

ADMINISTRATIVE PANEL DECISION

BASF SE v. Name Redacted

Case No. D2023-4524

1. The Parties

The Complainant is BASF SE, Germany, represented by IP Twins, France.

The Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <basf-nederland.com> is registered with NetEarth One Inc. d/b/a NetEarth (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 31, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 7, 2023, the Registrar 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 13, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2023. On December 12, 2023, the Center sent a communication noting that the Written Notice was not delivered to an address provided by the Registrar, inviting the Respondent to indicate whether it wished to participate in this proceeding. An informal communication was received from an email connected to the disputed domain name on December 19, 2023. The Complainant submitted a Supplemental Filing on the same day. Pursuant to paragraph 6 of the Rules, the Center informed the Parties of the Commencement of Panel Appointment Process on December 26, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on January 8, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a leader in the field of chemicals and owns many trademark registrations for BASF worldwide such as the following:

1. International Trademark Registration No. 638794, registered on May 3, 1995;
2. European Union Trademark Registration No. 98020, registered on October 15, 1998; and

The Complainant also has many domain names which contain the trademark BASF such as <basf.com>, <basf.nl>, and <basf.world.com>.

The disputed domain name was registered on November 10, 2021, and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant's trademark is considered well known by UDRP Panels. The disputed domain name contains the Complainant's trademark in its entirety. The addition of the generic geographical term "nederland" does not diminish the likelihood of confusion. On the contrary, it adds to the confusion as disputed domain name may be considered the Complainant's website for the Netherlands. The generic Top-Level Domain ("gTLD") ".com" may be disregarded.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant did not authorize the Respondent to use its trademark. There is no evidence of use or preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is no noncommercial or fair use of the disputed domain name. Rather, the disputed domain name has been used in connection with a fraudulent email scheme whereby the Respondent impersonates the Complainant in emails to the Complainant's clients via "[...][@basf-nederland.com](mailto:[...]@basf-nederland.com)".

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent must have had knowledge of the Complainant's trademark as it is well known. Also, the Complainant's trademark was registered long before the creation of the disputed domain name and a quick

Google search would have revealed the Complainant's trademark. The use of a well-known trademark creates a presumption of bad faith itself. The Complainant's trademark was used in the hope of attracting Internet users. Passive holding does not prevent a finding of bad faith. No *bona fide* use can be contemplated. Lastly, the Respondent usurped the contact details for the Complainant's contact for Belgium, Netherlands, and Luxembourg for purposes of the registration of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions. A communication was sent from an email associated with the disputed domain name, that stated "we have discussed internally and are willing to proceed with this Hearing".

6. Discussion and Findings

6.1 Preliminary Considerations: Complainant's Supplemental Filing

As reported in the Complaint, the disputed domain name was used in connection with an email address "[...]@basf-nederland.com". Such email address was used for purposes of an informal communication to the Center on December 19, 2023, to which the Complainant submitted an unsolicited supplemental filing on the same day.

Paragraph 10 of the UDRP Rules vests panels with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition. Unsolicited supplemental filings are generally discouraged, unless specifically requested by panels. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.6.

Given that the content of the Complainant's unsolicited supplemental filing merely analyzes the fraudulent information found within the email, an assessment already accounted for in the original Complaint that remarked on the use of the disputed domain name for such an email, the panel will not consider the Complainant's unsolicited supplemental filing. The Panel notes that consideration thereof would not have impacted the outcome of the decision and does not unfairly prejudice either Party.

6.2 Substantive Considerations

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "nederland", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here impersonation, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent registered the disputed domain name 25 years after the registration of the Complainant’s trademark and the Complainant’s trademark is well known. The disputed domain name resolves to a page with no content, but has been used in a fraudulent email scheme. As noted in section 2.13.1 of the [WIPO Overview 3.0](#), given that the use of a domain name for *per se* illegitimate activity such as phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith. Accordingly, the Respondent registered and has used the disputed domain name in bad faith.

Furthermore, paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blankpage) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the lack of an active website connected to the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant’s trademark, the composition of the disputed domain name, the Respondent’s impersonation of

one of the Complainant's contacts for purposes registration of the disputed domain name, and the Respondent's previous illegal use of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <basf-nederland.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: January 16, 2024