

ADMINISTRATIVE PANEL DECISION

Spanish Original Brands, S.L. v. Anri Emmanuel Palomique Altea, Industex Limited

Case No. D2023-5153

1. The Parties

The Complainant is Spanish Original Brands, S.L., Spain, represented by NLO Shieldmark B. V., Netherlands (Kingdom of the).

The Respondent is Anri Emmanuel Palomique Altea, Industex Limited, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 11, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 14, 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 the same day.

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 December 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2024. The Respondent sent email

communications to the Center on November 15, and December 21, 2023. Accordingly, the Center notified the parties of commencement of panel appointment process.

The Center appointed Nick J. Gardner as the sole panelist in this matter on January 18, 2024. 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 Complaint provides very little information about the Complainant other than details of its portfolio of trademarks. It is the owner of a number of registered trademarks for the term LOIS, most of which are in stylised form, often accompanied by an image of bull. See for example International registration 1108866 registered on August 19, 2011. These trademarks are referred to as the “LOIS trademark” in this decision.

A typical example of the LOIS trademark is as follows:



The Disputed Domain Name was registered on June 19, 2023. It resolves to a website in Dutch which offers a range of clothing for sale (the “Respondent’s Website”). See further the discussion below.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that the Respondent uses the symbol ® against the term LOIS on Google, when it has no registered trademarks, and the Respondent’s website shows an address in Hong Kong, China, a French telephone number but the Whois records shows an address in Iceland. It also says the Iceland address has been identified in a United States Government report as associated with malware delivery. It also exhibits Trustpilot reviews from purchasers who have used the Respondent’s Website and are dissatisfied with what was provided (see further below). It concludes that “The above leads to the conclusion that the Registrant is operating a fraudulent website while using the Complainant’s registered trademarks to intentionally attract attention to their website and to fall for their scam. Notwithstanding the fraudulent actions, the registration of this domain name also prevents the Complainant from registering and using the domain in its own name”.

B. Respondent

No formal response has been filed. In an email to the Center dated December 15, 2023, the Respondent stated as follows:

“We understand the situation,

First of all we want to say that in any case we were trying to imitate the LOIS brand.[the Panel infers the word “not” has been inadvertently omitted here]

If you check our products you'll see that we do not copy, imitate or use any logo or similar designs to the LOIS brand.

We do not have any unkind intentions with selling our products, LOIS is a very common female name in the Netherlands and that's why we named our store like that.

Please kindly suggest what you would do in our place. Renaming the brand would be ok? Thank you".

The Panel will exercise its discretion to treat this email as the Response.

6. Discussion and Findings

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

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

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

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

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has rights in the LOIS trademark. That trademark is in most if not all cases a device mark. Similarity between a domain name and a device mark which includes words or letters is a readily accepted principle where the words or letters comprise a prominent part of the trademark in question – see for example *EFG Bank European Financial Group SA v. Jacob Foundation*, WIPO Case No. [D2000-0036](#), and *Sweeps Vacuum & Repair Centre, Inc. v Nett Corp.*, WIPO Case No. [D2001-0031](#).

The Panel finds the mark is recognizable within the Disputed Domain Name. Although the addition of other terms (here "Amsterdam") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

The Panel does not find it necessary to address this issue given its findings on bad faith (below)

C. Registered and Used in Bad Faith

The Panel is not persuaded that the evidence in this case supports a finding that the Disputed Domain Name has been registered and used in bad faith. The Respondent says it uses the term "Lois" because it is a common name. It is true that "Lois" is a common name - Wikipedia lists over 30 famous women who have

