

ADMINISTRATIVE PANEL DECISION

Monsanto Technology, LLC v. Leon Manders
Case No. DNL2022-0014

1. The Parties

The Complainant is Monsanto Technology, LLC, United States of America, represented by BPM Legal, Germany.

The Respondent is Leon Manders, Netherlands.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 15, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On March 16, 2022, 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 the Complainant on March 18, 2022, providing the information disclosed by SIDN, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on March 23, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on March 23, 2022. In accordance with the Regulations, article 7.1, the due date for Response was April 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2022.

The Center appointed Wolter Wefers Bettink as the panelist in this matter on May 3, 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 an American agrochemical and agricultural biotechnology corporation founded in 1901. In 2018, it was acquired by Bayer AG as part of its crop science division.

The Complainant is owner of the trade mark MONSANTO in numerous countries worldwide, including European Union (“EU”) trade mark Registration No. 009798471 MONSANTO, registered on August 18, 2011 (the “Trade Mark”).

The Complainant’s subsidiary in the Netherlands Monsanto Holland B.V. supplies customers in Europe, including in the Netherlands.

The Respondent registered the Domain Name on March 7, 2022. The Domain Name resolves to a website displaying a device/word mark which includes the term “monsanto”. The website contains, *inter alia*, the following text:

“Monsanto Holland, is a commercial vegetable seed company based in The Netherlands. We offer products of 3 commercial brands: Nickerson-Zwaan, SEMINIS, and Nunhems. For more information about Monsanto Holland and our vegetable seeds, feel free to contact us.”

The mentioned Nickerson-Zwaan, Seminis and Nunhems are subsidiaries of the Complainant. The website also contains a web page headed “Our Products”, showing pictures of and information on certain vegetables which correspond with products for which the Complainant produces and sells seeds.

The Respondent has in the past registered successively the domain names <monsantoholland.nl>, <monsantoholland.com>, and <monsantoholland.eu> which have been transferred to the Complainant with decisions respectively in *Monsanto Technology, LLC v. BV intergroup trading*, WIPO Case No. [DNL2021-0022](#) and *Monsanto Technology, LLC v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Leon Manders*, WIPO Case No. [D2021-1345](#).

The Complainant on March 11, 2022, sent take-down notices to the contact email address available at the Respondent’s website and to the administrative contact and technical contact information available in the WhoIs, to which the Respondent did not react.

5. Parties’ Contentions

A. Complainant

The Complainant states that it owns rights in the Trade Mark through its EU trade mark registration which enjoys protection in the Netherlands. According to the Complainant, the Domain Name fully incorporates and is confusingly similar to the Trade Mark. The Complainant submits that the Top-Level Domain (“TLD”) is generally not an element of distinctiveness to be taken into consideration when evaluating the identity or confusing similarity between the Domain Name and the Trade Mark, while the additional geographical term “holland” and the term “bv” (an abbreviation of the Dutch company form *Besloten vennootschap met beperkte aansprakelijkheid*) are merely descriptive and do not eliminate the similarity, and in fact only enhance the possibility of confusion as they clearly refer to the name of the Complainant’s subsidiary Monsanto Holland B.V.

According to the Complainant, “monsanto” is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with the Complainant.

Furthermore, the Complainant states that it has not licensed or otherwise permitted the Respondent to use the Trade Mark (or any other of its other trade marks) and has not permitted the Respondent to apply for or use any domain name incorporating the Trade Mark.

In addition, the Complainant contends, there is no evidence of the Respondent's use of, or demonstrable preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services within the meaning of article 3.1 sub a of the Regulations. According to the Complainant, the Respondent is using the Domain Name in connection with a scam (*i.e.* fraudulent) website, used to deceive Internet users into fraud or malicious attacks.

Finally, the Complainant submits that there is also no evidence which suggests that the Respondent is making a legitimate noncommercial or fair use of the Domain Name, or is commonly known by the Domain Name or the name "monsanto".

