

WIPO Arbitration and Mediation Center  
Case No.: DNL2020-0014  
Date: 11 July 2020

### **1. The Parties**

The Complainant is M. van der Wal Holding B.V., the Netherlands, represented by Inaday Merken BV, the Netherlands.

The Respondent is Omer Kilic, Den Automation Ltd., United Kingdom / Domains By Proxy, LLC, United States of America (“USA”).

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

The disputed domain name <densmarthome.nl> is registered with SIDN through GoDaddy.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 19, 2020. On March 19, 2020, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On March 20, 2020, SIDN transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint; on March 27, 2020, the Registrar in its turn transmitted by email to the Center further information.

The Center sent an email communication to the Complainant on March 31, 2020, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 1, 2020. The Center verified that the Complaint, together with 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 April 3, 2020. On April 22, 2020, the Center sent a request for further amendment of the Complaint to the Complainant, after SIDN brought information regarding the identity of the Respondent to the Center’s attention. The Complainant filed the further amended Complaint on April 23, 2020. In accordance with the Regulations, article 7.1, the due date for Response was April 23, 2020. On April 8, 2020, the Center received an email communication from a former employee of Den Automation Ltd. The Respondent itself did not submit any response. Accordingly, the Center notified the Respondent’s default on April 30, 2020. The Center appointed Gregor Vos as the panelist in this matter on May 28, 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.

On June 23, 2020, the Panel issued Administrative Panel Procedural Order No. 1, requesting the Complainant to provide evidence of the authorization to file the Complaint on behalf of the company DEN Smart Home B.V. (“Den Smart Home”) by June 30, 2020. The date for decision was provisionally extended to July 6, 2020. The Complainant submitted its evidence on June 25, 2020.

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

The Complainant is the sole shareholder and Board member of Den Smart Home. As confirmed by the submitted evidence, Den Smart Home has authorized the Complainant to file the Complaint with the Center.

Den Smart Home is active in the development and sales of (electric) locking systems for homes or buildings. In addition, Den Smart Home develops software which makes it possible to lock and unlock doors with a smartphone from any location.

The Complainant claims to have been active under the tradename DEN SMART HOME since 2018. On February 6, 2019, the Complainant established Den Smart Home and registered the tradename DEN SMART HOME at the Dutch chamber of commerce. On April 17, 2018, the Complainant registered the domain names <densmarthome.com> and <densmarthome.de>. In December 2018, the Complainant created a Facebook page for Den Smart Home. Furthermore, in January 2019, the Complainant attended one of the biggest technology tradeshows in the world, the CES (Consumer Electric Show, Las Vegas, California, USA), under the name DEN SMART HOME.

Based on this use of the tradename DEN SMART HOME since 2018, the Complainant claims to have tradename rights in the Netherlands. To document this use, the Complainant provided the following evidence:

- a copy of the Whois database for the domain name <densmarthome.com>; and
- a screenshot of the Facebook page of Den Smart Home, which shows that the page was created on December 10, 2018. This screenshot also shows the address of Den Smart Home in the Netherlands, a link to the website “www.densmarthome.com”, and an email address linked to this website, “[...]@densmarthome.com”. The screenshot also shows a short company profile; and
- a screenshot of Facebook posts of Den Smart Home regarding their attendance at the CES tradeshow, in January 2019.

The Respondent offers smart switches. The disputed domain name <densmarthome.nl> was registered on February 8, 2019.

The disputed domain name redirects to the domain name <densswitches.com>. The homepage of <densswitches.com> displays a notification regarding the acquisition of the company Den Automation Ltd by Den Switches Ltd as of February 18, 2020.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that the disputed domain name is identical to the Complainant's tradename DEN SMART HOME. Furthermore, the disputed domain name is identical to the domain name <densmarthome.com>, the domain name primarily used by the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name as:

- the Respondent registered the disputed domain name on February 8, 2019, almost ten months after the domain names <densmarthome.com> and <densmarthome.de> were registered by the Complainant;
- the Respondent is not commonly known by the disputed domain name. On the social media accounts Twitter, Facebook, and LinkedIn the Respondent refers to the domain name <getden.co.uk>;
- the Respondent offers smart switches that contain a British socket outlet. These type of outlets cannot be used in the Netherlands. Therefore, the Respondent has no legitimate interest in the disputed domain name with an “.nl” extension; and

- the disputed domain name does not resolve to an active website under the disputed domain name. Visitors are redirected to the domain name <denswitches.com>.

The Complainant further claims that the Respondent has registered the disputed domain name in bad faith. The Complainant started using the tradename DEN SMART HOME in 2018. Therefore, the Respondent should have been aware of the existence of the Complainant's earlier rights. The Respondent failed to conduct further research and had the intention to disrupt the Complainant's business.

