

ADMINISTRATIVE PANEL DECISION

Monsanto Technology LLC v. Adam Ba
Case No. D2023-2044

1. The Parties

The Complainant is Monsanto Technology LLC, United States of America ("United States"), represented by BPM Legal, Germany.

The Respondent is Adam Ba, Belgium.

2. The Domain Name and Registrar

The disputed domain name <monsantoholland.net> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 8, 2023. On May 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 2023, the Registrar 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 (Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 16, 2023, 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 May 22, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 21, 2023.

The Center appointed Warwick Smith as the sole panelist in this matter on June 28, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of

Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, now fully owned by the corporation Bayer AG, is a well-known agricultural and biotechnology corporation, with its principal place of business in St. Louis, United States. It was founded in 1901, and its products are sold in many countries around the world. One of its best-known products is the herbicide “Roundup”, which it developed in the 1970s and the Complainant has become a major producer of genetically engineered crops.

The Complainant is the owner of the trademark MONSANTO in numerous jurisdictions around the world. It is not necessary to refer to all of them. It is enough for the purposes of this decision to record that the Complainant is the proprietor of the word mark MONSANTO in the European Union, where the Respondent appears to reside. The Complainant registered that mark in the European Union on August 18, 2011, under registration number 009798471. The registration covers herbicides and similar goods in International Class 5.

A related company within the Monsanto group, Monsanto Holland BV (“Monsanto Holland”), based in the Netherlands, supplies “Monsanto” branded products across the whole of Europe. The Netherlands Chamber of Commerce Business Register states that the business activities of Monsanto Holland include “Wholesale of seeds and legumes”, and “seed processing for propagation”, among others.

The disputed domain name was registered on May 3, 2023. It has resolved to a website (“the Respondent’s website”) which appears to be the website of Monsanto Holland. A screenshot of the “Who we are” section of the Respondent’s website taken on May 6, 2023, and produced by the Complainant, displays the name “Monsanto Holland BV” prominently at the top of the screenshot. The text on the Respondent’s website includes the following statements:

“Cultivating for a better future

Monsanto Holland is a commercial vegetable seed company based in the Netherlands.

We specialize in tomatoes, cucumbers, melons, watermelons, onions, carrots, and many more” (page 1).

“Monsanto Holland has been launched in 2014 to get a fresh group aimed towards helping the supply of many brands as a way to fortify the continuing motivation and ambition to eventually turn into a top company from Middle East and European markets. Monsanto Holland joins about three skilled Dutch brand names [there followed the names of three seed suppliers]” (page 3).

The Complainant says that the Respondent’s website is in no way associated with the Complainant, and is not authorized by it.

According to the Complaint, the Complainant, its subsidiary Monsanto Holland BV, and its customers have been the victims of a series of frauds involving 5 separate domain names resolving to websites that were almost identical to the Respondent’s website. A customer lost EUR 18,000 as a result of one such fraud. The Complainant has obtained 5 favorable administrative decisions under the Policy on the domain names used in these fraudulent schemes, including three decisions in WIPO cases.¹

¹ *Monsanto Technology, LLC v. BV intergroup trading*, WIPO Case No. [DNL2021-0022](#), *MonsantoTechnology, LLC v Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Leon Manders*, WIPO Case No. [D2021-1345](#), and *Monsanto Technology LLC v Leon Manders*, WIPO Case No. [DNL2022-0014](#).

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademark MONSANTO, in which it has rights.

It says that it has never licensed or otherwise permitted the Respondent to use its MONSANTO mark, or to register or use a domain name consisting of or including the expression "Monsanto", and that there is no evidence that the Respondent, or any business operated by the Respondent, has ever been commonly known by the disputed domain name. It contends that the Respondent's use of the disputed domain name has not been in connection with any *bona fide* offering of goods or services, and has not been a legitimate noncommercial or fair use, without intent for commercial gain. The Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. It contends that the MONSANTO mark is highly distinctive, well-known, and solely connected with the Complainant. It is therefore inconceivable that the Respondent could have registered the disputed domain name without being aware of the Complainant and its MONSANTO mark. The Respondent has since used the disputed domain name in connection with a scam website (the Respondent's website), targeting the Complainant and its subsidiary Monsanto Holland. That use of the disputed domain name is deemed to be bad faith use under paragraph 4(b)(iv) of the Policy: the Respondent has used the disputed domain name to attract Internet users to the Respondent's website, for likely commercial gain, by creating confusion with the Complainant's MONSANTO mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website (or of products or services offered on the Respondent's website).

Alternatively, the fact that the Respondent registered a domain name that includes the Complainant's trademark and is so obviously connected with the Complainant and its products, is sufficient on its own to support a finding of bad faith use of the disputed domain name. The very use of such a domain name by someone with no connection with the Complainant's products is suggestive of opportunistic bad faith.

Further in the alternative, the Complainant contends that the Respondent's registration and use of the disputed domain name constitute bad faith registration and use under paragraphs 4(b)(ii) of the Policy because the Respondent's use of the disputed domain name has been calculated to disrupt the Complainant's business (the use being capable of reducing the number of visitors to the Complainant's website), and/or because the registration constitutes an abusive threat hanging over the Complainant's head.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a Complainant is required to establish each of the following:

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Identical or Confusingly Similar

The Complainant has proved this part of the Amended Complaint.

The Complainant is the registered proprietor of the mark MONSANTO in the European Union. That registration is sufficient to establish rights in that mark for the purposes of paragraph 4(a)(i) of the Policy. The question under this part of the Policy is whether the disputed domain name is confusingly similar to the Complainant's MONSANTO mark.

The disputed domain name includes the Complainant's MONSANTO mark without alteration, and that mark is followed by the geographical term "Holland".

