

ADMINISTRATIVE PANEL DECISION

Herobility AB v. R. Prins
Case No. DNL2022-0040

1. The Parties

The Complainant is Herobility AB, Sweden, represented by Bjerké Hynell KB, Sweden.

The registrant of the disputed domain name is R. Prins, the Netherlands (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <herobility.nl> is registered with SIDN through Internationale Domeinregistratie Nederland.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 30, 2022. On October 3, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name.

On October 4, 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 October 4, 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 October 5, 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 October 7, 2022. In accordance with the Regulations, article 7.1, the due date for Response was October 27, 2022. On October 7, 2022, the Center received an email communication from TransIP BV, stating: “Since this domain is registered via a sister brand of TransIP we have forwarded this to them so they can take appropriate action to for example contact the customer that owns the domain name.” The Center did not receive a formal response. Accordingly, the Center notified the Respondent’s default on October 28, 2022.

The Center appointed Alfred Meijboom as the panelist in this matter on November 10, 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 a Swedish company which was established in 2012 and sells baby bottles, soothers, and feeding and caring products directed to parents with newborn or small children. The Respondent used to be a reseller of the Complainant until 2019 when their business relationship came to an end.

The Complainant is owner of European Union trademark No. 015470032 for HEROBILITY of October 5, 2016, for goods in classes 10 and 21, including for feeding aids and pacifiers, and of European Union trademark No. 018081801 for HEROBILITY of September 26, 2019, for goods in class 8.

SIDN informed the Center that the Domain Name was first registered on January 29, 2018, and that the date of the current registration by change of registrant is February 14, 2018. The disputed domain name resolves to a website offering the Complainant's products for sale.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is identical to the HEROBILITY trademarks, and that the Respondent has no rights to or legitimate interests in the disputed domain name, which currently resolves to a website offering the Complainant's goods which the Respondent can no longer deliver because his reseller agreement with the Respondent terminated, while the website gives the appearance of being an official website of the Complainant and the Respondent has not been commonly known by the disputed domain name and is not making a legitimate noncommercial or fair use of the disputed domain name, but is rather misleading Internet users into believing that the Respondent is a retailer for the goods offered on his website.

Further, the Complainant alleges that the Respondent uses the disputed domain name in bad faith by attempting to attract customers to the website under the disputed domain name which no longer delivers the offered products and is no longer connected to the Complainant as the manufacturer of the goods offered on the website. The Complainant also alleges that the Respondent is using the disputed domain name for its own commercial gain by accepting payments for products that he does no longer deliver. Specifically, the Complainant notes that customers contact the Complainant with questions and demands regarding their orders placed on the website linked to the disputed domain name, paid to the account connected to this website, but never delivered. Besides the fact that the Complainant is forced to deliver goods for free, this is seriously damaging their reputation and trademarks.

B. Respondent

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

6. Discussion and Findings

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

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

a. the registrant has no rights to or legitimate interests in the domain name; and

b. 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

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](#)”))¹. It is also well established precedent that the country code Top-Level Domain “.nl” (“ccTLD”) may be disregarded in assessing 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](#)).

As owner of the European Union trademarks for HEROBILITY, the Complainant has rights in a trademark protected under Dutch law. When disregarding the ccTLD, the disputed domain name is identical to the HEROBILITY trademarks.

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

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

The Panel is satisfied that the Complainant has made such a *prima facie* case. The Respondent has not disputed the Complainant’s contention that he was never authorized to register or use the disputed domain name. Furthermore, according to the Complainant, the Respondent uses the disputed domain name to resolve to a website which mimics the Complainant’s website by prominently using the Complainant’s logo atop of the website, offering the Complainant’s products for sale, thus not delivering the products ordered. Such use of the disputed domain name constitutes an intent for commercial gain to misleadingly divert consumers and it tarnishes the Complainant’s HEROBILITY trademarks.

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 cases decided under both the Regulations and the UDRP are relevant to this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

The Panel notes that the disputed domain name, as it is identical to the Complainant's trademark, carries a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Noting that the Respondent has not rebutted this *prima facie* case, the Panel finds that the Complainant has satisfied the requirement of article 2.1(b) 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.

As set forth in paragraph 6.B. above, the Respondent has not disputed that he used the disputed domain name to attract Internet users to the website under the disputed domain name, creating a likelihood of such website visitors believing that the Respondent's website originates from or is authorized by the Complainant, and that the products offered for sale shall be delivered, while it appears that the Respondent is not in a position to deliver such orders, nor is he responding to such customers' complaints. The Panel considers this use of the disputed domain name in bad faith in the sense of article 3.2(d) of the Regulations, namely use of the disputed domain name by the Respondent for commercial gain, by attracting Internet users to the Respondent's website through the likelihood of confusion which may arise with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

The Panel finds 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 domain name <herobility.nl> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Panelist

Date: November 23, 2022