

ADMINISTRATIVE PANEL DECISION

Turnitin, LLC v. Sergi Avaliani
Case No. DNL2023-0023

1. The Parties

Complainant is Turnitin, LLC, United States of America, represented by V.O. Patents & Trademarks, Netherlands (Kingdom of the).

The registrant of the disputed domain name is Sergi Avaliani, Georgia (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <turnitin.nl> (the “Domain Name”) is registered with SIDN through Domain Robot.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2023. On July 25, 2023, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name.

On July 26, 2023, SIDN 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 Complainant on July 27, 2023, concerning the language of the proceedings and providing the information disclosed by SIDN, and inviting Complainant to amend the Complaint in this light. Complainant filed an amended Complaint on August 4, 2023.

The Center verified that the Complaint as amended satisfies the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on August 8, 2023. In accordance with the Regulations, article 7.1, the due date for Response was August 28, 2023. The Center did not receive any response. Accordingly, the Center notified Respondent’s default on August 29, 2023.

The Center appointed Dinant T. L. Oosterbaan as the panelist in this matter on September 6, 2023. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

4. Factual Background

According to the information provided in the Complaint, Complainant is an American company founded in 1998. Complainant's technology promotes fairness, consistency and equity in all areas of education and academic research. Complainant provides online plagiarism detection services and research integrity solutions for universities, companies and publishers worldwide; its services are currently licensed to over 15.000 academic institutions and Complainant has over 30 million student users.

According to the evidence submitted, Complainant owns various trademarks for TURNITIN, including the trademark TURNITIN registered with the United States Patent and Trademark Office, registration number 2812598, filing date March 3, 2003 and registration date February 10, 2004, International trademark TURNITIN, registration number 1175782, registration date April 23, 2013, designating among others the European Union, and the European Union Trade mark TURNITIN No. 018162941, registration date September 25, 2020.

Complainant also owns several tradenames, including the Dutch tradename: Turnitin Netherlands B.V., registration date June 12, 2003.

In addition, Complainant is the owner of a domain name identical to its TURNITIN trademark and tradename, <turnitin.com>, which has been registered since 1999.

SIDN informed the Center that the Domain Name was first registered on June 13, 2008 and that the date of the current registration is April 14, 2013 by new registration.

The Domain Name resolves to a pay-per-click parking website.

5. Parties' Contentions

A. Complainant

Complainant submits that the Domain Name is identical to Complainant's trademark and tradename. Complainant refers in particular to Regulation (EU) 2017/1001 on the European Union Trademark ("EUTMR") and the Dutch Tradename Act.

Complainant submits that Respondent has no rights or legitimate interests in the Domain Name. Complainant asserts that from a brief search in the worldwide trademark registers available of trademark applications or registrations in the name of Respondent, it appears that no rights to an identical or highly similar mark exist which could justify the choice of this particular Domain Name. Moreover, at the time of the Domain Name registration, Respondent did not have Complainant's permission to register the Domain Name. Complainant submits that the Domain Name resolves to a pay-per-click website containing hyperlinks directing to websites, which offer products and services competing with the services of Complainant.

Complainant asserts that the Domain Name has been registered and is being used in bad faith. According to Complainant at the time of registration of the Domain Name in 2013, Respondent knew or should have known of Complainant's TURNITIN marks and tradenames. This was due to the high profile of TURNITIN and related products and services. Respondent should have known about Complainant's organization, marks and tradenames since, according to the website under the Domain Name, Respondent appears to

operate in the same field and uses the identical or similar name to Complainant's tradename and trademarks. TURNITIN is not a common or descriptive name for goods or services. Nevertheless, at the time, Respondent chose this Domain Name for itself and without Complainant's consent. Complainant is of the opinion that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant's mark and/or tradename as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location. According to the submission of and evidence provided by Complainant Respondent's website under the Domain Name consists (primarily) of sponsored website links that point to parties that bypass plagiarism checks, offer writing assistance or plagiarism detection service. These sponsored links send you to websites of Complainant's competitors.

Complainant concludes that Respondent registered and used the Domain Name in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Based on article 2.1 of the Regulations, a claim to transfer a domain name must meet three cumulative conditions:

- a. the domain name is identical or confusingly similar to a trademark or tradename protected under Dutch law in which the complainant has rights, or other name mentioned in article 2.1(a) under II of the Regulations; and
- b. the respondent has no rights to or legitimate interests in the domain name; and
- c. the domain name has been registered or is being used in bad faith.

As Respondent has not filed a Response, the Panel shall rule based on the Complaint. In accordance with article 10.3 of the Regulations, the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or in fact.

A. Identical or Confusingly Similar

Complainant has established that it is the owner of several trademarks and tradenames for TURNITIN, including European Union Trademark TURNITIN, also applicable in the Netherlands, and the Dutch tradename Turnitin Netherlands B.V.

The Domain Name incorporates the entirety of the TURNITIN mark and tradename. Previous panels under the Regulations have found that a domain name is identical or confusingly similar to a complainant's trademark and tradename where the domain name incorporates the distinctive part or entirety of such trademark and tradename. See also section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).¹

¹ In view of the fact that the Regulations are substantially similar to the Uniform Domain Name Dispute Resolution Policy ("UDRP"), it is well established that both cases decided under the Regulations and cases decided under the UDRP, and therefore [WIPO Overview 3.0](#), may be relevant to the determination of this proceeding (see, e.g., *Aktiabolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

The country code Top-Level Domain “.nl” may be disregarded for purposes of article 2.1(a) of the Regulations, see *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. [DNL2008-0008](#).

The Panel finds that the Domain Name is identical and confusingly similar to Complainant’s TURNITIN trademarks and tradename for purposes of the Regulations.

B. Rights or Legitimate Interests

As stated in [WIPO Overview 3.0](#), “while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name 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. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, 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”.

In the Panel’s opinion, Complainant has made out a *prima facie* case that Respondent lacks rights to or legitimate interests in the Domain Name.

According to the undisputed submission and evidence provided by Complainant, the Domain Name at the time of the filing of the Complaint resolves to a pay-per-click website featuring links to various third-party websites including websites offering services which directly compete with the services offered by Complainant to its customers. The Panel does not consider such use a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the Domain Name. There is no evidence that Respondent has acquired any relevant trademark or service mark rights. In addition, there has never been any business relationship between Complainant and Respondent. There is also no indication that Respondent is commonly known by the Domain Name.

No Response to the Complaint was filed and Respondent has not rebutted Complainant’s *prima facie* case.

The Panel finds that Respondent has no rights to or legitimate interests in the Domain Name.

C. Registered or Used in Bad Faith

The Panel finds that the Domain Name has been registered and is being used in bad faith.

Noting the overall circumstances of this case, the Panel finds it highly likely that Respondent knew, and further finds that Respondent in any event should have known, Complainant’s trademarks and tradenames at the time of registration, especially in view of the fact that the Domain Name includes the entirety of Complainant’s trademark and tradename and that the Domain Name resolves to a pay-per-click website featuring links to various third-party websites including websites offering services which directly compete with the services offered by Complainant to its customers.

In light of these circumstances the Panel concludes that Respondent has attempted or is attempting to attract Internet users, for commercial gain, to the website of Respondent through the likelihood of confusion which may arise with the trademark and tradename of Complainant as to the source, sponsorship, affiliation, or endorsement of the website of Respondent, which constitutes registration and use in bad faith.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the Domain Name, <turnitin.nl>, be transferred to Complainant.

/Dinant T. L. Oosterbaan/

Dinant T. L. Oosterbaan

Panelist

Date: September 14, 2023