the first name “Lois”. The Respondent uses that name in combination with the geographical identifier “amsterdam” for a website clearly targeted at the Dutch market (it is in Dutch). It seems to the Panel that may well simply be the Respondent’s marketing strategy which is not intended to take advantage of the Complainant or its LOIS trademark. The Panel is unable to infer that the Respondent chose to use the word “Lois” because of its association with the Complainant as there is no evidence at all before the Panel as to why the Complainant believes the Respondent knew or should have known of the Complainant or what it does. The general thrust of the Complaint suggests it is a manufacturer of clothing (the Complainant states that the goods for which the trademarks are registered relate mainly to clothing, but also more types of products as well as wholesale and retail services related to these products, and refers to Annex III to the Complaint which contains a number of trademark certificates), but no details are provided as to how or where it sells that clothing, whether it has any retail outlets, how large its business is, what advertising and promotion it undertakes, whether it is famous or indeed anything else about its activities or where it conducts them. The Panel simply knows it has a portfolio of LOIS trademarks.

So far as the Respondent’s Website is concerned it does not seem to the Panel that it is obviously seeking to impersonate the Complainant. It does not use the stylised form of the term “Lois” that appears in the LOIS trademark, nor does it use the bull device that appears in a number of the registrations for the LOIS trademark (see example above of the Complainant’s usage and see below for more details of the Respondent’s usage). It provides contact details of a company in Hong Kong, China and a French telephone number as per the information disclosed by the Registrar. It is not suggested by the Complainant that these details are false. There is nothing wrong per se with a Hong Kong, China company producing a Dutch language website aimed at the Dutch market and the fact of a French telephone number being used is not itself improper. Overall it may be seeking to give an impression it is a Dutch or European business, but it does not seem to the Panel that it is seeking to give the impression that it is a website operated by or with the permission of the Complainant.

So far as the specific factors identified by the Complainant are concerned the position is as follows. It is true that in some (but not all) cases the Respondent appears to use the ® symbol alongside the term LOIS. This may be improper (assuming the Respondent has no trademark registration for the term) but the Panel is not convinced it shows the Respondent is specifically seeking to target or take advantage of the Complainant as opposed to simply promote itself overenthusiastically. The Panel also notes the Respondent generally displays the term LOIS in stylised form as follows:

The logo consists of the word "LOIS" in a large, serif font. The letter "I" has a small dot above it, resembling an umlaut. Below "LOIS" is the word "AMSTERDAM" in a smaller, all-caps, sans-serif font.

This seems to the Panel markedly different from the way the LOIS trademark is typically laid out by the Complainant (see example above). Why for example would the Respondent include an umlaut over the letter “I” if it was seeking to target the Complainant or its trademark?

The Trustpilot reviews which the Complainant has exhibited appear to show that in general the Respondent takes a long time to supply goods, which come from China and the goods when and if received are poor quality. Not one of the reviews however contains any reference to the Complainant or any suggestion that the term “Lois” was understood by the customer as relating to the Complainant – they are simply reviews by dissatisfied customers who in several cases assumed that they were dealing with a Dutch company. These reviews may well show that the Respondent is a supplier of goods of dubious quality and engaged in what might be described as sharp practice, but they do not in the Panel’s opinion show any connection with the Complainant and do not in the Panel’s view establish the type of bad faith required by the Policy.

The malware report that the Complainant relies on relates to the Icelandic address which is associated with the Whois service for the Disputed Domain Name. This is simply a privacy service address which is no doubt used by numerous different domain name registrants. There is nothing to show this malware has anything to do with the Respondent.

In short the Respondent may well be marketing products of dubious quality and deliberately giving at least the initial inaccurate impression to casual visitors to the Respondent's Website that it is a Dutch company. However apparently accurate details as to who the Respondent is do appear on the Respondent's Website. The Respondent is not, so far as the Panel can see, doing anything to suggest a connection with the Complainant, or with the Complainant's trademark or products.

Accordingly the Panel concludes there is insufficient evidence to establish bad faith on the part of the Respondent and the Complainant has failed to discharge its burden of proof and has failed to establish that the third condition of paragraph 4(a) of the Policy has been fulfilled.

The Panel makes no findings of any kind as to whether or not the Respondent's activities infringe any trademark rights the Complainant has. That is a matter for a court of appropriate jurisdiction.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: January 31, 2024