

ADMINISTRATIVE PANEL DECISION

Elmar Reizen B.V. v. Juan Carlos Herrera Murgas
Case No. DNL2024-0045

1. The Parties

Complainant is Elmar Reizen B.V., Netherlands (Kingdom of the), represented by Matchmark B.V., Netherlands (Kingdom of the).

The registrant of the disputed domain name is Juan Carlos Herrera Murgas, Panama, (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <vakantiedicounter.nl> (“the Disputed Domain Name”) is registered with SIDN through Sombrero.de Gmbh.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 12, 2024. On November 12, 2024, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name.

On November 13, 2024, SIDN 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 and contact information in the Complaint.

The Center sent an email communication to Complainant on November 13, 2024, providing the information disclosed by SIDN, and inviting Complainant to amend the Complaint in this light. Complainant filed an amended Complaint on November 13, 2024.

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 November 13, 2024. In accordance with the Regulations, article 7.1, the due date for Response was December 3, 2024. The Center did not receive any response. Accordingly, the Center notified Respondent’s default on November 4, 2024.

The Center appointed Moïra Truijens as the panelist in this matter on December 6, 2024. 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

Complainant is a Dutch company in the field of online searches and bookings of holiday deals. The trade name de VakantieDiscounter, and the website “www.vakantiediscounter.nl”. have both been used since at least 2001. Through the website “www.vakantiediscounter.nl” approximately 200.000 bookings per year are made which represents 550.000 customers. In 2023 the website “www.vakantiediscounter.nl” registered approximately 40 million visitors.

Complainant owns the following trademark registrations for DEVAKANTIEDISCOUNTER (hereafter “the Trademark registrations”):

- Benelux semifigurative trademark registration no. 713276, registered on December 1, 2002, for services in classes 36, 39, and 43;
- Benelux semifigurative trademark registration no. 930296, registered on March 11, 2013 for services in classes 35, 36, 39, and 43.

Additionally, Complainant is the owner of the trade names De VakantieDiscounter and VakantieDiscounter. The domain name <vakantiediscounter.nl> is registered in name of Complainant.

The first date of the registration of the Disputed Domain Name is July 15, 2004. Respondent became the registrant on March 20, 2019. The Trademark registrations predate Respondent’s registration of the Disputed Domain Name. At the time of filing the Complaint, the Disputed Domain Name resolved to a website with pay per click (“PPC) links to holiday deals from direct competitors of Complainant’s.

5. Parties’ Contentions

A. Complainant

Complainant states that the Disputed Domain Name is confusingly similar to the Trademark registrations, since the term “discounter” in Complainant’s trademark registrations is misspelled in the Disputed Domain Name. Therefore, it claims that the overall impression of the Disputed Domain Name is highly similar to the dominant part of the Trademark registrations, namely, the VakantieDiscounter part of the Trademark registrations.

Additionally, Complainant states that the addition of the country code “.nl” in the Disputed Domain Name can be disregarded because it is a technical registration requirement..

Complainant further claims that Respondent has no rights to or legitimate interests in the Disputed Domain Name.

Lastly, Complainant states that the Disputed Domain Name is not only used for highly similar services but is also misleading the relevant public (the public that is looking for the best holiday deals) by using a domain name in which the element “discounter” is intentionally misspelled as “dicounter”. By doing so, Respondent is trying to generate unauthorized traffic to the website “www.vakantiedicounter.nl”, which leads to abuse of Complainant’s rights in the Trademark registrations and the trade names, for the relevant services. Therefore, the Disputed Domain Name has not been used by Respondent in connection with a bona fide offering of these services.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Pursuant to article 2.1 of the Regulations, Complainant must prove each of the following three elements:

a. the Disputed Domain Name is identical or confusingly similar to:

I) a trademark, or trade name, protected under Dutch law in which Complainant has rights; or

II) a personal name registered in the General Municipal Register ("Gemeentelijke Basisadministratie") of a municipality in the Netherlands, or the name of a Dutch public legal entity or the name of an association or foundation registered in the Netherlands under which Complainant undertakes public activities on a permanent basis; and

b. Respondent has no rights to or legitimate interests in the Disputed Domain Name; and

c. the Disputed Domain Name has been registered or is being used in bad faith.

