compensation for a package of stock products and the disputed domain name. According to the Complainants it should further be noted that the lack of any active use of the disputed domain name by the Respondent to resolve to an active website without any active attempt to sell or to contact the Complainants does not as such prevent a finding of bad faith.

The Complainants request the Panel to order that the disputed domain name be transferred to the first Complainant.

B. Respondent

The Respondent did not timely reply to the Complainants' contentions.

6. Supplemental Filings

Apparently on behalf of the Respondent and ten days after the due date for the Response and three days after the notification of the appointment of the Panel, Mr. [achternaam] sent an email to the Center on June 10, 2016, claiming that he “[doesn't] know exactly the meaning of all the mails I receive from you but I just want to inform you that you are being used in a business dispute” and briefly elaborating about the alleged distributorship with Dima Cosmetics SRL which has ended and Dima Cosmetics SRL's refusal to pay for remaining stock and the disputed domain name. The Complainants replied to the Center on the same date, which was followed by an e-mail with attachments from Mr. [achternaam].

The Respondent's informal Response to the Complaint was submitted too late. The Regulations do not provide parties with a right to file supplemental filings if these were not requested by the Panel pursuant to article 11.1 of the Regulations. Article 11.2 of the Regulations provides that the panel in its sole discretion shall determine the admissibility of unsolicited submissions. Notwithstanding a panel's power to decide otherwise, it is well established that unsolicited submissions normally are admissible only in exceptional circumstances which made it impossible for a party which filed an unsolicited submission to file such submission before the deadline of the proceedings provided such exceptional circumstances are explained in the supplemental filing (e.g., Formula One Licensing B.V. v. Louis Theunisse, WIPO Case No. DNL2009-0033; BIC Graphic Europe S.A. and Société BIC v. Alpha Holding B.V., WIPO Case No. DNL2015-0059).

In this matter the Respondent filed its late informal Response without express or implied explanation of exceptional circumstances which would justify the late submission. The Panel therefore considers the informal Response and subsequent supplemental filings as inadmissible.

7. Discussion and Findings

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

a. the disputed domain name is identical or confusingly similar to:

a trademark, or trade name, protected under Dutch law in which the complainant has rights; or

II. 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

b. the respondent has no rights to or legitimate interests in the disputed domain name; and

c. the disputed 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 Trademark on the one hand, and the disputed domain name on the other hand (e.g., Roompot Recreatie Beheer B.V. v. Edoco LTD, WIPO Case No. DNL2008-0008).

The Trademark is an international registration, which designated the European Union, so that it is a trademark protected under Dutch law in which the Complainants have rights. Except the accent after the last letter of the Trademark, which the Panel understands to have the function of giving the last letter of the Trademark a “grave accent”, the disputed domain name incorporates the Trademark in its entirety. As the mentioned accent cannot be represented in a domain name, its omission does not change the finding of the disputed domain name being identical to the Trademark.

The Panel finds that the Complainants have satisfied the requirements of article 2.1(a) of the Regulations.

B. Rights or Legitimate Interests

Article 2.1(b) of the Regulations requires that the Complainants demonstrate that the Respondent has no rights to or legitimate interests in the disputed domain name. This condition is met if the Complainants make 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).

As the Complaint acknowledges that a business relationship between the first Complainant’s company and the Respondent, or person behind the Respondent, existed from 2013 until 2016, and the Complainants asked the Respondent to transfer the disputed domain name to the Complainants when the relationship ended, the Panel cannot establish if the Respondent had registered the disputed domain name without authorization of the Complainants. The possibility that the Respondent had a legitimate interest in connection with the disputed domain name during the term of the business relationship can therefore not be excluded.

However, if such legitimate interest existed, it has ended with the apparent termination of the business relationship and the Complainants asking the Respondent for transfer of the disputed domain name to the Complainants (e.g., Normalu SA v. Cover BV, WIPO Case No. DNL2011-0040; BEV.CON ApS v. TR-Group, WIPO Case No. DNL2011-0050; Viridian International Ltd. trading as Viridian Nutrition v. Provisan Nutrition, Patricia Catharina Maria IJsbrandij, WIPO Case No. DNL2015-0061). As furthermore there is no indication in the record that the Respondent is known under the disputed domain name or a similar name, the Panel finds that the Complainants have satisfied the requirements of article 2.1(b) of the Regulations.

C. Registered or Used in Bad Faith

It is well possible that the disputed domain name was registered with the Complainants’ explicit or implied consent in connection with the parties’ asserted business relationship;

the Complainants have not succeeded in establishing that the disputed domain name was registered in bad faith. However, article 2.1(c) of the Regulations requires evidence of registration or use of the disputed domain name.

The Respondent has not disputed the Complainants' allegation that the Respondent is only prepared to transfer the disputed domain name to the Complainants for valuable consideration in excess of the cost of registration. Consequently, on the record before the Panel it appears that the Respondent is holding the disputed domain name in connection with a terminated business relationship, failing an adequate explanation in the record from the Respondent, the Panel finds that this constitutes use of the disputed domain name in bad faith (e.g., MapsTell B.V. v. Jean Klare [concepten en ontwerpen], WIPO Case No. DNL2015-0048).

Therefore, the Complainants have also satisfied article 2.1(c) of the Regulations.

The Panel notes that its findings are based on the record before it to the extent admissible under the Regulations. In contrast to these expedited administrative proceedings, courts can offer parties a more extensive process for an exchange of facts and arguments over time. The Panel notes that, pursuant to article 21 of the Regulations, participation in an .nl case does not prevent either party from submitting the dispute to an independent court of competent jurisdiction. In this connection the Panel furthermore refers to article 20.1 concerning the implementation of the .nl decisions.

8. Decision

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

Alfred Meijboom

Panelist