

ADMINISTRATIVE PANEL DECISION

Marktplaats B.V. v. Camer Media group
Case No. DNL2022-0036

1. The Parties

The Complainant is Marktplaats B.V., Netherlands, represented by Houthoff, Netherlands.

The registrant of the disputed domain name is Camer Media group, Cameroon (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <marktplaatsnederland.nl> (the “Disputed Domain Name”) is registered with SIDN through Realtime Register.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2022. On August 31, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name.

On September 1, 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.

On September 2, 2022, the registrar in its turn transmitted by email to the Center further in relation to the Disputed Domain Name.

The Center sent an email communication to the Complainant on September 2, 2022, providing the information disclosed by SIDN and the registrar, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on September 2, 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 Complaint and the proceedings commenced on September 5, 2022. In accordance with the Regulations, article 7.1, the due date for Response was September 25, 2022. The Center did not receive any response. Accordingly, the Center notified the Respondent’s default on September 26, 2022.

The Center appointed Moira Truijens as the panelist in this matter on October 4, 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 operates a classifieds advertisement platform, “Marktplaats”, in the Netherlands through its website “www.marktplaats.nl” and the Marktplaats smartphone application. The website “www.marktplaats.nl” is one of the most-visited Dutch websites. The platform allows individual users to place advertisements for products and services, as well as small, medium, and larger sized businesses to advertise their products and services. Marktplaats enables users to get in touch with each other and conclude transactions among themselves.

The Complainant’s principal domain name <marktplaats.nl>, was registered on May 19, 1999. Since its incorporation 23 years ago, Marktplaats has developed considerable goodwill and has become one of the largest trading platforms in the Netherlands. Marktplaats’ website attracts up to eight million visitors every month and approximately ten million advertisements are placed each month. The Marktplaats app is ranked eighth among the top free apps in the “shopping” category of the Apple App Store, and has been downloaded over ten million times on Google Play.

The Complainant owns several (word and figurative) trademark registrations for MARKTPLAATS. Such trademark registrations include the following:

- Benelux word mark MARKTPLAATS, registration number 859287, registered on June 10, 2009;
- Benelux word mark MARKTPLAATS.NL, registration number 764432, registered on March 10, 2005.

The Disputed Domain Name was registered on June 16, 2015. The website displayed via the Disputed Domain Name consists of an advertising platform.

5. Parties’ Contentions

A. Complainant

The Complainant takes the position that the Disputed Domain Name is confusingly similar to the MARKTPLAATS trademark. The Complainant owns several trademark registrations for MARKTPLAATS (both figurative and word trademarks) in various jurisdictions, including in the Netherlands.

The Complainant notes that the Disputed Domain Name consists of the Complainant’s MARKPLAATS trademark, in addition to the geographical term “nederland” (the Dutch term for “the Netherlands”). In accordance with section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)¹, the MARKTPLAATS trademark is clearly recognizable within the Disputed Domain Name. Therefore, the addition of the geographical term “nederland” does not prevent a finding of confusing similarity.

Pursuant to established case law under the Regulations, the applicable country code Top-Level Domain (“ccTLD”) “.nl” is viewed as a standard registration requirement and as such is disregarded under the first

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](#)).

element confusing similarity test.²

The Complainant states that under the Disputed Domain Name a website (the “Website”) is hosted that mimics the Complainant’s website. At first glance, the Website seems to allow Internet users to browse and publish classifieds. The layout of the website largely corresponds to the Complainant’s website, showing an identical list of categories on the left-hand side and a selection of featured classifieds and images in the center. Furthermore, the Website allows users to register or log in, and perform searches with the possibility to specify a category. The top bar also includes a button stipulating “Place ad”.

The Complainant further asserts that the Respondent is operating a scam using the Disputed Domain Name, by redirecting Internet users to third-party websites, inactive web pages, and fake advertisements. Using the Disputed Domain Name, the Respondent thereby misleads Internet users by making them believe that the advertisements on the Website have been placed by various independent advertisers. Instead, the images on the Website seem to have been copied from various sources, including the Complainant’s website, and published by the Respondent under fake profiles. According to the Complainant, this is evidenced by the fact that all classifieds on the Website have been published by a single account named “verkaufer”.

The Complainant asserts that such use of the Disputed Domain Name cannot be considered as a *bona fide* offering of goods or services, in the sense of article 3.1 of the Regulations. After all, the Respondent has been using the Disputed Domain Name for commercial gain to mislead Internet users seeking the Complainant’s website, thereby tarnishing the Complainant’s reputation and goodwill associated with the MARKTPLAATS trademark and the well-known Marktplaats service.

The Complainant concludes by stating that the Disputed Domain Name is registered and used in bad faith. The Disputed Domain Name was registered on June 16, 2015, over sixteen years after the Complainant had registered its own domain name dedicated to the Dutch market, <marktplaats.nl>, and over ten years after the Complainant secured Benelux trademark registrations for its MARKTPLAATS trademarks.

The Complainant asserts that it and its MARKTPLAATS trademark are very well known. The platform has gained immense popularity in the Netherlands. Offering and buying products on Marktplaats is part of many people’s daily lives. Marktplaats makes every effort to maintain this reputation and its goodwill, as well as to secure its users’ safety on its platform and has made considerable and continuous investments in this respect.