In accordance with article 10.3 of the Regulations, the Panel shall determine the admissibility, relevance, and weight of the evidence submitted; if no response has been submitted, the Panel shall rule on the basis of the Complaint; and 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 shown registered rights in the Trademark registrations under the Regulations. The Disputed Domain Name incorporates the dominant part of the Trademark registrations almost in its entirety. The Panel additionally finds that the Disputed Domain Name and the Trademark registrations are confusingly similar. The only difference between them is the absence of the term "de" and the letter "s" in the Disputed Domain Name. Numerous panels have found similarity to be present in the case of a deliberate misspelling of a mark (so-called "typosquatting"), by adding, deleting substituting or reversing the order of letters in a mark. See, *Fuji Photo Film U.S.A., Inc. v. LaPorte Holdings*, WIPO Case No. [D2004-0971](#); and *LouisVuitton v. Net-Promotion*, WIPO Case No. [D2000-0430](#).

The country code Top-Level Domain ("ccTLD") ".nl" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.11.1).¹

The Panel finds that the Disputed Domain Name is confusingly similar to the Trademark registrations and that Complainant has thus established the first element of article 2.1(a) of the Regulations.

B. Rights or Legitimate Interests

A complainant bears the burden of prima facie showing that the respondent has no rights to or legitimate interests in the domain name. If a complainant succeeds in making a prima facie case, the burden of

¹In view of the fact that the Regulations are to an extent based on 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., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

production shifts to the respondent, which will then have to come forward with appropriate allegations or evidence demonstrating a right to or legitimate interests in the domain name (*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Article 3.1 of the Regulations provides circumstances in which such rights or legitimate interests to a domain name may be demonstrated. These circumstances include: i) before having any notice of the dispute, the registrant made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services; ii) being commonly known by the domain name; and iii) making legitimate noncommercial use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish or otherwise damage the relevant trademark, trade name, personal name, name of a Dutch public legal entity or name of an association or foundation located in the Netherlands.

Based on the evidence and the undisputed submissions of Complainant, the Panel concludes that Respondent has not received Complainant's consent to use the Trademark registrations as part of the Disputed Domain Name, nor that it has otherwise been authorized to use the Trademark registrations.

Respondent has not replied, hence not provided evidence, nor is there any indication on the record of this case that Respondent is commonly known by the Disputed Domain Name. Respondent did not demonstrate any use or demonstrable preparation to use the Disputed Domain Name in connection with a bona fide offering of goods or services. On the contrary, Respondent has used the Disputed Domain Name for a page with PPC links directing Internet users to holiday deals from Complainant's competitors. This cannot be considered a bona fide offering nor legitimate noncommercial use. [WIPO Overview 3.0](#), section 2.9. The composition of the Disputed Domain Name, comprised of an intentional misspelling of Complainant's trademark, also supports this finding.

Finally, in the circumstances of this case, the Panel finds that a lack of rights to or legitimate interests in the Disputed Domain Name on the part of Respondent is further supported by the fact that no formal response was filed by Respondent.

The Panel concludes that Complainant has met the second requirement of article 2.1(b) of the Regulations.

C. Registered or Used in Bad Faith

In accordance with article 3.2 of the Regulations, Complainant has to show that the Disputed Domain Name was registered or is being used in bad faith. Several circumstances put forward by Complainant make that the Panel finds that this is so.

Respondent took over the registration of a domain name that is intentionally misspelled. In this Panel's view, Respondent is using the Disputed Domain Name with the mentioned misspelling to intentionally attract, for commercial gain, Internet users to the website linked to disputed domain name in a manner that confuses and misleads Internet users. Thus, the Panel infers Respondent's bad faith based on the fact that Respondent is trying to gain profit of mistakes such as typographical errors made by Internet users, when inputting the expression "vakantiedicounter.nl" instead of "vakantiediscounter.nl" into a web browser. The fact that the Disputed Domain Name was used for a page with PPC links directing Internet users to holiday deals from Complainant's competitors further supports a finding of bad faith of the Respondent.

Finally, the Respondent has been involved in a similar case in 2022 in which it was ordered the transfer the domain name to the complainant in that case (See *Boosten Reizen Hoensbroek B.V. v. Juan Carlos Herrera Murgas*, WIPO Case No. [DNL2022-0002](#)) of

The Panel concludes that the requirement of article 2.1(c) of the Regulations has also been met.

7. Decision

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

/Moira Truijens/

Moira Truijens

Panelist

Date: December 20, 2024