

WIPO Arbitration and Mediation Center
Case No.: DNL2020-0032
Date: 6 October 2020

1. The Parties

Complainant is Cloetta Holland B.V., the Netherlands, internally represented.

Respondent is Zenith Mining, China / Flores Sarah, the Netherlands.

2. The Domain Name and Registrar

The disputed domain name <werkenbijcloetta.nl> (the “Domain Name”) is registered with SIDN through AXC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 20, 2020. On July 20, 2020, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On July 21, 2020, 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 August 11, 2020, providing the registrant and contact information disclosed by SIDN, and inviting the Complainant to submit an amendment to the Complaint in this light. Complainant filed an amended Complaint on August 11, 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 Respondent of the Complaint, and the proceedings commenced on August 12, 2020. In accordance with the Regulations, article 7.1, the due date for Response was September 1, 2020. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 3, 2020.

The Center appointed Dinant T. L. Oosterbaan as the panelist in this matter on September 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

Complainant is an international confectionary company, with a Swedish parent company, registered in the Netherlands at the Trade Register of the Chamber of Commerce as Cloetta Holland B.V. Complainant and its predecessors have been active in the Netherlands for over a century.

According to the evidence submitted by Complainant, Complainant uses the trade name Cloetta Holland B.V. Its parent company owns multiple trademark registrations for CLOETTA, including the European Union Trademark CLOETTA with registration number 000244061, registration date March 10, 1999. In addition, the parent company of Complainant operates the website “www.cloetta.com”.

The Domain Name was registered on April 13, 2020.

Complainant alleges that at the time of filing of the Complaint, the Domain Name resolved to a website which invites the public to request a price quotation by providing name and email address.

5. Parties' Contentions

A. Complainant

Complainant submits that the Domain Name is confusingly similar to Complainant's trade name Cloetta Holland B.V. and to the trademark CLOETTA as "cloetta" is the distinctive part of the Domain Name. According to Complainant, the Domain Name is directed to Internet users in the Netherlands; given its country code Top-Level Domain ("ccTLD") ".nl", while Respondent Zenith Mining, appears to be located in China. Complainant asserts that it was holder of the Domain Name until early 2020. It concerned a "working at" (in Dutch: "werken bij") career page, intended to inform applicants and potential future employees about Complainant. Complainant's registration of the Domain Name was terminated without Complainant's knowledge, after its account had been hacked.

Complainant submits that Respondent has no rights or legitimate interests in the Domain Name. Complainant did not give any consent, express or implied, to Respondent to use its trademark or trade name in the Domain Name, nor for any other purpose. There is also no commercial connection or affiliation with Complainant. When Respondent uses the CLOETTA trademark or trade name in the Domain Name, an affiliation is implied which could mislead Internet users.

According to Complainant, Respondent through the Domain Name pretends to host a "working at" career page but Respondent appears to have no registered rights in terms similar to the Domain Name, nor is Respondent commonly known by the Domain Name, or making any legitimate noncommercial use of the Domain Name.

According to Complainant the Domain Name has been registered and is being used in bad faith. Complainant submits that at the time Respondent registered the Domain Name in 2020 the CLOETTA trademark and trade name had already been registered and widely used in connection with Complainant's activities.

Complainant asserts that Respondent is using the CLOETTA trademark and trade name in order to attract Internet users to its website. Respondent appears to be interested in obtaining (private) information in order to issue a price quotation.

Complainant adds that while the registrant information points to a Respondent in Amsterdam, the website related to the Domain Name furthermore refers to a name and address in China. Complainant submits that Respondent appears to provide misleading information in this regards.

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 based on 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

Complainant has established that it is the owner of the trade name Cloetta Holland B.V. and that through its parent company it has rights to the European Union trademark CLOETTA.

The Domain Name incorporates the term “cloetta” as its distinctive element, which is the main characteristic of the trade name and consists of the entirety of the CLOETTA trademark. Many decisions under the Regulations have found that a domain name is confusingly similar to a complainant’s trade name and trademark where the domain name incorporates the distinctive part or entirety of the trade name or the trademark. The addition of the descriptive words “werken bij” (in English: “working at”) in the Domain Name may thus be disregarded for this purpose. The ccTLD “.nl” may also be disregarded for purposes of article 2.1(a) of the Regulations, see *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. DNL2008-0008.

The Panel finds that the Domain Name is confusingly similar to Complainant’s trade name and trademark.

B. Rights or Legitimate Interests

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

Based on the undisputed submission of Complainant, Complainant’s former ownership of the registration ended in early 2020 due to a hack.

At the time of filing of the Complaint the Domain Name resolved to a website in English which appears aimed at collecting personal information and email addresses. This website is completely unrelated to the “working at” suggestion provided by the Domain Name.

In addition, there has never been any business relationship between Complainant and Respondent. There is also no indication that Respondent is commonly known by the Domain Name nor has Respondent acquired any relevant trademark or service mark rights.

The Panel does not consider such use a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name.

No Response to the Complaint was filed and Respondent has not made any effort to rebut Complainant’s *prima facie* case.

The Panel finds that Respondent has no rights 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.

Considering the distinctiveness of Complainant's trade name and trademark the Panel finds that Respondent knew or should have known of Complainant's rights.

Respondent has chosen to register as the Domain Name a term which includes the characteristic "Cloetta" part of the trade name and Complainant's entire trademark. In the circumstances of this case, the Panel finds that Respondent has registered and uses the Domain Name with the intention to attract, for commercial gain, Internet users to its website through likelihood of confusion which may arise with the trade name and trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or other online location or of a service on its website or location, which constitutes registration and use in bad faith.

In its conclusion of bad faith, the Panel also takes into account the contradictory and confusing information on Respondent's part in relation to its identity and location.

7. Decision

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

Dinant T. L. Oosterbaan
Panelist