

ADMINISTRATIVE PANEL DECISION

Boosten Reizen Hoensbroek B.V. v. Juan Carlos Herrera Murgas
Case No. DNL2022-0002

1. The Parties

The Complainant is Boosten Reizen Hoensbroek B.V., Netherlands, represented internally.

The Respondent is Juan Carlos Herrera Murgas, Panama.

2. The Domain Name and Registrar

The disputed domain name <boostenreizen.nl> is registered with SIDN through Sombrero.de GmbH.

3. Procedural History

The Complaint was filed in Dutch with the WIPO Arbitration and Mediation Center (the “Center”) on January 28, 2022. On January 28, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On January 31, 2022, SIDN transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On February 9, 2022, the Center transmitted an email to the Parties regarding the language of the proceeding. On February 10, 2022, the Complainant filed an amended Complaint in English.

The Center verified that the Complaint together with the amended Complaint satisfied 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 the Respondent of the Complaint, and the proceedings commenced on February 11, 2022. In accordance with the Regulations, article 7.1, the due date for Response was March 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 4, 2022.

The Center appointed Richard C.K. van Oerle as the panelist in this matter on March 21, 2022. 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

The Complainant is engaged in organizing day trips and multi-day trips through Europe by touring car. It trades under the trade name Boosten Reizen, registered in the Netherlands at the Trade Register of the Chamber of Commerce, and that trade name is invoked in these proceedings.

SIDN informed the Center that the disputed domain name was first registered on August 25, 2004, and that the date of registration of the disputed domain name by the current registrant is March 20, 2019.

The disputed domain name resolves to a website with pay-per-click ("PPC") links that divert to websites where services competing with the Complainant are offered.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it is active since 1983 by the trade name "Boosten Reizen" and that it is known under this trade name by close to 100,000 customers in the Netherlands. The use of the trade name is demonstrated by, among other things, its use on the Complainant's website "www.boosten.nl" and on the buses used for the trips organized by the Complainant.

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's trade name as the disputed domain name incorporates the trade name in full.

The Complainant asserts also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is using the disputed domain name to divert to a website with PPC hyperlinks that divert to websites where services competing with the Complainant are offered.

The Complainant further asserts that the Respondent registered and is using the disputed domain name in bad faith. The trade name has been registered at the Trade Register. The Complainant uses the domain name <boosten.nl> since 1998. It would have been easy for the Respondent to check whether the disputed domain name had been used by third parties before. By not verifying this, the Respondent was in bad faith when registering the disputed domain name.

In addition, the Respondent uses the disputed domain for commercial benefit by exclusively offering advertisements of competing companies. This demonstrates that the Respondent uses the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

As the Respondent has not filed a Response, the Panel shall rule on the basis of 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 fact.

The Panel notes that, in accordance with article 16.4 of the Regulations, the Center has fulfilled its obligation to employ reasonably available means to achieve actual notice of the Complaint to the Respondent.

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

- a. The domain name is identical or confusingly similar to a trademark or trade name protected under Dutch law in which the complainant has rights, or other name by means of 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.

Considering these conditions, the Panel rules as follows:

A. Identical or Confusingly Similar

The Complainant has provided evidence of its use of the trade name “Boosten Reizen” and has thereby established its rights in this trade name.

The disputed domain name is confusingly similar to the trade name as it incorporates the trade name in its entirety. The country code Top-Level Domain (“ccTLD”) “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement.

Therefore, the Panel finds that the Domain Name is confusingly similar to the Complainant’s trade name and the requirement in article 2.1(a) of the Regulations is met.

B. Rights or Legitimate Interests

As is described in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”),¹ “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”.

The Complainant has established that the disputed domain name diverts to a website with PPC links that divert to websites where services competing with the Complainant are offered.

It is well established that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering of goods or services where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark (in this case, Complainant’s trade name) or otherwise mislead Internet users (see [WIPO Overview 3.0](#), section 2.9).

Therefore the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods and services.

The Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights to or legitimate interests in the disputed domain name to rebut the Complainant’s *prima facie* case.

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., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. DNL2008-0050).

The Panel finds that the Complainant has established that the Respondent has no rights to or legitimate interests in the disputed domain name. The requirement in article 2.1(b) of the Regulations is met.

C. Registered or Used in Bad Faith

The Panel finds that at the time of registration of the disputed domain name, the Respondent was or should have been aware of the Complainant's trade name. A simple online search prior to the registration of the disputed domain name would have informed the Respondent of the existence of the Complainant's prior trade name and the Complainant's use of that trade name.

The clear absence of the Respondent's own rights or legitimate interests, the nature of the disputed domain name itself (*i.e.*, the manner in which the domain name incorporates the Complainant's trade name), and the content of the websites to which the disputed domain name points, after being diverted by the PPC-site, demonstrate that the Respondent was acting in bad faith in registering and using the disputed domain name.

The Panel also notes that the Respondent has not filed a Response in this proceeding to deny knowledge of the Complainant at the relevant time or to explain the reason for its selection of the disputed domain name.

For the above reasons, the Panel finds that the Respondent has registered and uses the disputed domain name in bad faith and concludes that the requirement under article 2.1(c) of the Regulations has been met.

7. Decision

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

/Richard van Oerle/

Richard van Oerle

Panelist

Date: March 24, 2022