

## **ADMINISTRATIVE PANEL DECISION**

Amor GmbH v. Lara Lima, Amorjewellery.nl  
Case No. DNL2022-0030

### **1. The Parties**

The Complainant is Amor GmbH, Germany, represented by Taylor Wessing, Germany.

The registrant of the disputed domain name is Lara Lima, Amorjewellery.nl, Netherlands, (the “Respondent”).

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

The disputed domain name <amorjewellery.nl> is registered with SIDN through Tucows.com Co.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2022. On July 12, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name.

On July 13, 2022, 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 the Complainant on July 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 July 18, 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 July 19, 2022. In accordance with the Regulations, article 7.1, the due date for Response was August 8, 2022. The Center did not receive any response. Accordingly, the Center notified the Respondent’s default on August 9, 2022.

The Center appointed Alfred Meijboom as the panelist in this matter on August 24, 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 the owner of several European Union trademarks, and international trademarks designating the Benelux and the European Union, including:

- European Union trademark 006983381 AMOR, registered on February 4, 2009, for goods in classes 9, 14, and 18; and
- International trademark 586442A AMOR of May 27, 1992, designating the Benelux, with priority of December 3, 1991, based on a French national trademark, for goods in classes 9 and 14;

(the “AMOR trademarks”).

The Respondent established a sole-proprietor company “amor jewellery” on April 1, 2021, and registered the disputed domain name on June 11, 2021. The disputed domain name resolves to a website displaying the term “Amor jewellery” and the message “Opening Soon - Get notified when we launch”, including the possibility to leave an email address.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant alleges that the disputed domain name infringes its AMOR trademarks pursuant to Article 9(2)(a) of the European Union Trademark Regulation (“EUTMR”). According to the Complainant the elements “jewellery” and the Top-Level Domain “.nl” do not have any distinctive character for which reason the disputed domain name is identical to the AMOR trademarks and likelihood of confusion is irrefutably presumed. Alternatively, the Complainant alleges that in any event a likelihood of confusion between the disputed domain name and the AMOR trademark exists pursuant to article 9(2)(b) EUTMR.

The Complainant also contends that the Respondent has no rights to or legitimate interest in the disputed domain name because the Respondent is a natural person, who does not own any trademarks in the Netherlands or the European Union for the sign “Amor” or “Amorjewellery”. According to the Complainant, the Respondent is not the owner of other prior rights to the term “Amor” based upon the name of her company, as it was only established on April 1, 2021, and as such infringes the AMOR trademarks so that the Complainant holds prior rights to the term AMOR.

The Complainant further alleges that the disputed domain name is being used in bad faith by the Respondent because the disputed domain name’s intended use refers to the offering and/or selling of jewelry products via an online shop. Accordingly, the disputed domain name is used for commercial gain and is attracting Internet users to the website of the Respondent through the likelihood of confusion with the AMOR trademarks.

##### **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 panelist considers it to be without basis in law or in 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 the disputed domain name must meet three cumulative conditions:

- a. the disputed 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 disputed domain name; and
- c. the disputed domain name has been registered or is being used in bad faith.

Before deciding the dispute, the Panel observes that the Complaint is partially based on the presumption of the disputed domain name and the Respondent's company name infringing the Complainant's AMOR trademarks pursuant to the EUTMR. However, the Regulations contain their own substantive rules on the basis of which the Panel must decide the dispute. Consequently, the Panel need not take into account as such the arguments of the Complainant based upon the EUTMR (see *Calvin Klein Trademark Trust and Calvin Klein Inc. v. Gilles Chiazza*, WIPO Case No. [DNL2015-0049](#); *Fossil Group Europe GmbH and Fossil Group, Inc. v. Anke Eisenhower soho*, WIPO Case No. [DNL2017-0010](#)).

### A. Identical or Confusingly Similar

With regard to the assessment of identity or confusing similarity, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).<sup>1</sup> It is also well established precedent that the Top-Level Domain ".nl" may be disregarded in assessing identity or confusing similarity between the trademark on the one hand and the disputed domain name on the other hand (see, e.g., *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. [DNL2008-0008](#)).

