

WIPO Arbitration and Mediation Center
Case No.: DNL2020-0050
Date: 25 January 2021

1. The Parties

The Complainant is Fruit Of The Loom, Inc., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Rock Dreams Supplies B.V., the Netherlands.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2020. On November 11, 2020, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On November 12, 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 November 27, 2020. In accordance with the Regulations, article 7.1, the due date for Response was December 17, 2020. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 18, 2020.

The Center appointed Wolter Wefers Bettink as the panelist in this matter on January 11, 2021. 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 underwear and casualwear business, incorporated in 1851, operating in 44 countries. In 2019 it had listed earnings of USD 2 billion from its operations worldwide and was listed that year (and previous years) in the top 100 Global Brand Ranking at No. 49.

The Complainant is the owner of trademark registrations across various jurisdictions, including:

- Benelux word mark FRUIT OF THE LOOM, registered on November 1, 1973, under No. 0318919;
- European Union word mark FRUIT OF THE LOOM registered on April 17, 2000, under No. 000731737;
- United States word mark FRUIT OF THE LOOM registered on October 30, 1923, under No. 0174998;
- International word mark FRUIT OF THE LOOM, registered on January 29, 2019, under

No. 1453624;
hereafter together referred to as the "Trade Marks".

The Domain Name was registered on October 18, 2001. The Domain Name resolves to a placeholder stating that it currently "does not have" (is not connected to) a website.

The Complainant sent cease-and-desist letters to the Respondent on July 31, August 10, August 19, and October 14, 2020, requesting the Respondent to cease trading under the Trade Marks (see paragraph 5.A. below) and transfer the Domain Name to the Complainant, to which the Respondent did not respond.

5. Parties' Contentions

A. Complainant

According to the Complainant, the Domain Name is clearly confusingly similar to the Trade Marks, since the Domain Name is composed of the terms "Fruit Of The Loom", which together are identical to the Trade Marks, while the country code Top-Level Domain ("ccTLD") ".nl" may be disregarded in assessing the similarity between the Trade Marks and the Domain Name.

The Complainant submits that it has not given the Respondent permission to use the Trade Marks in any manner and that the Respondent is not sponsored by or affiliated with the Complainant in any way.

Furthermore, the Complainant states, the Respondent is neither an authorized dealer of the Complainant's products or services nor has it had a business relationship with the Complainant, so that the Respondent cannot claim any actual or contemplated *bona fide* or legitimate use of the Domain Name. The Complainant also contends that the Respondent is not commonly known by the Domain Name. The Complainant points out that the Respondent is using the Domain Name to redirect Internet users to a website that resolves to an effectively blank page and lacks content. Based on the above, the Complainant states that the Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant submits that it has marketed and sold its goods and services using the Trade Marks since 1871, long therefore before the Respondent's registration of the Domain Name. According to the Complainant, the Respondent has demonstrated a knowledge of and familiarity with the Trade Marks, *inter alia* by displaying on the website linked to its other domain name, <rdppshop.nl>, the Complainant's logo and by selling the Complainant's goods on this website. The Complainant submits that in assessing bad faith registration and/or use, it should be taken into account that the Domain Name is confusingly similar to the Trade Marks and that the Domain Name currently resolves to a website that has no substantial content and is not being used. According to the Complainant, the Domain Name can only be taken as intending to cause confusion among Internet users as to the source of the Domain Name, and thus, the Domain Name must be considered as having been registered and used in bad faith, with no good faith use possible. In addition, the Complainant points out that the Respondent ignored the Complainant's attempts to resolve this dispute outside of this administrative proceeding as it failed to respond to its cease-and-desist letters. Finally, the Complainant submits that, noting that the Respondent knew of and targeted the Trade Marks, the Respondent should be found to have registered and used the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

At the outset, the Panel notes that the Complainant has initiated this case 19 years after the Domain Name was registered. This may raise the question – which is not addressed in the Complaint – why the Complainant waited to initiate proceedings and, in particular, whether filing the Complaint after so many years have lapsed since the Domain Name was registered, has any effect on the Complainant’s standing under the Regulations or the validity of the Complaint. This is not the case. The Regulations do not have a statute of limitations or any other mechanism which would require a complainant to file a complaint within a certain period of time after the domain name in question has been registered. Whether the timing of filing of the Complaint has an effect on the merits of this case will be discussed under C below.

