

## **ADMINISTRATIVE PANEL DECISION**

FINANCIERE N v. Barry West  
Case No. DNL2024-0028

### **1. The Parties**

The complainant is FINANCIERE N, France, represented by H20 Avocats, France (“Complainant”).

The registrant of the disputed domain name is Barry West, Germany, (“Respondent”).

### **2. The Domain Name and Registrar**

The disputed domain name <nemera.nl> (the “Disputed Domain Name”) is registered with SIDN through Namecheap, Inc.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2024. On June 20, 2024, the Center transmitted by e-mail to SIDN a request for registrar verification in connection with the Disputed Domain Name.

On June 21, 2024, SIDN transmitted by e-mail 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 e-mail communication to Complainant on June 27, 2024, providing the information disclosed by SIDN, and inviting Complainant to amend the Complaint in this light. Complainant filed an amended Complaint on July 1, 2024.

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 Respondent of the Complaint and the proceedings commenced on July 3, 2024. In accordance with the Regulations, article 7.1, the due date for Response was July 23, 2024. The Center did not receive any response. Accordingly, the Center notified Respondent’s default on July 26, 2024.

The Center appointed Moïra Truijens as the panelist in this matter on August 21, 2024. 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**

Complainant is Financière N, a French company that is operating under the tradename “Nemera”. It is one of the world's leading suppliers of medical devices in fields such as ophthalmology, allergology, oncology, diabetes, hormonal disorders, infertility, dermatology, and respiratory diseases. The company operates throughout the world, including the Netherlands.

Complainant owns many trademarks worldwide, including several NEMERA trademarks covering multiple European jurisdictions, amongst which:

- European Union Trademark Registration NEMERA, registered on October 1, 2021, under number 018480480 for classes 10, 21 and 42;
- European Union Trademark Registration for semi-figurative trademark NEMERA, registered on September 17, 2022, under number 018694713 for classes 10, 21, 40 and 42;
- European Union Trademark Registration for semi-figurative trademark NEMERA, registered on July 3, 2014, under number 013469549 for classes 10, 20, 21, 35, 42 et 45.

Complainant makes use of the domain name <nemera.net>.

The NEMERA trademark registrations predate the registration of the Disputed Domain Name as the Disputed Domain Name was registered on March 4, 2024. At the time of filing the Complaint and the Decision, the Disputed Domain Name did not resolve to an active website, the message displayed when trying to reach the Disputed domain Name states: “*Deze site is niet bereikbaar*” (in English: “This site is not reachable”).

#### **5. Parties' Contentions**

##### **A. Complainant**

The Disputed Domain Name incorporates Complainant's NEMERA trademark and trade name in its entirety. Complainant therefore finds the Disputed Domain Name confusingly similar to Complainant's NEMERA trademark and trade name.

Complainant further claims that Respondent has no rights to or legitimate interests in the Disputed Domain Name. Complainant states that a TMView search for Respondent's trademarks, including the search term “Nemera”, revealed no results.

Complainant also holds that since Complainant is using the NEMERA trademark and trade name, the registration of the Disputed Domain Name has been made without a legitimate right by Respondent.

Additionally, Complainant states that the Disputed Domain Name is registered and used in bad faith as Respondent is sending fraudulent e-mails with it. Complainant has demonstrated that Respondent has created, at least, one e-mail address using the first and last name of an actual employee of Complainant:

“firstname.lastname@nemera.nl”, whose real e-mail address is “firstname.lastname@nemera.net”<sup>1</sup>. Complainant has submitted an e-mail dated March 5, 2024, the day after the Disputed Domain Name was registered, which shows Respondent sending an e-mail to one of Complainant’s clients, using the e-mail address “firstname.lastname@nemera.nl”, in which Respondent requested payment of an invoice, to a bank account not owned by Complainant.

## **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

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

b. 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**

Complainant has shown registered rights in the NEMERA trademark under the Regulations. The Disputed Domain Name incorporates the NEMERA trademark in its entirety.

The country code Top-Level Domain “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11)<sup>2</sup>.

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

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<sup>1</sup> For privacy reasons, the real name of Complainant’s employee is not published in the Decision, but “firstname.lastname” is used instead.

<sup>2</sup>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 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](#)).

## **B. Rights or Legitimate Interests**

A complainant bears the burden of prima facie showing 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 a right to or legitimate interest 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 Complainant, the Panel concludes that Respondent has not received Complainant's consent to use the NEMERA trademark as part of the Disputed Domain Name, nor that it has otherwise been authorized to use the NEMERA trademark.

Respondent has not replied and thus not provided evidence, nor is there any indication in the record of this case that Respondent is commonly known by the Disputed Domain Name. 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. Rather to the contrary, the Respondent has attempted to use the Disputed Domain Name for illegal activity, here impersonation and fraud, which can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the Panel notes the Disputed Domain Name is identical to Complainant's mark, which also prevents a finding of rights or legitimate interests. [WIPO Overview 3.0](#), section 2.5.1.

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 Respondent is further supported by the fact that no formal response was filed by Respondent, but that he did reply to the cease-and-desist letter, with an e-mail in which Respondent offered to sell the Disputed Domain Name.

The Panel concludes that 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, Complainant has to show that the Disputed Domain Name was registered or is being used in bad faith. Several circumstances put forward by Complainant, lead the Panel to find that the Disputed Domain Name was registered or is being used in bad faith.

The Disputed Domain Name is identical to Complainant's NEMERA trademark. When Respondent registered the Disputed Domain Name, the NEMERA trademark had already been registered and was being used by Complainant for its products and services. Respondent has no independent right or legitimate interest in the Disputed Domain Name.

Given the fraudulent e-mail address that was made and used by Respondent to mislead Complainant's clients, the Panel finds that, at the time of registration of the Disputed Domain Name, Respondent was aware of Complainant and its NEMERA trademark.

Bad faith further is proven, since Respondent has used the identity of an employee of Complainant and sent at least one e-mail to a client of Complainant, asking for payments into a bank account that does not belong to Complainant. Panels have held that the use of a domain name for illegal activity, here impersonation and fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4

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 <nemera.nl> be transferred to the Complainant.

*/Moira Truijens/*

**Moira Truijens**

Panelist

Date: September 4, 2024