

WIPO Arbitration and Mediation Center**ADMINISTRATIVE PANEL DECISION****Magazijn “De Bijenkorf” B.V. v. [Verweerder]****Case No. DNL2017-0071****1. The Parties**

Complainant is Magazijn “De Bijenkorf” B.V. of Amsterdam, Netherlands, represented by Novagraaf Nederland B.V., Netherlands.

Respondent is [Verweerder] of Tbilisi, Georgia.

2. The Domain Name and Registrar

The disputed domain name <wwwdebijenkorfcard.nl> (the “Domain Name”) is registered with SIDN through Gransy s.r.o. d/b/a/ subreg.cz.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2017. On the same day, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On December 18, 2017, SIDN transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on December 21, 2017. In accordance with the Regulations, article 7.1, the due date for Response was January 10, 2018. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 12, 2018.

The Center appointed Dinant T. L. Oosterbaan as the panelist in this matter on January 22, 2018. 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

Complainant is a chain of high-end department stores in the Netherlands and founded in 1870.

Complainant currently has 7 stores in the Netherlands and over 3,000 employees.

According to the evidence submitted by Complainant, Complainant holds several trademark registrations for DE BIJENKORF, including a Benelux trademark with registration number 0354206 and a registration date of September 27, 1978. In addition, Complainant is active under the website “www.debijenkorf.nl”.

The Domain Name, <wwwdebijenkorfcard.nl>, was registered by Respondent on May 3, 2016. The Domain Name resolves to a website displaying pay-per-click links to various websites, including multiple websites for credit cards.

5. Parties' Contentions

A. Complainant

Complainant submits that the Domain Name is substantially similar to Complainant's trademark DE BIJENKORF as it contains this trademark in its entirety. According to Complainant the element "www" is only a prefix and the addition "card" is merely descriptive and does nothing to differentiate the Domain Name from the DE BIJENKORF trademark. Complainant adds that it offers a credit card through "www.debijenkorf.nl/Card" and that the addition in the Domain Name of the element "card" only confirms the confusing similarity.

According to Complainant, in view of Complainant's trademark, Respondent has no rights to or legitimate interests in respect of the Domain Name. Internet users are directed to a website which is a (parking) page displaying pay-per-click links to other websites, including third-party websites for acquiring credit cards. Complainant submits that Respondent is not commonly known under the Domain Name, nor is Respondent affiliated with Complainant in any way.

Complainant submits that Respondent has registered and is using the Domain Name in bad faith. Complainant asserts that it is very well known in the Netherlands and moreover has customers from all over the world. It is not a coincidence that Respondent registered the Domain Name using Complainant's trademark.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Based on article 2.1 of the Regulations, a claim to transfer a 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 mentioned in 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.

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

A. Identical or Confusingly Similar

Pursuant to article 2.1(a) of the Regulations, it is established case law under the Regulations that Complainant must establish that the Domain Name is identical or confusingly similar to a trademark or trade name in which Complainant has rights.

Complainant has demonstrated that it is the owner of several Benelux trademark registrations for DE BIJENKORF. The Domain Name incorporates the entirety of the DE BIJENKORF trademark. The addition of the common, descriptive and non-distinctive elements “www” and “card” is insufficient to avoid a finding of confusing similarity. The top level domain “.nl” may be disregarded for purposes of article 2.1(a) of the Regulations.

The Panel finds that the Domain Name is confusingly similar to Complainant’s DE BIJENKORF trademark.

B. Rights or Legitimate Interests

In the Panel’s opinion, Complainant has made out a *prima facie* case that Respondent lacks rights to or legitimate interests in the Domain Name.

Based on the record, the Panel finds that Respondent is not commonly known by the Domain Name nor has acquired trademark or other rights corresponding to the Domain Name.

It appears that by using the Domain Name, Respondent diverts Internet users to a website which is a pay-per-click site in the Dutch and English languages featuring links to various third-party websites offering credit cards, which directly compete with the card offered by Complainant to its customers.

Such use of the Domain Name corresponding to Complainant’s trademark rights cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name.

Under these circumstances the Panel finds that Respondent has no rights to or legitimate interests in the Domain Name.

C. Registered or Used in Bad Faith

The Panel finds that the Domain Name has been registered and is being used in bad faith. The Benelux trademark DE BIJENKORF of Complainant was registered and used well before the registration of the Domain Name by Respondent. Considering also that the DE BIJENKORF trademark has been registered as a domain name in the “.nl” domain name space, and the fact that Complainant’s stores are well known in the Netherlands and attract customers worldwide, the Panel finds it highly likely that Respondent had Complainant’s trademark in mind when it registered the Domain Name for a website displaying pay-per-click links.

The Panel therefore finds that Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant’s DE BIJENKORF trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or services on its website or location, which constitutes registration and use in bad faith pursuant to article 3.2(d) of the Regulations.

While this is merely an additional consideration, the Panel also notes that Respondent has been found to have registered and/or used similar domain names in bad faith in several other cases, which clearly suggests a pattern of such conduct on the part of Respondent (see: *Cofares*, *Sociedad Cooperativa Farmacéutica Española c.*

[Verweerder], [WIPO Case No. DES2016-0031](#); *Raiffeisen Schweiz Genossenschaft v.*
[Verweerder], [WIPO Case No. DCH2016-0017](#); and *Lidl Stiftung & Co. KG v.*
[Verweerder], [WIPO Case No. DCH2016-0024](#)).

7. Decision

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

Dinant T.L. Oosterbaan
Panelist
Date: January 29, 2018