The Respondent aims to attract potential visitors of the Website linked to the domain name <densmarthome.com> to its website "www.getden.co.uk" through the likelihood of confusion which may arise with the disputed domain name.

## ***B. Respondent***

The Respondent did not reply to the Complainant's contentions. On April 8, 2020, the Center received a brief email communication from Mr. Kilic, as a former employee of Den Automation Ltd., which did not substantively respond to the Complainant's contentions.

## **6. Discussion and Findings**

Based on article 2.1 of the Regulations, a request to transfer a domain name must meet three cumulative conditions:

(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 complainant undertakes public activities on a permanent basis; and

(b) 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.

Only if all three elements are fulfilled can the Panel grant the remedies requested by the Complainant.

Even though the Complaint has been filed under the Regulations and not under the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel will, in view of similarities between the respective policies, refer to UDRP precedent to the extent applicable.

The Respondent failed to come forward with allegations or evidence that contradict the Complainant's assertions. As a result, the Panel is directed to decide this administrative proceeding on the basis of the complaint only.

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

Article 2.1(a) of the Regulations requires two elements to be proven. A disputed domain name should be (i) identical or confusingly similar to a trademark or tradename (ii) in which a complainant has rights.

In the Netherlands, tradenames, unlike trademarks, do not originate from registration, but solely from use. A tradename is the name under which business is conducted (article 1 of the Dutch Trade Name Act). Once it has been properly used, the name is protected against third-party use of a similar more recent name that causes a risk of confusion (article 5 of the Dutch Trade Name Act).

The Panel finds that the evidence submitted by the Complainant shows use of the tradename DEN SMART HOME by Den Smart Home *inter alia* in the Netherlands. The Panel finds that, on balance, the Complainant has established that it has rights in the tradename DEN SMART HOME.

Comparison shows that the disputed domain name is identical to the tradename. It is generally accepted that the addition of the “.nl” Top-Level Domain (“TLD”) does not affect the identity or confusing similarity (see *inter alia*: *VAT Holdings v. Vat.com*, WIPO Case No. D2000-0607; *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. DNL2008-0008).

Consequently, the Panel finds that the disputed domain name and the tradename are identical in the sense of article 2.1(a) of the Regulations.

### **B. Rights or Legitimate Interests**

The Complainant bears the burden of showing that the Respondent has no rights or legitimate interests in the disputed domain name. If the Complainant succeeds in making a *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 or legitimate interest in the disputed domain name (*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455, and *Technische Unie B.V. en Otra Information Services v. Technology Services Ltd.*, WIPO Case No. DNL2008-0002).

Article 3.1 of the Regulation provides circumstances in which such rights or legitimate interests in the disputed domain name may be demonstrated. These circumstances include (a) use of the domain name in connection with a *bona fide* offering of goods or services; (b) being commonly known by the domain name; and, (c) making legitimate noncommercial or fair use of the domain name.

In the present case, it appears to the Panel that the Respondent does not hold any prior rights with respect to the disputed domain name, nor that it is commonly known by the disputed domain name.

The Respondent is using the disputed domain name to redirect visitors to the domain name <densswitches.com>. On its social media accounts, the Respondent refers to the website “www.getden.co.uk” instead of the disputed domain name. The Respondent offers smart switches that contain a British socket outlet. These type of outlets and their corresponding plugs are not used in the Netherlands. However, the chosen TLD (“.nl”) corresponds to the area of business activity of the Complainant.

The Panel finds that the Respondent does not hold any rights with respect to the disputed domain name and all evidence points to a lack of legitimate interests in the disputed domain name by the Respondent. Based on the record before it, the Panel finds that the Complainant’s un rebutted *prima facie* case is sufficiently established in the sense of article 2.1(b) of the Regulations.

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

Article 3.2(d) of the Regulations provides that a domain name is deemed to have been registered or to be used in bad faith if it is used for commercial gain or to attract Internet users to the website of the Registrant through the likelihood of confusion.

The disputed domain name is identical to the Complainant’s tradename and domain name <densmarthome.com>. The Respondent registered the disputed domain name on February 8, 2019, after the Complainant’s registration of the domain names <densmarthome.com> and <densmarthome.de>, the Complainant’s first presence on social media (Facebook), and the Complainant’s attendance of the important CES tradeshow. As both parties are active in areas of smart-home applications, the Panel

considers it likely that the Respondent was aware of the Complainant and its use of the tradename DEN SMART HOME when it registered the disputed domain name.

Given these circumstances, the Panel finds that the Respondent registered and has used the disputed domain name in order to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the trade name as to the source of its website or of products or services on it.

Consequently, the Panel holds that the Domain Name was registered and used in bad faith in the sense of article 2.1(c) 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 <densmarthome.nl> be transferred to the Complainant.

Gregor Vos  
Panelist