The Complainant states that the Respondent has registered and is using the Domain Name in bad faith, since the Trade Mark is highly distinctive and solely connected with the Complainant and well known and that it is inconceivable that the Respondent registered the Domain Name unaware of the Complainant and the Trade Mark.

In addition, the Complainant submits that the Respondent used the Domain Name in connection with a fraudulent website deliberately targeting the Complainant and its subsidiary Monsanto Holland B.V. which also shows that the Respondent was aware of the Complainant and the Trade Mark.

The Complainant contends that the Respondent has used the Domain Name in bad faith in accordance with article 3.2 sub d of the Regulations, in order to attract Internet users and divert Internet traffic to its website for the likely purpose of achieving commercial gain, through the likelihood of confusion which may arise with the Trade Mark. Finally, the Complainant puts forward that the registration of the Domain Name also prevents the Complainant from using it, as set out in article 3.2 sub b of the Regulations.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Mark. The Domain Name is confusingly similar to the Trade Mark as it incorporates the Trade Mark in its entirety (see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).¹ The addition of the geographical term "holland" and the abbreviation "bv"(in English "limited liability company") does not prevent a finding of confusing similarity, as the element "monsanto" is clearly recognizable in the Domain Name (see also [WIPO Overview 3.0](#), section 1.8). The country code TLD ".nl" 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 Domain Name is confusingly similar to the Trade Mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Under article 3.1 of the Regulations, the Complainant has to make out a *prima facie* case that the Respondent does not have rights to or legitimate interests in the Domain Name, upon which the burden of

¹ In 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, are relevant to this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the Domain Name ([WIPO Overview 3.0](#), section 2.1).

The Panel finds that, since the Domain Name incorporates the Trade Mark in its entirety with additional terms that clearly refer to the name of the Complainant's subsidiary Monsanto Holland B.V., it carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1). Furthermore, 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 use the Trade Mark in the Domain Name and that it is not an authorized retailer or distributor of the Complainant's products or otherwise authorized to use the Trade Mark. The Respondent has not provided evidence, nor is there any indication in the record of this case that the Respondent is commonly known by the Domain Name (article 3.1(b) of the Regulations). Furthermore, there is no evidence that the Respondent is making a legitimate noncommercial or fair use of the Domain Name since the Domain Name leads to a website which presents itself as the website of the Complainant's subsidiary Monsanto Holland B.V., *inter alia* by using the name "Monsanto Holland" as well as a device/word mark of the Complainant and texts and images relating to products similar or identical to those of the Complainant.

Based on all of the above, the Panel concludes that the 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, the Complainant has to show that the Domain Name was registered or is being used in bad faith.

In this respect, based on the information and the unrefuted evidence provided by the Complainant, the Panel concludes that the Domain Name was registered in bad faith. In this context, the Panel notes that (i) the Domain Name was registered eleven years after the Trade Mark; (ii) the Domain Name incorporates the Trade Mark in its entirety with additional terms that clearly refer to the name of the Complainant's subsidiary Monsanto Holland B.V., and "monsanto" does not appear to be a term of which the Respondent was likely to spontaneously or accidentally think; and (iii) the website to which the Domain Name resolves contains a word/device mark of the Complainant and refers to "Monsanto Holland" and to products identical or similar to products (resulting from the seeds) produced by the Complainant.

On the basis of the above circumstances the Panel concludes that at the time of registration of the Domain Name, the Respondent was or should have been aware of the Trade Mark and that the Respondent registered the Domain Name in bad faith.

For completeness' sake, the following circumstances – in combination with the above – point at bad faith use of the Domain Name: (i) the Respondent has in the past registered other domain names containing the "monsanto" name, which have been transferred to the Complainant by other WIPO panel decisions, showing that the Respondent is disrupting the Complainant's activities by maintaining the registration of the Domain Name; (ii) the Respondent did not react to a take-down notice the Complainant sent prior to initiating these proceedings; (iii) the Respondent did not file a Response.

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 <monsantohollandbv.nl> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Panelist

Date: May 17, 2022