

ADMINISTRATIVE PANEL DECISION

Monsanto Technology, LLC. v. Mark Bush
Case No. DNL2023-0031

1. The Parties

The Complainant is Monsanto Technology, LLC., United States of America, represented by pm.legal, Germany.

The registrant of the disputed domain name is Mark Bush, Netherlands (Kingdom of the) (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <monsantoholandbv.nl> is registered with SIDN through Realtime Register.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 25, 2023. On September 25, 2023, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name.

On September 26, 2023, 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 September 27, 2023, providing the information disclosed by SIDN, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on September 29, 2023.

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 articles 5.1 and 16.4 of the Regulations the Center formally notified the Respondent and the effective domain name user and party in interest in these proceedings of the Complaint and the proceedings commenced on October 6, 2023. In accordance with the Regulations, article 7.1, the due date for Response was October 26, 2023. The Center did not receive any response. Accordingly, the Center notified the Respondent’s default on November 8, 2023.

The Center appointed Alfred Meijboom as the panelist in this matter on November 14, 2023. 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 article 9.2 of the Regulations.

4. Factual Background

The Complainant is an agrochemical and agricultural biotechnology corporation founded in 1901. In 2018, the Complainant was acquired by Bayer AG as part of its crop science division. The Complainant developed Roundup, a glyphosate-based herbicide, in the 1970s, and became a major producer of genetically engineered crops. The Complainant has a subsidiary in the Netherlands, namely Monsanto Holland B.V., which supplies not only the Netherlands but the whole of Europe.

The Complainant is owner of, *inter alia*, European Union trademark MONSANTO with registration no. 009798471 of August 18, 2011 (the "MONSANTO trademark").

The Complainant is a victim of a series of frauds. Thus far, a total of nine domain names have been used fraudulently and the Complainant's customers have already fallen victim to the operators of the fraudulent websites, with one of the Complainant's customers having suffered a loss of EUR 18,000. The Complainant and its parent company Bayer AG have already commenced proceedings and obtained decisions related to this series of fraud (*Monsanto Technology, LLC v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Leon Manders*, WIPO Case No. [D2021-1345](#); *Monsanto Technology, LLC v. BV intergroup trading*, WIPO Case No. [DNL2021-0022](#); *Bayer AG v. leon manders (Lescongroep)*, CAC Case No. ADREU-008253; *Monsanto Technology, LLC v. Leon Manders*, WIPO Case No. [DNL2022-0014](#); *Bayer AG v. Steven Storm*, CAC Case No. ADREU-008336; *Monsanto Technology LLC v. Adam Ba*, WIPO Case No. [D2023-2044](#); *Monsanto Technology, LLC v. Bernstein stein*, WIPO Case No. [D2023-2554](#); *Monsanto Technology, LLC. v. Bedmond Maize*, WIPO Case No. [DNL2023-0021](#); and *Monsanto Technology, LLC v. IBC LP1*, WIPO Case No. [DNL2023-0025](#)). All of the domain names which were subject to these decisions were similar variations of Monsanto Holland B.V., and have been used according to the Complainant, in connection with mostly identical websites. According to the Complainant all the domain names which were subject to these decisions are operated by the same person, and the disputed domain name was apparently registered in response to the Complainant's and Bayer AG's successful actions with respect to the earlier mentioned domain names with the sole intention of continuing fraudulent activities.

The disputed domain name was registered on August 17, 2023, and resolved to a scam website which falsely claims to be from the Complainant's subsidiary Monsanto Holland B.V.

5. Parties' Contentions

A. Complainant

The Complainant alleges that it owns rights in the MONSANTO trademark which enjoys protection in the Netherlands. The disputed domain name fully incorporates the MONSANTO trademark and is confusingly similar to such trademark. The additional terms "holand", which is an obvious misspelling of the geographical term "holland", and "bv" as abbreviation of "besloten vennootschap" (Dutch limited liability company) are merely descriptive and do not eliminate the similarity between the MONSANTO trademark and the disputed domain name.

