

## **ADMINISTRATIVE PANEL DECISION**

Akzo Nobel Coatings N.V. v. Jenny Merlo, Acliviti  
Case No. D2023-1239

### **1. The Parties**

The Complainant is Akzo Nobel Coatings N.V., Netherlands, internally represented.

The Respondent is Jenny Merlo, Acliviti, United States of America (“United States”).

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

The disputed domain name <akzon0bel.com> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2023. On March 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 22, 2023, 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 (Redacted) and contact information in the Complaint. On March 29, 2023, the Center sent an email communication to the Complainant on 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 amendment to the Complaint on March 30, 2023.

The Center verified that the Complaint together with the amendment to the 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 April 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 27, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on May 2, 2023. 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 Dutch company, trading globally, specializing in global paints and coatings. The Complainant employs 35,000 people, had revenue of EUR 10 billion in 2022 and trades in 150 countries. It was founded in 1994 through its predecessors in title have histories dating back to the 17<sup>th</sup> century and promotes its products from various websites including a website located at the domain name <akzonobel.com>.

The Complainant is the owner of trade mark registrations in various jurisdiction for marks consisting of the word “AkzoNobel” (“AKZONOBEL Mark”) including an Benelux Registration for a variety of goods and services in classes 1-3, 5, 7, 9, 16, 17, 19, 30, 37, and 40-42 (Registration No. 849141, with an application date of August 19, 2008 and a registration date on August 20, 2008), and an international Registration for a variety of goods and services in classes 1-3, 5, 7, 9, 16, 17, 19, 30, 37, and 40-42 (Registration No. 1064677, with a registration date on June 25, 2010, designating a number of countries including United States).

The Domain Name was registered January 27, 2023. The Domain Name does not resolve, and there is no evidence that it ever has resolved, to an active webpage. The Complainant, in its Complaint, indicates that it has received reports of the Domain Name being used to send emails to its clients but it has not received (and does not attach to the Complaint) any definitive evidence of this occurring.

#### **5. Parties’ Contentions**

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

The Complainant makes the following contentions:

- (i) that the Domain Name is confusingly similar to the Complainant’s AKZONOBEL Mark;
- (ii) that the Respondent has no rights nor legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the AKZONOBEL Mark, being the owner of trade marks registered in various jurisdictions for the AKZONOBEL Mark. The Domain Name consists of a minor misspelling of the AKZONOBEL Mark, replacing the second “o” with a “0” and adding the “.com” generic Top-Level Domain (“gTLD”).

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the AKZONOBEL Mark and the Respondent is not commonly known by the Domain Name. The Respondent does not use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose.

The Respondent has registered and uses the Domain Name in bad faith. Given the fame of the AKZONOBEL Mark and the nature of the Domain Name, being a minor misspelling (also known as typosquatting) of the AKZONOBEL Mark, there are no plausible circumstances under which the Respondent could legitimately use the Domain Name other than in bad faith. In such circumstances, the Respondent’s passive holding of the Domain Name amounts to use of the Domain Name in bad faith. Furthermore, the Complainant has received reports which it is presently unable to substantiate that the Domain Name is being

used to send misleading emails to the Complainant's customers. The Domain Name was also used for a similar purpose in 2015 however the Complainant does not have evidence that the registrant of the Domain Name in 2015 is the same registrant as the Respondent.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Panel notes the statements in the Complaint that the Complainant has received reports of the use of the Domain Name to send misleading emails but is unable to substantiate such reports. Given its finding that the elements in the Policy are satisfied without considering the possible use of the Domain Name for misleading emails it has not been necessary to consider these unsubstantiated claims or issue a Panel Order seeking further information about these claims. The same position arises with respect to the question of whether the entity using the Domain Name in 2015 to send misleading emails is connected to the Respondent in any way.

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

To prove this element, the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the AKZONOBEL Mark, having registrations for the AKZONOBEL Mark as a trade mark in various jurisdictions, including United States.

Disregarding the ".com" gTLD, as a necessary technical requirement of the Domain Name, the Domain Name is confusingly similar to the AKZONOBEL Mark since it wholly incorporates the AKZONOBEL Mark, other than replacing the second "o" with a "0" which creates a minor distinction that would be easy for an Internet user to overlook. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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

To succeed on this element, a complainant may make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If such a *prima facie* case is made out, the respondent then has the burden of demonstrating rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the AKZONOBEL Mark or a mark similar to the AKZONOBEL Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name.

There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial use. In fact, there is no evidence of any demonstrable preparations to use the Domain Name at all.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has chosen not to respond to the Complaint and thus has failed to provide any evidence of rights and legitimate interests in the Domain Name. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

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

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The Panel finds on the balance of probabilities that the Respondent was aware of the Complainant and its reputation in the AKZONOBEL Mark at the time the Respondent registered the Domain Name. The AKZONOBEL Mark has been used for close to 30 years and has a considerable reputation. There is no obvious reason, nor has the Respondent offered an explanation, for the Respondent to register a domain name that consists of a minor misspelling of the coined AKZONOBEL Mark unless there was an intention to create a likelihood of confusion between the Domain Name and the Complainant and the AKZONOBEL Mark. The registration of the Domain Name in awareness of the AKZONOBEL Mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The Panel is prepared to infer, based on the conduct of the Respondent, including the passive holding of the Domain Name, the nature of the Domain Name itself, being a minor misspelling of a well-known mark, the fact that the Domain Name has previously been used (albeit by a party that is not obviously connected to the Respondent) to send misleading emails, the failure by the Respondent to participate in this proceeding or otherwise provide any explanation of its conduct in registering a domain name that is confusingly similar to the AKZONOBEL Mark and the lack of any apparent legitimate reason for the registration and use of the Domain Name, that the Domain Name is most likely being held in a bad faith manner that would take

advantage of confusion between the Domain Name and the AKZONOBEL Mark. As such, the Panel finds that the passive holding of the Domain Name does not prevent a finding that the Domain Name is used in bad faith.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith under 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 <akzon0bel.com> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: May 12, 2023