

ADMINISTRATIVE PANEL DECISION

Akzo Nobel N.V. v. David Ostad

Case No. D2023-3574

1. The Parties

The Complainant is Akzo Nobel N.V., Netherlands (Kingdom of the), represented by Heleen Geerlings-Reens, Netherlands (Kingdom of the).

The Respondent is David Ostad, India.

2. The Domain Name and Registrar

The disputed domain name <akzonobel-oil-woodcoatings.com> (the “Disputed Domain Name”) registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2023. On August 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 28, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details / disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Unknown, Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 22, 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 amendment to the Complaint on September 25, 2023.

The Center verified that the Complaint together with the amendment to the 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 September 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 1, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on November 6, 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, Akzo Nobel N.V., is a global paints and coatings company based in the Netherlands (Kingdom of the).

The Complainant is the holder of various registered trademarks, including the following:

- AKZONOBEL, international word trademark registered on June 25, 2010, with registration number 1064677 in classes 1, 2, 3, 5, 7, 9, 16, 17, 19, 30, 37, 40, 41, and 42.

The Complainant is the holder of several domain names including:

- <akzonobel.com>

The Disputed Domain Name was registered on July 17, 2023. The Panel observes that the Disputed Domain Name currently resolves to a web site with placeholder “lorem ipsum” text. The web site displays a “buy now” button, which refers to a webpage offering web design services.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be identical to trademarks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent had no fair intention when registering the Disputed Domain Name.

Finally, the Complainant considers that the Disputed Domain Name was registered and is being used in bad faith. The Complainant claims that the Respondent intentionally attempts to attract for commercial gain, Internet users to the Respondent's web site 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 Respondent's web site or location or of a product or service on the Respondent's web site or location.

B. Respondent

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

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed he must prove, within the meaning of paragraph 4(a) of the Policy, that:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

(iii) The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's AKZONOBEL trademark has been registered and used in various countries in connection to the Complainant's paints and coatings business.

The Disputed Domain Name incorporates the Complainant's AKZONOBEL trademark in its entirety, simply adding the terms "oil" and "woodcoatings". 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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is well established that generic Top-Level-Domains ("gTLDs"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "David Ostad". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). As mentioned above, the Disputed Domain Name incorporates the Complainant's AKZONOBEL trademark in its entirety and

merely adds the descriptive terms “oil” and “woodcoatings”. Both terms can be obviously linked to the Complainant as the Complainant is active in the paint and coating business. Therefore, the Panel finds that the Disputed Domain Name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

In the present case, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its trademark rights when it registered the Disputed Domain Name. As mentioned above, the Disputed Domain Name incorporates the Complainant’s distinctive trademark and company name in its entirety and combines it with terms directly referring to the Complainant’s paint and coating business. The Complainant’s mark predates the registration of the Disputed Domain Name by more than 13 years. In the Panel’s view, the Respondent’s awareness of the Complainant’s trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

Among the factors that are considered evidence of registration and use of a domain name in bad faith is the circumstance where, by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the web site or location or of a product or service on the web site or location (see paragraph 4(b) of the Policy). In the case at hand, the Panel finds that the Disputed Domain Name must have been registered and has been used to take advantage of its significance as a trademark owned by the Complainant. Through use of the Complainant’s trademark, the Respondent has been trying to direct traffic to commercial web design services for commercial gain.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element 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, <akzonobel-oil-woodcoatings.com>, be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: November 20, 2023