

## **ADMINISTRATIVE PANEL DECISION**

**Brocacef Groep N.V. v. Premium RX Pharmaceuticals / Jurii Bulanov**  
**Case No. D2022-3708**

### **1. The Parties**

The Complainant is Brocacef Groep N.V., Netherlands, represented by Clairfort lawyers, Netherlands.

The Respondent is Premium RX Pharmaceuticals, India / Jurii Bulanov, Russian Federation.

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

The disputed domain name <benuapothEEK.com> (the “Domain Name”) is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 6, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint (Premium RX Pharmaceuticals, India). The Center sent an email communication to the Complainant on October 12, 2022, 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 October 19, 2022.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 10, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on November 21, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a Dutch company in the medical field. The company goes back over 200 years. The Complainant currently employs over 5,400 employees and is a part of the German PHOENIX group, with McKesson Europe AG as the second shareholder. The Complainant is the sole shareholder of BENU Nederland B.V. BENU is the largest chain of pharmacies in the Netherlands. There are more than 345 BENU pharmacies. BENU has over 3.6 million customers.

The Complainant owns trademark registrations, such as BENU (the Benelux Office for Intellectual Property registration number 902395, registered on June 27, 2011). The Complainant uses its trademarks in connection with pharmacy services at BENU pharmacies, but also via <benushop.nl> and via <benuapotheek.nl>.

The Domain Name was registered on June 11, 2021. At the time of filing the Complaint, and at the time of the Decision, the Domain Name resolved to website that appears to be an online pharmacy. The website does not contain any information about the Respondent. It has a medical disclaimer referring to an Indian online pharmacy named "Premium Rx Pharmaceuticals". For Internet users the website appears to be connected to BENU.

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

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

The Complainant provides evidence of trademark registrations and argues that the BENU trademark is a well-known trademark, at least in the Netherlands. Moreover, the dominant part of the Domain Name ("benu") is identical to the Complainant's trademark. The addition of "apotheek" (the Dutch word for pharmacy) merely adds confusion.

The Complainant asserts that the Respondent is not authorized to use the Complainant's trademark. The Respondent cannot establish rights in the Domain Name, as it has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, the Complainant documents that the Respondent has used the Domain Name to set up a website to divert consumers. On the website, the Respondent is pretending to be BENU itself. The use of the Domain Name may tarnish the Complainant's trademark *inter alia* because the website offers impotence or erectile dysfunction that legally only can be purchased at a pharmacy with a doctor's prescription, whereas it seems that on the website the products can be ordered without prescription.

The Complainant argues that the Respondent registered and has used the Domain Name to impersonate the Complainant's company. There is no doubt that the Respondent was aware of the Complainant when the Respondent registered the Domain Name. The word BENU has no meaning in Dutch. The sole reason for registering the Domain Name was to take advantage of the Complainant's trademark.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

The Complainant has established that it has rights in the trademark BENU. The test for confusing similarity involves a comparison between the trademark and the Domain Name.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domains (“gTLDs”), see [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

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

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register the Domain Name containing the Complainant’s trademark or otherwise make use of the Complainant’s trademark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered trademark rights. The Respondent has not made use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering. The Respondent’s use of the Domain Name is not *bona fide*, but rather evidence of bad faith.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds it evident from the use of the Domain Name that the Respondent must have been aware of the Complainant and its trademark when the Respondent registered the Domain Name.

The Respondent’s use of the Domain Name for a website displaying the Complainant’s trademark to create an impression of association with the Complainant’s company to deceive Internet users is clear evidence of bad faith.

The Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 Domain Name <benuapothek.com> be transferred to the Complainant.

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Sole Panelist

Date: December 14, 2022