

WIPO Arbitration and Mediation Center
Case No.: DNL2021-0033
Date: 7 August 2021

1. The Parties

The Complainant is Poclain Marketing & Services, Luxembourg, represented by Cabinet Beau de Lomenie, France.

The Respondent is [X], the Netherlands.

2. The Domain Name and Registrar

The disputed domain name <poclain.nl> (the “Disputed Domain Name”) is registered with SIDN through Hostingking B.V.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2021. On the same day, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name. On June 16, 2021, 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 June 17, 2021, providing the registrant and contact information disclosed by SIDN, and requesting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 18, 2021. The Center verified that the Complaint as amended 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 June 18, 2021. In accordance with the Regulations, article 7.1, the due date for Response was July 8, 2021. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 9, 2021.

The Center appointed Thijs van Aerde as the panelist in this matter on July 24, 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.

On August 2, 2021, the Center received an informal email from the Respondent in English, which the Center has brought to the Panel’s attention.

4. Factual Background

The Complainant is part of the Poclain group of companies, which the Complainant describes as a leading manufacturer of hydrostatic transmissions, including motors, pumps, valves, electronics, and hydraulic power units. The Complainant markets its products on a global scale, engaging over 2,500 employees worldwide. The Complainant holds various domain name registrations, including its principal domain name <poclain.com>.

The Complainant holds various trademark registrations, including:

- POCLAIN, European Union trademark, registered on March 23, 2005, registration no. 003544021; and
- POCLAIN, Benelux trademark, registered on March 11, 2013, registration no. 929845;

hereinafter jointly referred to as the “Trademarks”.

SIDN informed the Center that the Disputed Domain Name was registered by the Respondent on December 20, 2014. At the time of filing of this administrative proceeding, the Disputed Domain Name resolved to a website depicting a list of hyperlinked product parts. Upon accessing the hyperlinks, Internet users were redirected to a product page at the webshop “co.uk. yourpartnumber.com”. After the Respondent’s brief communication of August 2, 2021, the website at the Disputed Domain Name redirected to “www.europa-bouwmachines.nl”, at which used excavators are being offered for sale.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

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

The Complainant states that it has not authorized, licensed, or otherwise permitted the Respondent to use the Trademarks or register a domain name incorporating the Trademarks. Further, the Respondent is not commonly known by the Disputed Domain Name. Consequently, the Respondent lacks any rights to or legitimate interests in the Disputed Domain Name.

The Complainant argues that the Respondent’s registration and use of the Disputed Domain Name should be considered in bad faith under the Regulations.

B. Respondent

The Respondent’s brief email of August 2, 2021, to the Center states that the Respondent is using “poclain” to sell used equipment, which, according to the Respondent, is different from the Complainant’s business of producing hydraulic motors.

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.

A. Identical or Confusingly Similar

The evidence submitted to the Panel shows that the Complainant has rights to the Trademarks. The Disputed Domain Name incorporates the Trademarks in their entirety. The Panel therefore finds the Disputed Domain Name to be identical to the Trademarks.

The country code Top-Level Domain (“ccTLD”) “.nl” may be disregarded when assessing the similarity between the Disputed Domain Name on the one hand, and the Trademarks on the other hand (see, *Roompot Recreatie Beheer B.V. v. Edoco LTD*, [WIPO Case No. DNL2008-0008](#)).

Therefore, the Complainant has met the first element, as set out in article 2.1(a) of the Regulations.

B. Rights or Legitimate Interests

Article 3.1 of the Regulations provides non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in respect of a domain name, by demonstrating any of the following:

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

The Respondent is not affiliated with the Complainant in any way. The Complainant contends that it has not authorized, licensed, or permitted the Respondent to use the Trademarks or register a domain name incorporating the term “poclaim”, as coined by the Complainant. There is also no indication in the case file that the Respondent is commonly known by the Disputed Domain Name.

The website at the Disputed Domain Name does not actually itself offer the product parts for sale. Until at least July 27, 2021, the website at the Disputed Domain Name depicted a list of product part numbers which redirected Internet users to a third-party website offering for sale product parts under the Trademarks. Following the Respondent’s email of August 2, 2021, the Disputed Domain Name was changed to redirect to a website offering for sale used excavators.

Previous panels have found that the use of domain names identical to the complainant’s trademark carries a high risk of implied affiliation, see section 2.5.1 of the [WIPO Overview 3.0](#). This risk is further increased by the Respondent’s failure to disclose its lack of a relationship with the Complainant, as the trademark holder.

The Respondent’s informal email communication, which merely refers to a change of use of the Disputed Domain Name, fails to rebut the *prima facie* case established by the Complainant. The Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that the second condition of article 2.1(b) of the Regulations has been fulfilled.

C. Registered or Used in Bad Faith

Article 3.2 of the Regulations furnishes a non-exhaustive list of circumstances establishing that a domain name has been registered or is being used in bad faith, including under (d) that the domain name “has been or is being used for commercial gain, by attracting Internet users to a website of the registrant or other online location through the likelihood of confusion which may arise with the trademark [...] as to, for example, the source, sponsorship, affiliation or endorsement of the website of the registrant or other online location(s) or of products or services on the domain registrant’s website or another online location.”

The Panel finds that this scenario applies in the present case. As noted, the Trademarks consist of a coined term with no descriptive meaning. The Complainant has been marketing its products at its principal domain name <poclain.com>, which has been registered since 1999. Based on the record and the absence of any evidence to the contrary, the Panel can only conclude that the Respondent intended to adopt an identical domain name using the “.nl” ccTLD to confuse and mislead Internet users looking for the Complainant’s website in the Netherlands.

Internet users looking for the Complainant’s products are likely to believe, when being redirected upon accessing the hyperlinks, that the website displaying a product page at the webshop “co.uk. yourpartnumber.com”, is in some way connected or affiliated with the Complainant. The Respondent’s use of the Disputed Domain Name to divert Internet users for commercial gain must be deemed bad faith within the meaning of the Regulations. This conclusion is further strengthened by the Respondent’s action to change the use of the Disputed Domain Name in the course of the present case.

The Panel concludes that the Respondent registered and uses the Disputed Domain Name in bad faith and that the Complainant prevails on the third element as set out in 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 Disputed Domain Name <poclain.nl> be transferred to the Complainant.

Thijs van Aerde
Panelist