

## **PANEL DECISION**

**A.S. Watson (Health & Beauty Continental Europe), B.V. v. Meike De Jong**  
Case No. DEU2023-0036

### **1. The Parties**

The Complainant is A.S. Watson (Health & Beauty Continental Europe), B.V. of Netherlands (Kingdom of the), represented by Fencer BV, Belgium.

The Respondent is Meike De Jong of Netherlands (Kingdom of the).

### **2. The Domain Name, Registry and Registrar**

The Registry of the disputed domain name <kruiddvatmedicijnen.eu> (the “Domain Name”) is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the Domain Name is Realtime Register B.V.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2023. On September 20, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the Domain Name. On September 21, 2023, the Registry transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent 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 Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 25, 2023. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed a second amended Complaint on October 4, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 5, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was October 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 27, 2023.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on November 3, 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 ADR Rules, Paragraph B(5).

#### **4. Factual Background**

The Complainant is part of the A.S. WATSON group, one of the world's largest international health & beauty retailers with more than 1,250 shops and 25,000 employees in the Benelux, under the name KRUIDVAT. The Complainant has been using the name KRUIDVAT since 1975. It has gained significant notoriety in the Benelux due to longstanding and extensive use.

The Complainant is the owner of the following trade mark registrations for the word mark KRUIDVAT (hereafter together the "Trade Marks"):

- Benelux trade mark no. 514736 registered since December 1, 1992
- Benelux trade mark no. 927560 registered since January 10, 2013
- Benelux trade mark no. 979891 registered since August 6, 2015
- Benelux trade mark no. 633318 registered since February 1, 1999
- Benelux trade mark no. 798870 registered since July 6, 2006
- International trade mark no. 591850 registered since September 22, 1992
- International trade mark no. 1285057 registered since August 26, 2015.

The Domain Name was registered on April 24, 2023 and resolves to a website on which medicinal products are sold.

By letter of August 30, 2023, the Complainant requested transfer of the Domain Name. By email of August 31, 2023 the Respondent wrote: "You need to pay me and I will give the domain name ok...". By email of September 1, 2023 the Complainant responded: "There is no question that our client would pay any amount for the transfer of this domain name, which is a clear infringement of its rights." The Complainant subsequently filed the Complaint on September 18, 2023.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant has made the submissions and statements summarized below in support of its request for transfer of the Domain Name.

The Domain Name is confusingly similar to the Trade Marks, since it contains the KRUIDVAT word mark, of which the Trade Marks consist. The addition of the descriptive term "medicijnen" (Dutch for "medicines") does not prevent a finding of confusing similarity between the Trade Marks and the Domain Name. The country code Top Level Domain ("ccTLD") is a standard registration requirement and should be disregarded when assessing the confusing similarity.

The Respondent lacks rights or legitimate interests in the Domain Name. First, there is no evidence of prior use of the Domain Name in connection with a *bona fide* offering of goods or services. The sale of medicines is highly regulated within the European Union ("EU") and only pharmacies may sell prescription drugs.

However, it appears that the Respondent sells such products freely in its webshop to which the Domain Name resolves. In addition, the Respondent appears to offer illegal substances on its website, such as GHB, XTC, magic mushrooms and anabolica. The offering for sale of prescription drugs, as well as illegal products does not fall under a “bona fide offering of goods or services”.

Secondly, there is no evidence that the Respondent is commonly known by the Domain Name. Only the Complainant is entitled to the KRUIDVAT word mark and the Complainant has not licensed or otherwise authorized the Respondent to use that mark.

Furthermore, there is no evidence that the Respondent is making fair use of the Domain Name without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark. Use of a domain name consisting of a trade mark plus an additional term, cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trade mark owner. In this case, the Respondent uses the Domain Name for a web shop in which it offers among others ‘melatonine’ products which are also offered by the Complainant, thereby competing with the Complainant. Internet users may be confused into believing that the website and the products are sponsored or endorsed by the Complainant. The Complainant suspects that the Domain Name was specifically chosen by the Respondent for the purpose of redirecting consumers to its website and offer them alternative products.

The mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the trade mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. The Trade Marks have become widely known and predate the registration date of the Domain Name by several years. Moreover, given that the Domain Name is used for illegitimate activities, this constitutes bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law**

The Complainant has shown that it has registered rights in the Trade Marks in the European Union. The Domain Name is confusingly similar to the Trade Marks as it incorporates the term “kruidvat”, of which the Trade Marks consist, in its entirety. The addition of the Dutch dictionary word “medicijnen” does not avoid the confusing similarity between the Domain Name and the Trade Marks (see, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8)<sup>1</sup>. The ccTLD “.eu” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see, [WIPO Overview 3.0](#), section 1.11). Therefore, the Panel finds that the Complainant has established that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights in accordance with Paragraph B(11)(d)(1)(i) of the ADR Rules.

### **B. Rights or Legitimate Interests**

Under the ADR Rules, the Complainant has to prove that the Respondent lacks rights or legitimate interests in a domain name. This may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the Respondent. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or

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<sup>1</sup>Given the similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (“UDRP”), the Panel shall refer to concepts embodied in UDRP precedent where appropriate.

legitimate interests in the Domain Name. If the Complainant succeeds in doing so, 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. See *Lidl Stiftung & Co. KG v. Name Redacted*, WIPO Case No. [DEU2018-0012](#).

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant's consent to register or use the Trade Marks as part of the Domain Name, is not commonly known by the Domain Name, and has not acquired trade mark rights in the Domain Name. The Respondent has used the Domain Name to resolve to a web shop on which it offers both prescription and over-the-counter ("OTC") medicines. There is no evidence in the case file that the Respondent meets the strict requirements under applicable EU regulations for the online sale of prescription medicines, or that it is a licensed pharmacy. In addition, some of the OTC medicines offered by the Respondent through its web shop compete with similar products of the Complainant. Therefore, the Domain Name is not used for a *bona fide* offering of goods or services, nor does this use amount to a legitimate noncommercial or fair use of the Domain Name.

In view of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name as set out in Paragraph B(11)(d)(1)(ii) of the ADR Rules.

### **C. Registered or Used in Bad Faith**

For completeness' sake the Panel has also reviewed the requirement of bad faith registration or use, although under the ADR Rules it is sufficient that a complainant, as in this case, proves the first two elements.

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was or should have been aware of the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred 31 years after the registration of the earliest of the Trade Marks;
- the word mark KRUIDVAT, which is incorporated in its entirety in the Domain Name, is a pun on the word "kruitvat" (English 'powder keg') and is a well-known trade mark in the Netherlands where the Respondent is located;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name in its name would have informed the Respondent of the existence of the Trade Marks.

Under these circumstances, the Panel concludes that the Domain Name has been registered in bad faith.

The use of a domain name consisting of the Trade Marks and the word "medicijnen" (medicines) for a web shop where products are offered for sale which compete with the products of the Complainant, constitutes bad faith use, in that the Respondent intentionally uses the Domain Name to attract Internet users, for commercial gain to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Trade Marks, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent (as set out in Paragraph B(11)(f)(4) of the ADR Rules. In addition, the Panel considers that the following circumstances support a finding of bad faith use:

- the use of the Domain Name for a web shop where prescription medicine is offered for sale, in contravention of the strict requirements for such sale under EU regulations;
- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;

- the well-known nature of the word mark KRUIDVAT incorporated in the Domain Name, such that the Respondent cannot claim to have “accidentally” registered a domain name that happens to correspond to the Trade Marks;
- the lack of a formal Response of the Respondent.

Therefore, the Panel concludes that the Domain Name has been registered and is being used in bad faith in accordance with paragraph B(11)(d)(1)(iii) of the ADR Rules.

## 7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name, <kruidvatmedicijnen.eu> be transferred to the Complainant<sup>2</sup>.

*/Wolter Wefers Bettink/*

**Wolter Wefers Bettink**

Sole Panelist

Date: November 17, 2023

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<sup>2</sup> The Complainant is established and located in the Netherlands (Kingdom of the) and, therefore, within the European Union, thus satisfying the general eligibility criteria for registration of the Domain Name set out in Article 3 of the Regulation (EU) No 2019/517.

The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.