

WIPO Arbitration and Mediation Center  
Case No.: DNL2020-0039  
Date: 16 October 2020

### **1. The Parties**

The Complainant is BV Intergroup Trading (IGT), the Netherlands, represented by Aaron Guile, United States of America.

The Respondent is “BV Intergroup Trading IGT”, the Netherlands (see section 6.C. below).

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

The disputed domain name <bvintergrouptrading.nl> (the “Disputed Domain Name”) is registered with SIDN through Registrar.eu.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2020. On August 17, 2020, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name. On August 18, 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. The Center sent an email communication to the Complainant on August 26, 2020, providing the registrant and contact information disclosed by SIDN, and inviting the Complainant to submit an amendment to the Complaint in this light. The Complainant filed an amended Complaint on August 26, 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 September 3, 2020. In accordance with the Regulations, article 7.1, the due date for Response was September 23, 2020. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 24, 2020.

The Center appointed Thijs van Aerde as the panelist in this matter on October 2, 2020. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Independence, as required to ensure compliance with the Regulations, article 9.2.

### **4. Factual Background**

The Complainant describes itself as a wholesale business, responsible for the intergroup sourcing of food and non-food items for the company’s worldwide affiliated organizations in over 40 countries. According to public registers, the Complainant was incorporated on January 1, 1973, by initiative of national Spar supermarket chains. The Complainant operates under the name BV Intergroup Trading (the “Trade Name”) since December 28, 1973. According to its statutes the objectives of the Complainant are *inter alia* the purchase and sale of goods, and the fulfilment of commercial agent in favor of undertakings of the Spar organization.

The Disputed Domain Name was registered on January 24, 2020. At the time of the Decision, the Disputed Domain Name does not resolve to an active website. However, the evidence to the Complaint contains screenshots showing that the Disputed Domain Name formerly resolved to a website offering for sale luxury cosmetics.

The Complaint also includes evidence that the Disputed Domain Name was used for an email account in furtherance of a fraud scheme. Between June 29 and July 20, 2020, various emails were sent using the Disputed Domain Name as an email account and purporting to be from the Complainant. Following an abuse report, the Registrar suspended the Disputed Domain Name.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that the Disputed Domain Name is identical to the Trade Name.

The Complainant asserts that the Respondent is using the Disputed Domain Name to mislead consumers to a fictitious business and impersonates the Complainant through fraudulent emails, therefore lacking any legitimate rights or interests in the Disputed Domain Name.

The Complainant argues that this fraudulent use must be considered bad faith under 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.

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

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

The Complainant contends that it has rights in the Trade Name. The Panel notes that in accordance with the Dutch Trade Name Act, rights to a trade name are only conferred through actual use, as the mere registration of a trade name with the Dutch Chamber of Commerce is insufficient. The Panel finds that the evidence submitted by the Complainant concerning its actual use of the Trade Name is limited. Section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”)<sup>1</sup> permits the panel to undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.

Further to the Panel’s factual research and considering the fraudulent use of the Disputed Domain Name, the Panel on balance accepts that the Complainant has a right to the Trade Name. It is noted that were it not for the powers afforded to the Panel by section 4.8 of the WIPO Overview 3.0, the evidence provided by the Complainant may have been insufficient.

The Panel finds that the Disputed Domain Name is identical to the Trade Name, thus the Complainant has established the first element of article 2.1 of the Regulations.

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

Article 3.1 of the Regulations provides non-exclusive examples of instances in which the Respondent may establish rights or legitimate interests in respect of the Disputed Domain Name, by demonstrating any of the following:

- a. before having any notice of the dispute, the [Respondent] made demonstrable preparations to use the Disputed Domain Name (or a name corresponding to the Disputed Domain Name) in connection with a *bona fide* offering of goods or services;
- b. the [Respondent] as an individual, business or other organization is commonly known by the Disputed Domain Name;
- c. the [Respondent] is making a legitimate noncommercial use of the Disputed 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.

Initially, the onus of establishing the Respondent’s lack of rights or legitimate interests in the Disputed Domain Name falls on the Complainant. It is thereby well established under the Regulations that inherent difficulties arise for the Complainant in proving a negative, especially as relevant information concerning (lack of) rights or legitimate interests is in the possession of the respondent. Consequently, it is generally sufficient for a complainant to raise a *prima facie* case against the respondent under this element, shifting the evidential burden to the respondent to rebut that *prima facie* case. See, *Auto 5 v. E. Shiripour*, WIPO Case No. DNL2008-0027, and WIPO Overview 3.0, section 2.1.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the Trade Name. The Panel finds on the record that there is a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and thus it is on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has any rights in respect of the Disputed Domain Name or that it has used the same in connection with a *bona fide* offering of goods or services. To the contrary, evidence shows that the Respondent has used the

Disputed Domain Name to impersonate the Complainant and to set up a fraudulent email scam.

Accordingly, the Panel concludes that the Complainant prevails on the second element of the Regulations.

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

The Complainant asserts that the Disputed Domain Name is being used to defraud Internet users into believing that they are dealing with the Complainant. In this regard, the Complainant has provided evidence in the form of an email thread between the Respondent and a customer. The evidence shows that the Respondent introduced itself to the customer as the “sales representative” of the Complainant, offering for sale various luxury beauty products in bulk. The emails were sent using an email address configured with the Disputed Domain Name. Following payment to the Respondent, the customer was requested to pay an additional EUR 12,000 “refundable caution fee as a guarantee for the shipment”. The customer, having become suspicious, contacted the Complainant and reported the Disputed Domain Name to the Registrar and (local) authorities.

Evidence furthermore shows that prior to its suspension by the Registrar, the Disputed Domain Name previously resolved to a website offering for sale cosmetics, whilst using the Complainant’s Trade Name, official VAT number, and close to identical commercial address. The Panel further notes that the Respondent registered the Disputed Domain Name using the Complainant’s name, falsely suggesting that the Complainant is the registrant of the Disputed Domain Name. It is thus apparent that the Respondent had full knowledge of the Complainant and registered the Disputed Domain Name with the intent to impersonate the Complainant.

This conduct and consequently the use of the Disputed Domain Name cannot amount to anything but registration and use in bad faith. The Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users by creating a likelihood of confusion with the Complainant’s Trade Name as to the source, sponsorship, affiliation, or endorsement of the website at the Disputed Domain Name, as established by article 3.2(d) of the Regulations.

The Panel therefore finds that the Complainant has established the third element of article 2.1 of the Regulations.

## **7. Decision**

For the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the disputed domain name <bvintergrouptrading.nl> be transferred to the Complainant.

Thijs van Aerde  
Panelist

<sup>1</sup> In view of the fact that the Regulations are to an extent based on the UDRP, it is well established that cases decided under both the Regulations and the UDRP are relevant to this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, [WIPO Case No. DNL2008-0050](#)).