

WIPO Arbitration and Mediation Center
Zaak-/rolnummer: DNL2017-0037
Datum: 30 August 2017

1. The Parties

The Complainant is Agfa-Gevaert N.V. of Mortsel, Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

The Respondent is [Respondent] of Xinyu, China.

2. The Domain Name and Registrar

The disputed domain name <agfagraphics.nl> is registered with SIDN through 1API Gmbh.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2017. On the same date, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On July 3, 2017, SIDN transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 4, 2017 providing the registrant and contact information disclosed by SIDN, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 6, 2017.

The Center verified that 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 July 7, 2017. In accordance with the Regulations, article 7.1, the due date for Response was July 27, 2017. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2017.

The Center appointed Willem Hoorneman as the panelist in this matter on August 9, 2017. 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 active in the medical sector, as a developer of inter alia medical software and medical image devices. It has registered, inter alia, the following European Union Trademark registrations for its trademark AGFA (the “Trademarks”):

- AGFA, filed on January 20, 2010 and registered on July 5, 2010 with registration number 8820979; relating to goods in class 5;

- AGFA, filed on September 16, 2003 and registered on January 24, 2005 with registration number 3353463, relating inter alia to goods in class 10.

The Complainant also holds the domain name <agfagraphics.com> (registered on March 22, 2006) and uses the trade name Agfa Graphics (the "Trade Name").

The Domain Name was registered by the Respondent on February 25, 2014. Currently, the Domain Name resolves to a pay-per-click parking page offering the Domain Name for sale.

5. Parties' Contentions

A. Complainant

The Complainant is the owner of the Trademarks. The Domain Name is confusingly similar to the Trademarks, since it incorporates the trademark AGFA. The addition of the descriptive word "graphics" by the Respondent only adds to the risk of confusion given the activities of the Complainant. The public will draw the conclusion that the Domain Name originates from the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, as it has no trademark rights or licenses for AGFA and does not trade under the name "Agfa".

Because of the fact that the Domain Name is confusingly similar to the famous Trademarks and Trade Name, that predate the Domain Name's registration, the Complainant concludes that the Respondent must have been aware of the Trademarks and Trade Name. The fact that the Domain Name leads to a webpage indicating that the Domain Name is for sale and that the Respondent is concealing its identity in the public available Whois database, is further evidence that the Domain Name is registered and/or is being used in bad faith by the Respondent.

B. Respondent

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

6. Discussion and Findings

Pursuant to article 2.1 of the Regulations, the 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 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.

The Respondent may demonstrate such rights or legitimate interests on its part, inter alia, through the circumstances mentioned in article 3.1 of the Regulations as listed below.

The Complainant may provide evidence that the Domain Name has been registered or is being used in bad faith, inter alia, through the circumstances mentioned in article 3.2 of the Regulations as listed below.

As the Respondent has not filed any 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

Panel considers it to be without basis in law or in fact.

A. Identical or Confusingly Similar

It is established case law that the country code Top-Level Domain (“ccTLD”) “.nl” may be disregarded in assessing the similarity between the domain name on the one hand, and the relevant trademark on the other hand (see: Taylor Made Golf Company, Inc. v. Lotom Group S.A., WIPO Case No. DNL2010-0067; Roompot Recreatie Beheer B.V. v. Edoco LTD, WIPO Case No. DNL2008-0008).

The Domain Name is confusingly similar to the Complainant’s Trademarks, because the Domain Name incorporates the Trademark in its entirety. The Domain Name differs from the Trademarks only in that the term “agfa” in the Domain Name is followed by a descriptive term, namely “graphics”. The addition of such a descriptive term does not eliminate the confusing similarity with the Trademarks (see Seiko EPSON Corporation v. ANEM Computers / ANEM, WIPO Case No. DNL2010-0024).

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trademarks within the meaning of the Regulations. The Complainant has thus established the first element of article 2.1 of the Regulations.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, previous panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests in the domain name. Once such prima facie case is made, a respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied the second element of article 2.1 of the Regulations.

The Respondent may demonstrate such rights or legitimate interests on its part inter alia through the following circumstances listed in article 3.1 of the Regulations:

- a. before having any notice of the dispute, the [Respondent] made demonstrable preparations to use the Domain Name (or a name corresponding to the domain name) in connection with a bona fide offering of goods or services;
- b. the [Respondent] as an individual, business or other organization is commonly known by the Domain Name;
- c. the [Respondent] is making a legitimate noncommercial use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish or otherwise damage the relevant trademark, trade name, personal name, name of a Dutch public legal entity or name of an association or foundation located in the Netherlands.

The Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the Domain Name.

The Respondent has failed to address the Complainant's prima facie case, and the Panel sees no indication of the Respondent meeting any of the above mentioned circumstances or any other basis for a right to or legitimate interest in the Domain Name.

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

C. Registered or Used in Bad Faith

Article 3.2 of the Regulations provides that the following circumstances are deemed to be evidence that a respondent has registered and is using a domain name in bad faith:

- (a) the domain name has been registered or acquired primarily for the purpose of selling, renting or transferring it to the complainant or to the complainant's competitors for valuable consideration in excess of the cost of registration;
- (b) the domain name has been registered in order to prevent the complainant from using it;
- (c) the domain name has been registered primarily for the purpose of disrupting the complainant's activities;
- (d) 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, trade name, personal name, name of a Dutch public legal entity or name of an association or foundation 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 Trademarks significantly predate the date of the registration of the Domain Name by the Respondent. The Respondent is most likely to have known of the Complainant, its products, the AGFA trademarks and/or the mentioned <agfagraphics.com> domain name and the Trade Name prior to registering the Domain Name; indeed, except for the Top Level, the Domain Name is identical to the Complainant's domain name.

Furthermore, the Domain Name was registered and is used for a website containing a parking page trading off the Complainant's reputation. It appears that the Respondent has not conducted any legitimate business activity under a trademark or trade name corresponding to the Domain Name. Moreover, the Domain Name is explicitly offered for sale by the Respondent on the corresponding the website.

In the Panel's view, the Complainant has provided evidence of the circumstances listed in article 3.2(a) and (d) of the Regulations. These findings, together with the finding that the Respondent has no rights to or legitimate interests in the Domain Name, lead the Panel to the conclude that the Domain Name was registered and is being used by the Respondent 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, <agfagraphics.nl>, be transferred to the Complainant.

Willem Hoorneman

Panelist

Date: August 30, 2017