

ADMINISTRATIVE PANEL DECISION

Monsanto Technology, LLC v. Bernstein stein
Case No. D2023-2554

1. The Parties

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

The Respondent is Bernstein stein, Belgium.

2. The Domain Name and Registrar

The disputed domain name <monsantohollandbv.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2023. On June 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 14, 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 June 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 June 17, 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 June 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 18, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on July 21, 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 is an American agrochemical and agricultural biotechnology corporation founded in 1901. In 2018, it was acquired by Bayer AG as part of its crop science division. The Complainant developed Roundup, a glyphosatebased herbicide, in the 1970s, and became a major producer of genetically engineered crops.

The Complainant is owner of the trademark MONSANTO in numerous countries worldwide, including European Union trademark registration No. 009798471 registered on August 18, 2011.

The Complainant has a subsidiary in the Netherlands, namely Monsanto Holland B.V., which supplies not only the Netherlands but the whole of Europe.

The disputed domain name was registered on June 6, 2023, and resolved to a website pretending to be owned or controlled by the Complainant's subsidiary Monsanto Holland B.V. At the time of this decision the disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name fully incorporates the well-known Complainant's trademark and is confusingly similar to such mark. The specific Top-Level Domain ("TLD") is generally not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between the Complainant's trademark and the disputed domain name. The confusing similarity is given where a trademark is recognizable as such within the domain name. In the present case, the Internet user will clearly recognize the Complainant's well-known trademark. The additional terms "holland" as geographical term and "bv" as abbreviation of "Besloten vennootschap met beperkte aansprakelijkheid" (Dutch limited liability company) are merely descriptive and do not eliminate the similarity between the Complainant's trademark and the disputed domain name. It is even enhancing the possibility of confusion as it refers to a country where the subsidiary of the Complainant is located.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant's trademark is well known and obviously connected with the Complainant and its products. The Complainant's trademark is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the Complainant's trademark. These circumstances themselves are sufficient to constitute a *prima facie* showing by the Complainant of absence of rights or legitimate interests in the disputed domain name on the part of the Respondent. There is no evidence of the Respondent's use 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. The Respondent is using the disputed domain name in connection with a scam website. There is also no evidence which suggests that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name or is commonly known by the disputed domain name or the name "monsantohollandby".

The disputed domain name was registered and is being used in bad faith.

The Complainant's trademark is highly distinctive, well known, and solely connected with the Complainant. It is therefore inconceivable that the Respondent registered the disputed domain name unaware of the Complainant and trademark. The Respondent is using the disputed domain name in connection with a scam website deliberately targeting the Complainant and its subsidiary Monsanto Holland B.V. The Respondent was perfectly aware of the Complainant and its trademark when registering the disputed domain name. The Respondent has used the disputed domain name to attract Internet users and divert Internet traffic to its scam website for the likely purpose of achieving commercial gain, through the likelihood of confusion which may arise with the Complainant's trademark. The Respondent's registration of the disputed domain name prevents the Complainant from reflecting its trademarks in a corresponding domain name and the Respondent has engaged in a pattern of such conduct. The fact that the Respondent registered a domain name which includes a trademark that is obviously connected with the Complainant and its products also supports the finding of bad faith as the very use of such domain name by someone with no connection with the products suggests opportunistic bad faith. The Respondent's use of the disputed domain name is qualified to disrupt the Complainant's business and that it is capable of reducing the number of visitors to the Complainant's website, may adversely affect the Complainant's business and therefore constitutes bad faith. The registration of the disputed domain name by the Respondent constitutes an abusive threat hanging over the head of the Complainant, which also supports a finding of bad faith

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"), the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards the gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark 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. The Panel finds that the addition of the terms "Holland" and "bv" to the disputed domain name does not prevent finding it confusingly similar to the Complainant's trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence do not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The disputed domain name used to resolve Internet users to a website designed in a way to make the Internet users believe that they actually accessed a website owned or controlled by the Complainant, by impersonating the Complainant's Netherlands-based subsidiary. Past UDRP panels confirmed that such actions prove registrant has no rights or legitimate interests in a disputed domain name (see *Daniel C. Marino, Jr. v. Video Images Productions, et al.*, WIPO Case No. [D2000-0598](#), *Houghton Mifflin Co. v. Weatherman, Inc.*, WIPO Case No. [D2001-0211](#)).

Noting the risk of implied affiliation between the disputed domain name and the confusingly similar well-known trademark of the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not have the effect of being somehow connected to the Complainant (see, e.g., *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

Considering the above, the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.2.2 of the [WIPO Overview 3.0](#), further factors including the nature of the domain name, the chosen TLD, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark. In the present case, the Respondent shortly after registration of the disputed domain name incorporating the Complainant's trademark placed a website pretending to be the Complainant's Netherlands-based subsidiary. The Panel finds that the nature of the disputed domain name and its use confirms the Respondent knew or should have known of the Complainant's prior trademark rights, which confirms the bad faith.

According to section 3.1.4 of the [WIPO Overview 3.0](#), the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in the United States and internationally. Thus, the Panel finds that the disputed domain name confusingly similar to the Complainant's trademark was registered in bad faith.

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location. In this case, the disputed domain name was resolving to a website falsely pretended to be owned or controlled by the Complainant to intentionally attract Internet users by creating likelihood of confusion with the Complainant's trademark as to the source of the website. The Panel finds the above confirms the disputed domain name was registered and used in bad faith.

Although at the time of this decision the disputed domain name resolves to inactive webpage, its previous bad faith use and lack of explanation of possible good faith use from the Respondent makes any good faith use of the disputed domain name implausible. Thus, the current passive holding of the disputed domain name does not prevent a finding of bad faith (see section 3.3 of the [WIPO Overview 3.0](#)).

The Respondent ignored its possibility to comment on the contrary and provide any good explanations to prove its good faith while registering and using the disputed domain name.

Considering the above, the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under paragraph 4(a)(iii) of the Policy.

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 <monsantohollandbv.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: July 31, 2023