According to the Complainant, it is no coincidence that the Respondent chose to register the Disputed Domain Name, using the MARKTPLAATS trademark in combination with the geographical location of the Complainant’s principal consumer market, the Netherlands. The Complainant claims this was done to confuse the general public and to try to benefit from the popularity and reputation of the Complainant’s platform.

As a result of the use of the MARKTPLAATS trademark in the Disputed Domain Name and the similarities between the Website and the Complainant’s website, according to the Complainant, unsuspecting and less observant consumers and other users may be misled into believing that the Respondent’s website is affiliated with the Complainant or is even an official website of the Complainant.

Given the use of the Disputed Domain Name, the Complainant finds it evident that the Respondent had actual or constructive knowledge of the Complainant’s MARKTPLAATS trademarks and business, and that the use was intended to ride on the coattails of the Complainant’s success and reputation. It is impossible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant’s MARKTPLAATS trademark at the time the Disputed Domain Name was registered.³

² *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. [DNL2008-0008](#).

³ See *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Complainant finally asserts that the Respondent's bad faith registration and use of the Disputed Domain Name are evidenced by the fact that the Respondent has intentionally attempted to attract Internet users to the Website by creating a likelihood of confusion with the Complainant's MARKTPLAATS trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. A substantial proportion of Internet users visiting the Website will be doing so in the hope and expectation of reaching a site of (or authorized by) the Complainant. When they reach the Website they may become the victim of a fraudulent scheme.⁴ The Complainant states that the Respondent clearly registered and uses the Disputed Domain Name to mislead Internet users and derive a financial benefit therefrom, and that such use of the Disputed Domain Name can only amount to an act of bad faith.

B. Respondent

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

6. Discussion and Findings

Pursuant to article 2.1 of the Regulations, the 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 the 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 the Complainant undertakes public activities on a permanent basis; 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.

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 fact.

A. Identical or Confusingly Similar

The Complainant has shown several trademark registrations for MARKTPLAATS (both figurative and word trademarks) in the Benelux, including in the Netherlands. The Disputed Domain Name is confusingly similar to the trademark registrations as it incorporates MARKTPLAATS in its entirety. The addition of the term "nederland" in the Disputed Domain Name does not alter the fact that MARKTPLAATS is recognizable in the Disputed Domain Name (see also [WIPO Overview 3.0](#), section 1.8).

Additionally, the ccTLD ".nl" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11).

The Panel therefore finds that the Disputed Domain Name is confusingly similar to the trademark registrations of the Complainant, and that the Complainant has thus established the first element of article 2.1 of the Regulations.

⁴ *David Foxx v. Kung Fox and Bill Hicks*, WIPO Case No. [D2008-0472](#).

B. Rights or Legitimate Interests

A complainant bears the burden of showing *prima facie* 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 production shifts to the respondent, which will then have to come forward with appropriate allegations or evidence demonstrating rights 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) use of 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 or fair use of the domain name.

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 Complainant's trademarks as part of the Disputed Domain Name, nor that it has otherwise been authorized to use the Complainant's trademarks.

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 Disputed Domain Name.

The 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. To the contrary, as the Respondent has been using the Disputed Domain Name for commercial gain by misleading Internet users seeking the Complainant's website, thereby taking unfair advantage of the Complainant's reputation and goodwill associated with the MARKTPLAATS trademark and well-known Marktplaats service.

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 the Respondent is further supported by the fact that no response was filed by the Respondent.

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 must show that the Disputed Domain Name was registered or is being used in bad faith. Several circumstances, put forward by the Complainant, make that the Panel finds that this is so.

When the Respondent registered the Disputed Domain Name, the trademarks had already been registered and were being used by the Complainant. Given the well-known character of the trademarks and the Complainant's app under the same name, the Panel finds that at the time of registration of the Disputed Domain Name, the Respondent knew that it would be confusingly similar to the Trademark.

The Panel finds that the facts of the case point to an intent on the part of the Respondent to unfairly profit from the Complainant's rights in this regard. Therefore, the Panel finds that the Respondent has registered the Disputed Domain Name in bad faith.

With respect to the use of the Disputed Domain Name, at the time the Complaint was filed, the Disputed Domain Name was resolving to an advertising platform with a layout that largely corresponds to the Complainant's website. The Panel concludes that the Respondent has intentionally attempted to attract Internet users, for commercial gain, to the Website by creating a likelihood of confusion with the Complainant's MARKTPLAATS trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Furthermore, a substantial proportion of Internet users visiting the site will be doing

so in the hope and expectation of reaching a site of (or authorized by) the Complainant, which *inter alia* increases the risk of the Disputed Domain name being used in a fraudulent scheme.

The Respondent clearly registered and uses the Disputed Domain Name to mislead Internet users and derive a financial benefit. Such use of the Disputed Domain Name can only amount to an act of bad faith.

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 <marktplaatsnederland.nl> be transferred to the Complainant.

/Moira Truijens/

Moira Truijens

Panelist

Date: October 18, 2022