

ADMINISTRATIVE PANEL DECISION

Mermet S.A.S. v. Didier Mermet
Case No. D2024-0151

1. The Parties

The Complainant is Mermet S.A.S., France, represented by Windt Le Grand Leeuwenburgh B.V., Netherlands (Kingdom of the).

The Respondent is Didier Mermet, France, represented by Selarl AXE AVOCATS, France.

2. The Domain Name and Registrar

The disputed domain name <mermet.com> is registered with Online SAS (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 15, 2024. On January 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 15, 2024, 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.

On January 23, 2024, the Center informed the parties in French and English, that the language of the registration agreement for the disputed domain name is French. On February 1, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent objected to the Complainant’s request.

The Center verified that 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 in both English and French, and the proceedings commenced on February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. The Response was filed with the Center on February 23, 2024.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on March 6, 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 Complainant is a French company created in 1951, which is specialized in the designing and manufacturing of hi-tech fabrics to provide visual and thermal comfort to occupants of various buildings (including residential buildings, offices, and other buildings). The Complainant was founded by Henri Mermet and joined the Hunter Douglas group of companies in 2005.

For the purpose of its activities, the Complainant is the owner of several domain names incorporating the MERMET sign, such as <mermet-industries.com> and <sunscreen-mermet.com>, registered in 1998 and 2004.

The Complainant is also the owner of several trademarks including the European Union Trademark MERMET, registration No. 005647912, registered on December 14, 2007, for products and services in classes 17, 20, 24, and 27 (the “MERMET Trademark”).

The disputed domain name was registered by the Respondent, a natural person located in France whose last name is Mermet, on February 20, 1998.

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.

First, the Complainant contends that the disputed domain name is identical to the MERMET Trademark since it consists solely of the MERMET Trademark.

Then, the Complainant stands that the Respondent has no rights or legitimate interests in respect of the disputed domain name, given that the Respondent is not making any use of the disputed domain name since its registration in 1998. The Complainant underlines that the Respondent has registered at least eight domain names with the term “mermet”, while not having an active website on any of these domain names and, that the Respondent is offering for sale these domain names, including the disputed domain name, to the Complainant, for an excessive amount of money of EUR 150,000.

Finally, the Complainant submits that the disputed domain name was registered and is being used in bad faith, considering that the Respondent is not making any use of the disputed domain name since its registration. Moreover, the Complainant underlines that the MERMET Trademark has a strong reputation and is widely known. Finally, the Complainant highlights that the Respondent is offering the disputed domain name for an excessive amount of money, which is an obvious intent to abuse and monetize the Complainant's commercial need to own the disputed domain name identical to its brand, which is now not possible due to the Respondent's passive holding.

B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

First, the Respondent submits that there is no confusing similarity between the disputed domain name and the Complainant's trademark, which is subsequent to the disputed domain name. The Respondent contends that the disputed domain name is identical to his family name "Mermet" and that the disputed domain name has been in use since 1998 and is an active website dedicated to genealogical research on the "Mermet" name, allowing Internet users to search for persons named "Mermet" throughout the world. The Respondent adds that the Complainant has chosen to register domain names describing its activities such as <mermet-industries.com> and <sunscreen-mermet.com>, registered in 1998 and 2004.

The Respondent also stands that he has rights and legitimate interests in respect of the disputed domain name which is identical to his family name. The Respondent argues that the disputed domain name has actively been used since its creation. The Respondent adds that it has registered many domain names containing the term "Mermet" in order to offer to the Internet users dedicated email addresses that correspond to their last name. The Respondent also highlights that he is not specialized in the Complainant's business and that the Complainant has been working with its own domain names for years, and that the Respondent is commonly known by the disputed domain name. Finally, the Respondent explains that he fixed the selling price of its domain names, including the disputed domain name at EUR 150,000 considering the longstanding use of them, the meaning of them and the large investments made by the Respondent since their creation.

Lastly, the Respondent submits that the disputed domain name has not been registered nor is being used in bad faith. On the contrary, the Respondent considers that the Complainant only attempted to buy the disputed domain name inexpensively. Therefore, the Respondent asks for a finding of Reverse Domain Name Hijacking ("RDNH").

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Panel shall issue a decision granting the remedies requested by the Complainant in the event that the Complainant proves the following three elements:

- (i) The domain name is identical or confusingly similar to a trademark in which the complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

A. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is French. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Respondent may be considered familiar with the English language due to the fact that his personal profile page on LinkedIn is in English and that the Complainant on the other hand is part of a group of companies where the primary language is English and where the responsible agents within the company only speak English, also vis-à-vis its external counsel. Therefore, the Complainant argues that he will be unduly disadvantaged by having to conduct the proceeding in French.

The Complainant also stands that it filed another complaint in English against the Respondent regarding the domain name <mermet.eu> in the ADR proceeding *Mermet S.A.S. v. Didier Mermet*, WIPO Case No. [DEUL2023-0007](#). In this proceeding, whose facts are identical, it was decided that the language of the proceeding would be English.

The Respondent requested that the language of the proceeding be French claiming that his knowledge of English is not sufficient to enable him to defend himself properly and that the Complainant has no valid argument for proceeding in English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Panel highlights that regarding the <mermet.eu> proceeding, *Mermet S.A.S. v. Didier Mermet*, WIPO Case No. [DEUL2023-0007](#), the Respondent had not objected to the proceedings being in English, and that he was able to present his arguments in English.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

B. 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 entirety of the MERMET mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical 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.

C. Rights or Legitimate Interests

The Panel finds that the Respondent has been commonly known by the disputed domain name as per paragraph 4(c)(ii) of the Policy. [WIPO Overview 3.0](#), section 2.3. Indeed, the Respondent has provided evidence that the disputed domain name is identical to his family name.

The Panel finds that the Respondent has made a legitimate noncommercial or fair use of the disputed domain name. [WIPO Overview 3.0](#), section 2.5. Indeed, the Respondent has provided evidence that the disputed domain name is dedicated to genealogical research on the "Mermet" name, allowing Internet users to search for persons named "Mermet" throughout the world.

The Panel finds based on the available records that the second element of the Policy has not been established.

D. Registered and Used in Bad Faith

The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark. Indeed, the Panel considers that even if the Complainant asserts that there is currently no active website accessible by the disputed domain name, the Respondent has provided evidence that he was using the disputed domain name in relation to his family name. Moreover, even if the Respondent proposes to sell to the Complainant its domain names, including the disputed domain name, for an amount of EUR 150,000, the Complainant does not demonstrate that the disputed domain name was registered in 1998 primarily for the purpose of selling it to the Complainant.

Furthermore, the Panel finds that the Respondent did not register the disputed domain name in bad faith targeting of the Complainant or its trademark rights because the Complainant had no trademark rights at the time that the Respondent registered the disputed domain name. [WIPO Overview 3.0](#), section 3.8.1.

The Panel finds based on the available records that the third element of the Policy has not been established.

E. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, "if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding". The mere lack of success of the complaint is not, on its own, sufficient to constitute Reverse Domain Name Hijacking. [WIPO Overview 3.0](#), section 4.16.

The Panel here finds that the Complainant sincerely believes that the Respondent is attempting to profit from the registration of the disputed domain name. Therefore, the Panel considers that the Complaint was not initiated in bad faith and does not constitute an attempt at Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: March 12, 2024