

PANEL DECISION

Mermet S.A.S. v. Didier Mermet
Case No. DEU2024-0001

1. The Parties

The Complainant is Mermet S.A.S. of France, represented by Windt Le Grand Leeuwenburgh B.V., Netherlands (Kingdom of the).

The Respondent is Didier Mermet of France, represented by Selarl Axe Avocats, France.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <mermet.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is Scaleway SAS.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 15, 2024. On January 16, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On January 17, 2024, the Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the “.eu” Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for “.eu” Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 22, 2024. In accordance with the ADR Rules, paragraph B(3)(a), the due date for Response was February 11, 2024. The Response was filed with the Center on February 9, 2024.

The Center verified that the Response satisfied the formal requirements of the ADR Rules and the Supplemental Rules.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on February 13, 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 ADR Rules, paragraph B(5).

The Center received unsolicited email communications from the Complainant and from the Respondent, both dated February 19, 2024. Pursuant to paragraphs B(8) the ADR Rules, the Panel decides, at its sole discretion, not to admit those further statements and documents from the Parties which correspond to arguments and documents already submitted by the Parties in their Complaint and Response.

Pursuant to the panel's decision of January 8, 2024 in *Mermet S.A.S. v. Didier Mermet*, WIPO Case No. [DEUL2023-0007](#), in which the Complainant's request for the language of these ADR proceedings to be in English was granted by the panel and accordingly the language of the ADR proceeding shall be English.

4. Factual Background

The Complainant is a French company created in 1951, which is specialized in the designing and manufacturing of hi-tech fabrics to provide visual and thermal comfort to occupants of various buildings (including residential buildings, offices, and other buildings). The Complainant was founded by Henri Mermet and joined the Hunter Douglas group of companies in 2005.

For the purpose of its activities, the Complainant is the owner of several domain names incorporating the MERMET sign, such as <mermet-industries.com> and <sunscreen-mermet.com>, registered in 1998 and 2004.

The Complainant is also the owner of several trademarks including the European Union Trademark MERMET, registration No. 005647912, registered on December 14, 2007, for products and services in classes 17, 20, 24, and 27 (the "MERMET Trademark").

The disputed domain name was registered by the Respondent, a natural person located in France whose last name is Mermet, on May 18, 2011.

5. Parties' Contentions

A. Complainant

First, the Complainant contends that the disputed domain name is identical to the MERMET Trademark since it consists solely of the MERMET Trademark.

Then, the Complainant stands that the Respondent has no rights or legitimate interests in respect of the disputed domain name, given that the Respondent is not making any use of the disputed domain name since its registration in 2011. The Complainant underlines that the Respondent has registered at least eight domain names with the sign "mermet", while not having an active website on any of these domain names and, that the Respondent is offering for sale these domain names, including the disputed domain name, to the Complainant, for an excessive amount of money of EUR 150,000.

Finally, the Complainant submits that the disputed domain name was registered and is being used in bad faith, considering that the Respondent is not making any use of the disputed domain name since its registration. Moreover, the Complainant underlines that the MERMET Trademark has a strong reputation and is widely known. Finally, the Complainant highlights that the Respondent is offering the disputed domain name for an excessive amount of money, which is an obvious intent to abuse and monetize the right holder's

commercial need to own the disputed domain name identical to its brand, which is now not possible due to the Respondent's passive holding.

B. Respondent

The Respondent contends that the disputed domain name is identical to his family name "Mermet" and that the disputed domain name has been in use since 2011 and is an active portal site that redirects services to the Respondent's website <mermet.com>, dedicated to genealogical research on the "Mermet" name, allowing users to search for persons named "Mermet" throughout the world.

The Respondent also stands that he has rights and legitimate interests in respect of the disputed domain name which is identical to his family name. The Respondent argues that the disputed domain name has actively been used since its creation. The Respondent adds that it has registered many domain names "Mermet" in order to offer to the Internet users dedicated email addresses that correspond to their last name. The Respondent also highlights that he is not specialized in the Complainant's business and that the Complainant has been working with its own domain names for years, and that the Respondent is commonly known by the disputed domain name. Finally, the Respondent explains that he fixed the selling price of its domain names, including the disputed domain name and the <mermet.com> domain name, at EUR 150,000 considering the longstanding use of them, the meaning of them and the large investments made by the Respondent since their creation.

Lastly, the Respondent submits that the disputed domain name has not been registered nor is being used in bad faith. On the contrary, the Respondent considers that the Complainant only attempted to buy the disputed domain name inexpensively, and to rob the Respondent. Therefore, the Respondent asks for a finding of reverse domain name hijacking.

