

WIPO Arbitration and Mediation Center
Case No.: DNL2020-0012
Date: 6 May 2020

1. The Parties

The Complainant is Google LLC, United States of America, represented by Brinkhof, the Netherlands.

The Respondent is Suneel Kumar, India.

2. The Domain Name and Registrar

The disputed domain name <gmailklantenservicenederland.nl> (the “Domain Name”) is registered with SIDN through PDR Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 26, 2020. On February 27, 2020, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On February 28, 2020, 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 March 5, 2020. In accordance with the Regulations, article 7.1, the due date for Response was March 25, 2020. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 1, 2020.

The Center appointed Willem J. H. Leppink as the panelist in this matter on April 22, 2020. 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 a global company, well-known for *inter alia* its GMAIL email service. The GMAIL email service boasts more than 1.5 billion active users worldwide and can be reached at *inter alia* “www.gmail.com” (the “Website”).

The Complainant owns numerous well-known trademark registrations worldwide for GMAIL, including:

- European Union trademark registration No. 004316841 GMAIL, registered on December 22, 2009;
 - Benelux trademark registration No. 0200850 GMAIL, registered on October 14, 2008.
- These trademark registrations are hereinafter collectively referred to as the “Trademark”.

The Domain Name was registered on September 12, 2019. The Domain Name currently resolves to a website that suggests to be a customer care service site for GMAIL customers.

5. Parties' Contentions

A. Complainant

Insofar as relevant, the Complainant contends the following.

The Domain Name is confusingly similar to the Trademark. The Domain Name incorporates the Trademark entirely and consists of the addition "klantenservicenederland" and ".nl". The addition "klantenservicenederland" translates to "customer services in the Netherlands", which is descriptive for the services that the Respondent purports to offer. The addition of ".nl" merely concerns the country code Top-Level Domain ("ccTLD") of the Netherlands.

The Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent is not commonly known under the Domain Name nor is the Respondent related to the Complainant's business or authorized by the Complainant to use its Trademark. There seems to be no legitimate noncommercial or fair use, also because the services offered by the Respondent are of a commercial nature. The Domain Name does not represent a *bona fide* offering of goods and services either. The website to which the Domain Name resolves, mentions an invalid telephone number that is also being used on similar (likely impersonated) customer care websites. The repeated use of the telephone number shows that there is a pattern of such conduct by the Respondent. This pattern consists of the registration of domain names that correspond to marks held by the Complainant and other well-known third parties.

The Domain Name was registered and is being used in bad faith. The Respondent takes unfair advantage of the Trademark and abuses the Trademark by using a domain name containing the highly distinctive and well-known Trademark. The Respondent intentionally attempts to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's Trademark as to the source and the endorsement of the Respondent's website and of the service offered on the Respondent's website. The Respondent has engaged in a pattern of registering domain names that correspond to well-known marks in the digital and tech industry, whereby such a pattern of conduct is expressly sanctioned by the Regulations.

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 must prove each of the following three elements:

- a. the Domain Name is identical or confusingly similar to:
 - I) 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 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 a respondent fails to submit a response, the complaint shall be granted unless the panel considers it to be without basis in law or in fact. The Panel thereby notes that this does not mean that the requested remedy should automatically be awarded. The Panel will have to determine whether the Complainant's case *prima facie* meets the requirements of article 2.1 of the Regulations.

A. Identical or Confusingly Similar

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

The Complainant has established that it has rights in the Trademark in, amongst others, the European Union and the Benelux.

The Domain Name incorporates the Trademark in its entirety. The addition “klantenservicenederland” (Dutch for “customer services Netherlands”) is entirely descriptive of the services which the Respondent purports to provide. This addition does not distinguish the Domain Name from the Trademark.

Furthermore, it is generally accepted under “.nl” case law that the ccTLD “.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 the Trademark.

The Complainant has established the first element of article 2.1 of the Regulations.

B. Rights or Legitimate Interests

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

Consistent with earlier decisions under the Regulations, the Complainant must *prima facie* demonstrate that the Respondent has no rights to or legitimate interests in the Domain Name. If the Complainant succeeds in making out this *prima facie* case, the burden of production shifts to the Respondent, who will then have to come forward with appropriate allegations or evidence demonstrating a right to or legitimate interests in the Domain Name (See *Auto 5 v. E. Shiripour*, WIPO Case No. DNL2008-0027).

The Respondent may demonstrate such rights or legitimate interests *inter alia* through any of the following circumstances based on 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; or
- b. the Respondent as an individual, business or other organization is commonly known by the Domain Name; or
- 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.

There is no evidence submitted by the Parties that the Respondent has any rights or legitimate interests in the Domain Name.

The Respondent did not demonstrate any use or demonstrable preparation to use the Domain Name in connection with a *bona fide* offering of goods or services. In fact, the Respondent uses the Domain Name to impersonate the Complainant by creating a website that intentionally creates confusion as to the source, sponsorship, affiliation or endorsement of such website. Therefore, the use of the Domain Name misleadingly creates an association with the Complainant for commercial gain.

The Respondent does not appear to be affiliated with the Complainant in any way. There is no evidence that the Respondent is commonly known as “GMAIL”. There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever been permitted in any way by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating either of these.

Consequently, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

The Complainant has thus fulfilled the second element of article 2.1 of the Regulations.

C. Registered or Used in Bad Faith

The Panel notes that the Trademark is well-known throughout the world. Furthermore, the Respondent registered the Domain Name in full knowledge of the Complainant's existence and rights, in order to create a misleading impression of affiliation with the Complainant.

The Panel finds that the evidence submitted by the Complainant that the Domain Name has been registered as part of an abusive pattern of domain name registrations by the Respondent, targeting consumers of various trademark owners, is further evidence of the Respondent's bad faith registration of the Domain Name. This is also supported by the facts of a previous case between the same parties: [WIPO Case No. DNL2019-0053 Google LLC v. Suneel Kumar](#).

Accordingly, the Panel finds that the Respondent has registered the Domain Name in bad faith.

Although for establishing the third element of the Regulations, registration in bad faith is sufficient, the Panel also considers that the Domain Name is being used in bad faith.

The evidence submitted by the Complainant shows that the Domain Name is being used in bad faith. This finding is strengthened by the fact that the Respondent on the website under the Domain Name is providing an invalid telephone number and by the fact that the Respondent appears to be engaged in a pattern of bad-conduct.

On this basis, the Panel finds that the Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of its website, which constitutes registration and use in bad faith pursuant to article 3.2(d) of the Regulations.

The Panel concludes that the Complainant has also established the third element of article 2.1 of the Regulations.

7. Decision

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

Willem J. H. Leppink

Panelist