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates the Trade Marks in their entirety (see also [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) (“WIPO Overview 3.0”),¹section 1.7). The ccTLD “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0, section 1.11](#)).

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

Under article 3.1 of the Regulations, the Complainant has to make out a *prima facie* case that the Respondent does not have rights to or legitimate interests in the Domain Name, upon which the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the Domain Name ([WIPO Overview 3.0, section 2.1](#)). The Panel finds that, since the Domain Name incorporates the Trade Marks in their entirety, it carries a high risk of implied affiliation ([WIPO Overview 3.0, section 2.5.1](#)). Furthermore, based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant’s consent to use the Trade Marks in the Domain Name and that it is not an authorized retailer or distributor of the Complainant’s products or otherwise authorized to use the Trade Marks. The Respondent has not provided evidence, nor is there any indication in the record of this case that the Respondent is commonly known by the Domain Name (article 3.1(b) of the Regulations). Furthermore, in view of the fact that the Domain Name leads to a placeholder stating that it “does not have a website”, there is no evidence that the Respondent is making a legitimate noncommercial or fair use of the Domain Name.

The Panel concludes that the Complainant has met the second requirement of article 2.1(b) of the Regulations.

C. Registered or Used in Bad Faith

In accordance with article 3.2 of the Regulations, the Complainant has to show that the Domain Name was registered or is being used in bad faith.

The Complainant has initiated this case 19 years after the Respondent’s registration of the Domain Name. As noted, this may raise the question what, if any, effect this has on

the question of bad faith registration and/or use of the Domain Name. In particular, the question is whether the Respondent at the time of registration of the Domain Name was or should have been aware of the Trade Marks, and whether it is clear that the aim of the registration was to take advantage of the confusing similarity between the Domain Name and the Trade Marks. In this respect, based on the information and the unrefuted evidence provided by the Complainant, the Panel notes that (i) the Complainant has been using the Trade Marks since 1871; (ii) the FRUITOFTHELOOM word mark was registered in the Benelux, where the Respondent resides, in 1973, therefore 28 years before the Domain Name was registered of; (iii) the Domain Name incorporates the Trade Marks in their entirety, and “fruitoftheloom” does not appear to be a term of which the Respondent was likely to spontaneously or accidentally think; (iv) a simple search on the Internet at the time of registration would have alerted the Respondent to the Trade Marks and the Complainant.

Therefore, on the basis of the above circumstances the Panel concludes that at the time of registration of the Domain Name, the Respondent should have been aware of the Trade Marks and that the Respondent registered the Domain Name in bad faith.

For completeness' sake, the following circumstances – in combination with the above – point at bad faith use of the Domain Name: (i) the Respondent maintains another domain name linked to a website displaying the Trade Marks and the Complainant's logo and selling the Complainant's goods, showing that he has knowledge of the Trade Marks and is knowingly infringing the Trade Marks by maintaining the registration of the Domain Name; (ii) the Respondent did not react to four cease-and-desist letters that the Complainant sent prior to initiating these proceedings; (iii) the Respondent did not file a Response; and (iv) the Domain Name appears not to have been used over the years and such a passive holding of the Domain Name in this case constitutes bad faith, taking into consideration the overall context of the Respondent's behavior (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 and *Novartis AG v. YXP Li*, WIPO Case No. DNL2020-0037).

7. Decision

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

Wolter Wefers Bettink
Panelist

¹In view of the fact that the Regulations are to an extent based on the Uniform Domain Name Dispute Resolution Policy (“UDRP”), it is well established that both cases decided under the Regulations and cases decided under the UDRP, and therefore WIPO Overview 3.0, are relevant to this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. DNL2008-0050).