6. Discussion and Findings

Paragraph B(11)(d) of the ADR Rules provides that the Panel shall issue a decision granting the remedies requested by the Complainant in the event that the Complainant proves the following three elements:

- (i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either
- (ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or
- (iii) The domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

According to the ADR Rules, paragraph B(11)(d)(1)(i), the Complainant shall prove that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law.

First, the Panel finds that the Complainant has provided evidence that it has rights on the MERMET Trademark.

Then, the Panel notices that the disputed domain name is wholly and exclusively composed of (i) the Mermet Trademark, and (ii) the ".eu" suffix.

The Panel wishes to remind that according to ADR panels, the panel's review consists of a comparison between the disputed domain name and the name for which a right is recognized or established by national and/or European Union law, the ".eu" suffix should be disregarded for assessing identity or confusing similarity, as well as the use of a hyphen between words (see sections 1.7 and 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition¹, [WIPO Overview 3.0](#)).

Regarding the disputed domain name, the Panel finds that it wholly and exclusively incorporates the MERMET Trademark, so that it is identical to the trademarks in which the Complainant has rights.

Therefore, the Panel holds that the Complainant has established the first element of paragraph B(11)(d)(1)(i) of the ADR Rules and that the disputed domain name is identical to the Complainant's MERMET Trademark.

B. Rights or Legitimate Interests

According to the ADR Rules, paragraph B(11)(d)(1)(ii), the Complainant shall demonstrate that the disputed domain name has been registered by the Respondent without rights or legitimate interests in the disputed domain name.

The ADR Rules, paragraph B(11)(e), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name.

These circumstances are:

(1) prior to any notice of the dispute, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

(2) the Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or European Union law;

(3) the Respondent is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

The Respondent has provided evidence that the disputed domain name is identical to his family name and therefore the Panel finds that he is commonly known by the disputed domain name, which wholly and exclusively reproduce his family name.

In the light of the above matters, the Panel finds on balance that the Complainant has not established for the purpose of this proceeding that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the domain name.

C. Registered or Used in Bad Faith

According to the ADR Rules, paragraph B(11)(d)(1)(iii), the Complainant shall prove that the disputed domain name has been registered or is being used in bad faith.

Thus, paragraph B(11)(f) provides that any one of the following nonexclusive scenarios constitutes evidence of a respondent's bad faith:

¹ Given the similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel finds UDRP precedent and [WIPO Overview 3.0](#) to be relevant to this case. See *Natixis v. BARBAOUAT ROBERT*, WIPO Case No. [DEU2023-0002](#).

(1) Circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or European Union law, or to a public body; or

(2) The domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or European Union law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) the Respondent has engaged in a pattern of such conduct; or

(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) there are circumstances where, at the time the ADR Proceeding was initiated, the Respondent has declared its intention to use the domain name, in respect of which a right is recognized or established by national and/or European Union law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated;

(3) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(4) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other online location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or European Union law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or

(5) the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered.

First, the Complainant asserts that the bad faith of the Respondent results from the passive holding of the disputed domain name. However, even if the Complainant asserts that there is no active website accessible by the disputed domain name, the Respondent has provided evidence that appears he was using the disputed domain name in relation to his family name.

It appears that the disputed domain name was resolving to a website stating "Bienvenue chez les Mermets". The Panel notes that the Respondent claims that the disputed domain name was redirecting Internet users to the Respondent website's <mermet.com>, which is active since 1998 and provides Internet users results from genealogy or historical searches performed on the family name "Mermet". The Respondent also demonstrates that he offers Internet users named Mermet the possibility of acquiring dedicated email addresses corresponding to their name, with several extensions including <mermet.eu>, all of these consisting in a legitimate and non-commercial use of the disputed domain name.

Then, the Complainant highlights that the Respondent is offering the disputed domain name for an excessive amount of money. However, even if the Respondent proposes to sell to the Complainant its domain names, including the disputed domain name and the domain name <mermet.com>, for an amount of EUR 150,000, the Complainant does not demonstrate that the domain name was registered or acquired primarily for the purpose of selling it to the Complainant. Indeed, it appears that it was the Complainant who contacted the Respondent with a view to acquiring his domain names, twelve years after its registration by the Respondent.

In the circumstances, the Panel finds on balance that the Complainant is unable to establish that the disputed domain name was either registered or have been used in bad faith.

D. Abuse of administrative proceedings

Paragraph 12(h) of the ADR Rules provides that, if “after considering the submissions the Panel finds that the Complaint was initiated in bad faith, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of administrative proceeding”.

Panels have consistently found that the mere lack of success of a complaint is not itself sufficient for a finding of abuse of administrative proceeding.

The Panel here finds that the Complainant sincerely believes that the Respondent is attempting to profit from the registration of the disputed domain name. Therefore, the Panel considers that the Complaint was not initiated in bad faith and does not constitute an abuse of administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: March 12, 2024