

WIPO Arbitration and Mediation Center  
Zaak-/rolnummer: DNL2016-0019  
Datum: 21 september 2016

### **1. The Parties**

The Complainant is IBSA Institut Biochimique S.A. of Pambio-Noranco, Switzerland, internally represented.

The Respondent is [persoonsnaam] of Laren, the Netherlands.

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

The disputed domain name <ialuril.nl> is registered with SIDN through Heiper WEB (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 2, 2016. On May 2, 2016, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On May 3, 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 proceeding commenced on May 9, 2016. In accordance with the Regulations, article 7.1, the due date for Response was May 29, 2016. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 30, 2016.

The Complainant requested the suspension of the proceeding on June 8, 2016. At request of the Complainant, the proceedings were reinstated on September 5, 2016.

The Center appointed Gregor Vos as the panelist in this matter on September 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.

After the reinstatement of the proceeding, the Complainant and the Registrar, the latter apparently on behalf of the Respondent, sent several email communications regarding a possible transfer of the disputed domain name. On September 12, 2016, the Complainant communicated to the Center that it would not file "an additional suspension request".

#### **4. Factual Background**

On March 24, 2006, the Complainant applied for the trademark IALURIL (the “Trademark”) with the European Union Intellectual Property Office (“EUIPO”). On April 20, 2007, the Trademark was registered under Reg. No. 005008214 by the EUIPO. The Trademark was renewed on April 1, 2016. The Complainant uses the Trademark for a medicinal bladder product.

The Respondent registered the disputed domain name <ialuril.nl> (the “Domain Name”) on October 17, 2014. The Domain Name redirects users to the website “www.blaasproducten.nl” (“blaasproducten” translates to “bladder products” in English), which advertises for a medicinal bladder product named “Pentocyst”.

#### **5. Parties’ Contentions**

##### *A. Complainant*

The Complainant argues that the Domain Name is identical to the Trademark under article 2.1(a) of the Regulations. Thereby, in relation to article 2.1(b) of the Regulations, the Complainant submits that the Respondent was not authorized to use the Trademark. Ultimately, the Complainant contends that the Respondent’s product Pentocyst is a product that competes with the Complainant’s product marketed under the Trademark. The product marketed under the Trademark is genuinely used in many countries of the European Union and worldwide. Hence, the Complainant argues that the Domain Name has been registered or is being used in bad faith under article 2.1(c) of the Regulations.

##### *B. Respondent*

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

#### **6. Discussion and Findings**

Under article 2.1 of the Regulations, in order for a complainant to acquire a domain name, it must prove that three cumulative conditions are met:

- a. the domain name is identical or confusingly similar to a trademark or trade name, protected under Dutch law in which the complainant has rights; and
- b. the respondent has no rights or legitimate interests in respect of the domain name; and
- c. the domain name has been registered or is being used in bad faith.

Article 10.3 of the Regulations provides that in the event that a respondent fails to submit a response, the complaint shall be granted unless the panel considers it to be without basis in law or fact.

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

The requirements under article 2.1(a) under I of the Regulations is met, when a domain name is identical or confusingly similar to a trademark or trade name protected under Dutch law in which the complainant has rights.

The Complainant has provided evidence of ownership of the Trademark. The Trademark has been registered on April 20, 2007 and the Domain Name has been registered on October 17, 2014. Hence, the Trademark is an older right.

The Domain Name consists solely of "ialuril", which wholly incorporates the Trademark IALURIL. Therefore, the Trademark and the Domain Name are identical; it is generally accepted that the country code Top-Level Domain ".nl" does not affect the identity or confusing similarity test under the Regulations. See among others: Roompot Recreatie Beheer B.V. v. Edoco LTD, WIPO Case No. DNL2008-0008; Tesamen vzw v. [persoonsnaam], WIPO Case No. DNL2014-0020.

Considering the above, the Panel finds that the first condition under article 2.1(a) of the Regulations is met.

### *B. Rights or Legitimate Interests*

To meet the requirements of article 2.1(b) of the Regulations, a complainant has to prove a negative. As this is often considered impossible, the consensus panel view is that a complainant must make out a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a prima facie case is made, the burden of proof shifts to the respondent. The respondent must then prove that it in fact does have rights or legitimate interests in the disputed domain name. See among others: Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455.

In the present case, the Panel is of the opinion that the Complainant has indeed made its prima facie case of the lack of rights or legitimate interests of the Respondent in the Domain Name. The Complainant submits that it never authorized the Respondent to use the Trademark.

The Respondent did not respond to the Complainant's contentions and has not submitted any evidence to suggest rights or legitimate interests in the Domain Name. Based on the record before it, the Panel does not see an indication that any of the circumstances of article 3.1 of the Regulations are present.

The Panel concludes that the Respondent has no rights to or legitimate interests in the Domain Name and that the second condition under article 2.1(b) of the Regulations is met.

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

Article 3.2 of the Regulations lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name. Among these circumstances article 3.2(d) of the Regulations concerns the scenario where "the domain name has been or is being used for commercial gain, by attracting Internet users to a website of the registrant or other online location through the likelihood of confusion which may arise with the trademark [...] registered in the Netherlands as to, for example, the source, sponsorship, affiliation or endorsement of the website of the registrant or

other online location(s) or of products or services on the domain registrant's website or another online location".

The Panel notes that the Trademark was registered considerably earlier than the Domain Name and that "ialuril" is not a commonly used word. In fact, it is a coined term.

The Panel furthermore notes that the Domain Name redirects to a website where a medicinal bladder product from a competitor of the Complainant is offered for sale. As a result, Internet users seeking the Complainant's product will be redirected to the website under the Domain Name, where a product is offered that directly competes with the Complainant's product.

The Panel finds that the Respondent was or should have been aware of the Trademark when registering the Domain Name, and has used it for profit by redirecting (and misleading) Internet users to its website "www.blaasproducten.nl" through the likelihood of confusion which may arise with the Trademark. See among others: The Bear Stearns Companies Inc. v. [persoonsnaam], WIPO Case No. D2007-0593.

Considering the lack of the Respondent's reply and in view of the circumstances above, the Panel finds that the Respondent registered and used the Domain Name in bad faith. Therefore, the third condition under article 2.1(c) of the Regulations is met.

## **7. Decision**

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

Gregor Vos

Panelist