Applying the criteria of article 2.1 of the Regulations, the Panel finds that the disputed domain name incorporates the AMOR trademarks in its entirety, with the mere addition of the word "jewellery", which addition does not prevent a finding of confusing similarity under the Regulations.

Consequently, the Panel finds that the requirement of article 2.1 sub a. of the Regulations has been satisfied.

### B. Rights or Legitimate Interests

Article 2.1(b) of the Regulations requires the Complainant to demonstrate that the Respondent has no rights to or legitimate interests in the disputed domain name. This condition is met if the Complainant makes out a *prima facie* case that the Respondent has no such rights or legitimate interests and if the Respondent fails to rebut this (see, e.g., *Technische Unie B.V. and Otra Information Services v. Technology Services Ltd.*, WIPO

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<sup>1</sup> 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](#)).

Case No. [DNL2008-0002](#)).

The Complainant has alleged, and the Respondent has not rebutted, that the Respondent does not own a trademark in the Benelux for the term “Amor” or “Amorjewellery”, and the AMOR trademarks clearly predate the Respondent’s company name. The Complainant has also alleged, again unrebutted, that the Respondent’s business or intended business under the disputed domain name is to operate an online store offering jewelry for sale. In this regard, the Complainant’s allegation that the Respondent’s company name infringes the AMOR trademarks would be a separate cause of action not covered under the Regulations.

Currently, the disputed domain name – while registered in June 2021 – resolves to a website which announces an imminent opening. While over a year may be a considerable time to not have hosted a site, the Panel notes that the Complainant itself has stated “The respondent is only the owner and general director of a Dutch Company called “Amor Jewellery” (sole proprietorship), which was recently founded on 01/04/2021 (see current excerpt of the commercial register of the Netherlands regarding “Amor jewellery” [Eenmanszaak], provided as Annex 4) and as such infringes the Amor-Trademarks as well.”. The Panel finds that the fact that the Respondent has incorporated a company with a name corresponding to the disputed domain name rebuts any *prima facie* case made by the Complainant.

The Complainant has not established the second element of article 2.1 of the Regulations.

### **C. Registered or Used in Bad Faith**

Article 2.1(c) of the Regulations requires the Complainant to show that the disputed domain name was registered and/or is being used in bad faith.

The Complainant has not alleged that the Complainant registered the disputed domain name in bad faith, but rather that its resolving to a website which announces imminent opening of a jewelry webstore constitutes use of the disputed domain name for commercial gain by attracting Internet users to the Respondent’s website through the likelihood of confusion with the AMOR trademarks. The current use of the disputed domain name to resolve to a “coming soon” web page does not prevent a finding of bad faith under the doctrine of passive holding. In this respect section 3.3 of the [WIPO Overview 3.0](#), explains that:

*“From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.*

*While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”*

Of these four elements only the second element applies. The Complainant has made no allegations with respect to the AMOR trademark’s distinctive character or reputation, and has not claim that the disputed domain name was registered in bad faith. In absence of allegations to the contrary, the Panel therefore considers it is possible that the Respondent chose the term “Amor” because of its association with jewelry, while being unfamiliar with the AMOR trademarks. While there is no Response to clarify this, there is nothing in the case file to give the Panel the impression that the registration or use of the disputed domain name is a pretext for cybersquatting. The Respondent did also not conceal her identity or provide false contact details, while, as stated before under B, it is not implausible that the Respondent’s use of the disputed domain name would be in good faith.

In assessing the Complainant's allegations on the one hand and the probabilities of the Respondent's good faith use of the disputed domain name on the other hand, the Panel finds that the Complaint lacks sufficient explanation and that the balance therefore tips in favor of the Respondent so that, at least on the record of this case, the third element of article 2.1 of the Regulations was not established.

The Panel appreciates that the Complainant considers the Respondent's use of the disputed domain name as infringing the AMOR trademarks pursuant to Article 9(2) EUTMR, which claim was neither assessed nor decided in this panel decision. The Panel therefore expressly notes that this decision is without prejudice to any possible judicial proceedings between the Parties or their outcome.

## **7. Decision**

For all the foregoing reasons, the Complaint is denied.

*/Alfred Meijboom/*

**Alfred Meijboom**

Panelist

Date: September 7, 2022