

WIPO Arbitration and Mediation Center**ADMINISTRATIVE PANEL DECISION****Jemella Group Limited v. [Verweerder]****Case No. DNL2017-0065****1. The Parties**

The Complainant is Jemella Group Limited of Leeds, United Kingdom of Great Britain and Northern Ireland (“United Kingdom”), represented by Womble Bond Dickinson (UK) LLP, United Kingdom.

The Respondent is [Verweerder] of Shanghai, China.

2. The Domain Name and Registrar

The disputed domain name <ghdhair.nl> is registered with SIDN through Enom Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2017. On November 10, 2017, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On November 13, 2017, SIDN transmitted by email to the Center its verification response disclosing the registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on November 14, 2017, providing the registrant and contact information disclosed by SIDN, and inviting Complainant to amend the Complaint. Complainant filed an amended Complaint on November 16, 2017. The Center verified that the Complaint and the amended Complaint satisfy 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 November 17, 2017. In accordance with the Regulations, article 7.1, the due date for Response was December 7, 2017. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 8, 2017.

The Center appointed Alfred Meijboom as the panelist in this matter on December 20, 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, with its group of companies, manufactures and distributes hair styling goods and related electrical and non-electrical products. The Complainant is the owner of several European Union trademarks, including European Union trademark GHD

(registration number 2860518), registered on April 21, 2004 for, *inter alia*, hair lotions, hair styling products, hair straightening products, hair gels, sprays and mousses, hair dyes, hair bleaching products, shampoo, hair dryers, hair combs and brushes, and hair cutting gowns (the “Trademark”).

The disputed domain name was registered by the Respondent on March 17, 2017 and resolves to a pay-per-click website (the “Website”).

5. Parties’ Contentions

A. Complainant

The Complainant claims that the disputed domain name is identical or confusingly similar to the Trademark which is protected under Dutch law. Apart from the “.nl” Top-Level Domain, the disputed domain name is identical to the domain name <ghdhair.com>, which is used by the Complainant group of companies, to operate the group’s website in a number of jurisdictions. According to the Complainant the element “hair” of the disputed domain name is the less dominant element and is entirely descriptive of the goods for which the Trademark was registered, so that the disputed domain name is identical and/or confusingly similar to the Trademark.

The Complainant contends that the Respondent uses the disputed domain name as a domain parking page, for which the usual convention is that it allows the Respondent to earn money whenever a visitor clicks on the advertising links present on the Website. Such advertisements thematically correspond to the disputed domain name as the Website currently contains links to various products such as GHD straighteners, GHD hair dryers, hair treatment shampoo and other hair styling/hair care products. Some of these links transfer the Internet user directly to the website under the Complainant group’s domain name <ghdhair.com>, but the Website also contains an option to buy the disputed domain name from the Respondent. According to the Complainant, the Website as such, rather than utilizing the disputed domain name for a *bona fide* business operation with a legitimate trading name, appears to seek to trade off of the reputation and image of the Trademark in order to make money through domain parking and click advertising. This exploitation is not considered to be a legitimate use of the disputed domain name. The Complainant contends that current use of the disputed domain name has the potential to cause detriment and dilution to the reputation and image of the Trademark, if this has not already been caused, which the Complainant group has built over the years. The Complainant is therefore of the opinion that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant further points out that the Website currently contains an option to purchase the disputed domain name from the Respondent, which suggests that the disputed domain name has been registered for the purpose of selling, renting or transferring it to the Complainant, or one of the Complainant's competitors, for valuable consideration in excess of the cost of registration. In this respect the Complainant submitted three emails by the Respondent under an alias, offering the transfer of the disputed domain name in return for payment. The Complainant alleges that it seems more than likely that the Respondent intended to illegitimately exploit the Trademark for the purpose of diverting significant Internet traffic to the disputed domain name in order to profit from click advertisements; and/or offering the disputed domain name for sale to the Complainant or its competitors at a price in excess of the cost of registration. Both of the aforementioned intentions are exploitative and illegitimate. For these reasons, the

Complainant submits that the disputed domain name has been registered and is being used in bad faith.

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 the disputed 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 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 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 (see, e.g., *Roompot Recreatie Beheer B.V. v. Edoco LTD*, [WIPO Case No. DNL2008-0008](#)).

The Panel finds that the disputed domain name is confusingly similar to the Trademark. The disputed domain name incorporates the Trademark in its entirety in addition to the descriptive word “hair”. This term is insufficient to differentiate the disputed domain name and the Trademark, as it merely identifies the subject matter of the goods for which the Trademark was registered.

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 the Complainant to demonstrate that the Respondent has no rights to or legitimate interests in the disputed domain name. This condition is met if the Complainant makes out a *prima facie* case that the Respondent has no such rights or legitimate interests and if 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 a *prima facie* case, showing that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services. This was not disputed by the Respondent. Further, there is no evidence that the Respondent was commonly known by the disputed domain name or a similar name.

C. Registered or Used in Bad Faith

Article 2.1(c) of the Regulations requires the Complainant to show that the disputed domain name was registered and/or is being used in bad faith.

Given that “ghd” is neither a dictionary word nor a common abbreviation, and therefore not an obvious choice, and the fact that the Complainant uses <ghdhair.com> as the Complainant group’s domain name which is identical to the disputed domain name, the Panel finds that the Respondent must have been aware of the Trademark when the Respondent registered the disputed domain name. This finding is further strengthened by the fact that the Complainant received emails offering the disputed domain name for sale, which undisputedly sent by the Respondent using an alias and obviously meant to sell the disputed domain name for valuable consideration in excess of the cost of registration. This constitutes evidence of bad faith in accordance with article 3.2(a) of the Regulations.

For these reasons the Panel finds that the requirement of 2.1(c) of the Regulations has 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 domain name <ghdhair.nl> be transferred to the Complainant.

Alfred Meijboom

Panelist

Date: December 21, 2017