According to the Complainant, it has not licensed or otherwise permitted the Respondent to use any of its trademarks and it has not permitted the Respondent to apply for or use any domain name incorporating the MONSANTO trademark. The Complainant considers these circumstances themselves sufficient to constitute *prima facie* showing by the Complainant of absence of rights or legitimate interests in the disputed domain name. Further, the Complainant alleges that there is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed

domain name in connection with a *bona fide* offering of goods or services within the meaning of article 3.1(a) of the Regulations, more particularly as the Respondent is using the disputed domain name in connection with a scam website. According to the Complainant, there is also no evidence which suggests that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, or is commonly known by the disputed domain name or the name "Monsantoholandbv".

According to the Complainant, the disputed domain name has been registered in bad faith as the MONSANTO trademark is highly distinctive, well-known and solely connected with the Complainant so that it is inconceivable that the Respondent registered the disputed domain name unaware of the Complainant and its MONSANTO trademark. In combination with the fact that the Respondent used the disputed domain name in connection with a scam website deliberately targeting the Complainant and its subsidiary Monsanto Holland B.V., the Respondent obviously was perfectly aware of the Complainant and the MONSANTO trademark at the time of registration of the disputed domain name.

The Complainant alleges that the Respondent has used the disputed domain name to attract Internet users and divert Internet traffic to its scam website for the likely purpose of achieving commercial gain, through the likelihood of confusion which may arise with the MONSANTO trademark, which conduct constitutes bad faith use under article 3.2(d) of the Regulations.

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

(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.

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](#)).

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, and therefore [WIPO Overview 3.0](#), may be relevant to the determination this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

As owner of the European Union trademark for MONSANTO, the Complainant has rights in a trademark protected under Dutch law. The disputed domain name wholly incorporates the MONSANTO trademark. The Panel finds that the term “holandbv” which is added to the MONSANTO trademark in the disputed domain name is clearly a misspelling of “Holland B.V.”, which is the second part of the Complainant’s Dutch subsidiary’s corporate name. The added term does not prevent a finding of confusing similarity.

Consequently, the Panel is satisfied that the requirement of article 2.1(a) of the Regulations has been met.

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 it 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 scam website which constitutes an intent for commercial gain to misleadingly divert consumers and it tarnishes the MONSANTO trademark.

Therefore, 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

The Respondent has not rebutted the Complainant’s allegation that the domain names which were subject to the earlier decided disputes mentioned sub 4 above are subject to common control of the same person as the Respondent in this dispute. Given that all such domain names incorporate the company name of the Complainant’s Dutch subsidiary (sometimes with minor typographical errors as in the current dispute), that all such domain names undisputedly resolve to a scam website which is mostly identical to the website of the disputed domain name, and that in none of such cases a Response was filed, the Panel considers it most probable that the Respondent is the same as the respondents in the aforementioned decided disputes, using different false identities, and that it has again, in an incorrigible manner, registered and put into use the disputed domain name for the purpose of acting fraudulently towards the Complainant and the Internet users who have been misled into believing that they were visiting a website of the Complainant.

Therefore, the Panel considers it obvious that the Respondent registered the disputed domain name in bad faith as the Respondent’s intention was clearly to target the MONSANTO trademark, the Complainant and its Dutch subsidiary.

The Respondent’s use of the disputed domain name is also in bad faith because the Respondent used the disputed domain name for commercial gain, by attracting Internet users to a scam website through the likelihood of confusion which may arise with the MONSANTO trademark as to the source of the Respondent’s website as meant in article 3.2(d) of the Regulations, and because the Respondent has highly likely engaged in a pattern of abusive domain name registrations using different false identities, as evidenced by the cases mentioned sub 4 above (see section 3.1.2 [WIPO Overview 3.0](#)).

Consequently, 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 <monsantoholandbv.nl> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Panelist

Date: November 18, 2023