The consensus view of UDRP panels on the issue of confusing similarity where a complainant's mark is incorporated within a disputed domain name, is described as follows in The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, third edition (["WIPO Overview 3.0"](#)):²

"Where the relevant trade make is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

In this case, the MONSANTO mark is clearly recognizable within the disputed domain name. The mark appears at the beginning of the disputed domain name, and it is followed by the name of a country (Holland). The confusing similarity between the disputed domain name and the Complainant's MONSANTO mark is clear.

For completeness, the Panel notes that generic Top Level Domains ("gTLDs") such as ".net" are not normally taken into account in the comparison that is required by paragraph 4(a)(i) of the Policy. The gTLD is a technical requirement of registration, and is not normally considered to have legal significance in applying paragraph 4(a)(i).³

Rights or Legitimate Interests

Paragraph 4(c) of the Policy set out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a domain name for the purposes of paragraph 4(a)(ii) of the Policy. The circumstances are:

- (i) Before any notice to [the respondent] of the dispute, use by [the respondent] of, or 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; or
- (ii) Where [the respondent] (as an individual business or other organization) [has] been commonly known by the disputed domain name, even if [the respondent has] acquired no trade mark or service mark rights; or
- (iii) Where [the respondent is] making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly direct consumers or to tarnish the trade mark or service mark at issue.

[WIPO Overview 3.0](#) states the following on the burden of proof under paragraph 4(a)(ii) of the Policy:

"While the overall burden of proof in UDRP proceedings is on the Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the [often

² [WIPO Overview 3.0](#) at section 1.8.

³ [WIPO Overview 3.0](#), section 1.11.1.

impossible] task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

In this case, the Respondent has elected not to respond to the Complaint, and the issue is whether the Complainant has produced sufficient *prima facie* case that the burden of production should shift to the Respondent. If the Complainant’s evidence does meet the *prima facie* case standard, the Respondent’s failure to file a Response means that the Complainant must succeed on this part of the Amended Complaint.

The Panel is satisfied that the Complainant has provided sufficient *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

First, the disputed domain name is confusingly similar to the Complainant’s MONSANTO mark, and the Respondent has not licensed or otherwise permitted the Respondent to use any of its trademarks, or to apply for or use any domain name incorporating the MONSANTO mark. Furthermore, there is nothing to suggest that the Respondent might have a right or legitimate interest in the disputed domain name under any of the subparagraphs of paragraph 4(c)(ii) of the Policy.

The Panel accepts the Complainant’s submission that using the disputed domain name in connection with a website that is clearly designed to create the false impression that the website is owned by or associated with the Complainant, could never be a use in connection with a *bona fide* offering of goods or services (or the making of demonstrable preparations for such use). There is therefore nothing to suggest that the Respondent might have a right or legitimate interest in the disputed domain name under paragraph 4(c)(i) of the Policy. Similarly, there is nothing to suggest that the Respondent is commonly known by the disputed domain name (paragraph 4(c)(ii) of the Policy), or that the Respondent has been making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain (paragraph 4(c)(iii) of the Policy).

Those matters in combination are sufficient to establish a *prima facie* case under paragraph 4(a)(ii) of the Policy. In the absence of any Response, the Complainant has made out its case under paragraph 4(a)(ii) of the Policy.

Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, the following circumstances, without limitation, are deemed (if found by the Panel to be present) to be evidence of the registration and use of a domain name in bad faith:

- (i) Circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder’s documented out-of-pocket costs directly related to the domain name; or
- (ii) The holder has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
- (iii) The holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder’s website or other online location, by creating a likelihood of confusion with

the complainant's mark as to the source, sponsorship, affiliation or endorsement of the holder's website or location or of a product or service on the holder's website or location.

The Complainant has also sufficiently proved this part of the Amended Complaint.

The Panel is in no doubt that the Respondent was aware of the Complainant's MONSANTO mark when he registered the disputed domain name. The Panel accepts the Complainant's submission that that mark is very well known around the world, and the mark has been reproduced exactly in the disputed domain name and on the Respondent's website.

The name Monsanto Holland is prominently shown on the Respondent's website, and the Respondent's website is said to be operated by a "commercial vegetable seed company". The fact that that description appears to fit the commercial activities of Monsanto Holland would have reinforced the impression many Internet users would have gained from the use of the name "Monsanto" in the disputed domain name, that the Respondent's website must be owned or endorsed by, or affiliated in some way with, the Monsanto companies, including the Complainant.

In the absence of any Response, those matters lead the Panel to conclude that the disputed domain name was registered to enable the Respondent to effectively impersonate the Complainant and/or its related Dutch company, by creating confusion with the Complainant's MONSANTO mark. The fact that seed products are offered for sale on the Respondent's website make it clear that that the Respondent has done that for commercial gain of some sort.⁴

Those circumstances fall squarely within the category of bad faith registration and use described at paragraph 4(b)(iv) of the Policy – by using the disputed domain name, the Respondent has attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's MONSANTO mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or of the products offered for sale on it.

That is enough to decide the Amended Complaint in the Complainant's favor.

The Complainant having made out its case on all three of the elements of paragraph 4(a) of the Policy, there will be an order transferring the disputed domain name to the Complainant.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <monsantoholland.net>, be transferred to the Complainant.

/Warwick Smith/

Warwick Smith

Sole Panelist

Date: July 10, 2023

⁴ The commercial gain may not have been expected to come from genuine sales of the advertised goods – it appears from the poor quality of the Respondent's website generally, including much of the English used on it, that it may not be the website of a genuine seed supplier. But the Respondent's website contained spaces for site visitors to "Get Estimates" by completing a WhatsApp message, so he clearly intended to obtain orders for the sale of the advertised seed products. That is enough to demonstrate that commercial gain was intended.