

## **ADMINISTRATIVE PANEL DECISION RELATED TO THE REQUEST TO CHANGE THE LANGUAGE OF THE ADR PROCEEDING**

Eastman Chemical Company and Eastman Chemical HTF GmbH v. Rodun International B.V.

Case No. DEUL2022-0008

### **1. The Parties**

The Complainants are Eastman Chemical Company, United States of America (“United States”) and Eastman Chemical HTF GmbH, Germany, represented by Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, United States.

The Respondent is Rodun International B.V., Netherlands.

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

The disputed domain name is <marlotherm.eu>.

The Registry of the disputed domain name is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is AutoDNS.

### **3. Procedural History**

The Request to Change the Language of the ADR Proceeding (the “Request”) was filed in English and in Dutch with the WIPO Arbitration and Mediation Center (the “Center”) pursuant to the .eu Alternative Dispute Resolution Rules (the “ADR Rules”), Paragraph A(3)(b), on July 26, 2022. On July 29, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On August 9, 2022, the Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

In accordance with the ADR Rules, Paragraph A(3)(b)(3), the Center formally notified the Respondent of the Request, and the proceedings commenced on August 11, 2022. In accordance with the ADR Rules, Paragraph A(3)(b)(4), the due date for Response was August 23, 2022, which was extended by the Center to August 23, 2022. The Center received an email communication from the Respondent on September 5, 2022.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on September 15, 2022 in accordance with the ADR Rules, Paragraph A(3)(b)(4). 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 disputed domain name was registered on October 7, 2019, and resolves to a website in English reproducing the term MARLOTHERM and offers the Complainant's goods. The language of the registration agreement is Dutch.

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

##### **A. Complainants**

The Complainants request a change of the language of the ADR Proceeding in accordance with Paragraph A(3)(a) of the ADR Rules from Dutch into English and assert that they have established circumstances that justify the acceptance of such Request. The Complainants have argued a number of circumstances supporting English as the language of the ADR proceeding.

The reasons provided by the Complainants are that proceeding in English would both fair and efficient. Complainants' authorized representatives' language is English, and they are unable to communicate in Dutch.

Further, the Respondent is competent to proceed in English because:

- (1) the Complainants and the Respondent have corresponded in English in the past regarding transfer of the Domain Name;
- (2) the Domain Name is identical to the Complainants' MARLOTHERM trademark; and
- (3) the website to which the domain name resolves, <marlotherm.eu>, is in the English language.

Moreover, requesting a translation of the Complaint and exhibits will cause undue delay of these proceedings and unfairly increase Complainants' overall cost."

##### **B. Respondent**

The Respondent did not reply to the Complainants' contentions in a timely manner. After the extended deadline for submission of a Response had passed, the Respondent requested that the procedure take place in Dutch. The Respondent states "*I would prefer the procedure in Dutch*" but provides no further arguments to support his request.

#### **6. Discussion and Findings**

In accordance with Paragraph A(3)(a) of the ADR Rules, "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the ADR Proceeding shall be the language of the Registration Agreement for the disputed domain name. In the absence of an agreement between the Parties, the Panel may in its sole discretion, having regard to the circumstances of the ADR Proceeding, decide on the written request of a Complainant that the language of the ADR Proceeding will be different than the language of the Registration Agreement for the disputed domain name".

The procedure related to the request for a change to the language of the ADR Proceeding shall be as follows. The request shall be submitted to the Provider and shall amongst others (i) specify the requested change of the language of ADR Proceeding; (ii) specify the circumstances that would justify such a change of the language of an ADR Proceeding.

In this case, the language of the Registration Agreement is Dutch. The Complainants request that English should be the language of the proceeding.

In accordance with Paragraph B(7)(b) and (c) of the ADR Rules, the Panel shall ensure on the one hand that the Parties are treated fairly and with equality, and shall ensure, on the other hand, that the ADR Proceeding takes place with due expedition.

It is recognized that the ADR Rules are considered a variation of the Uniform Domain Name Dispute Resolution Policy ("UDRP"), under which the panels recognize that under certain circumstances the language of proceedings may be different from the language of the registration agreement for the disputed domain name. Such circumstances include:

- (i) evidence showing that the respondent can understand the language of the complaint;
- (ii) the language/script of the domain name particularly where the same as that of the complainant's mark;
- (iii) any content on the webpage under the disputed domain name;
- (iv) prior cases involving the respondent in a particular language;
- (v) prior correspondence between the parties;
- (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint;
- (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language;
- (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names;
- (ix) currencies accepted on the webpage under the disputed domain name; or
- (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement

See *Alko Inc. v. Titan Trading OÜ, Stepan Moissejev*, WIPO Case No. [DEUL2021-0001](#); *Chevron Corporation, Chevron Intellectual Property LLC, and Chevron Belgium BV v. Kristiina Loodus, AS QLS*, WIPO Case No. [DEUL2020-0005](#); *Sky scanner Limited v. Bolognesi Damiano, Aim S.r.l.*, WIPO Case No. [DEUL2020-0001](#); *Sphinx Information Technology Consulting and Software Project GmbH v. Sphinx IT SRL*, WIPO Case No. [DEUL2018-0001](#).

The Panel considers the following circumstances of the present proceeding:

- Prior correspondence between the Complainants and the Respondent, as well as the correspondence between the Respondent and the Center, were conducted in English, which demonstrates that the Respondent understands the language of the Complaint;
- The language and script of the disputed domain name as well as the content of the website displayed are in English; and
- Given the knowledge of English demonstrated by the Respondent and the mere preference of Dutch expressed by the Respondent, it would cause undue delay of the ADR proceedings and unfairly increase Complainants' overall cost to maintain Dutch as the language of the proceedings.

In the present case, the Panel therefore is satisfied that the Respondent has knowledge of the English language so that proceeding in English is fair and equal for the Complainants and the Respondent. This is supported by the fact that the Respondent's request to maintain Dutch as the language of the proceeding was submitted in English.

## 7. Decision

For the foregoing reasons, in accordance with Paragraph A(3)(b)(6) of the ADR Rules, the Panel orders that the language of the ADR proceeding shall be English and any future submission by the Parties (including the submission of a new Complaint) regarding the disputed domain name <marlotherm.eu> shall be made in the language of the ADR Proceeding in accordance with paragraph A(3)(c) of the ADR Rules.

This Panel's decision shall be final and not subject to appeal.

*/Benoit Van Asbroeck/*

**Benoit Van Asbroeck**

Sole Panelist

Date: September 28, 2022