

ADMINISTRATIVE PANEL DECISION

Brocacef Groep N.V. v. Brondon Niba
Case No. D2025-1106

1. The Parties

The Complainant is Brocacef Groep N.V., Netherlands (Kingdom of the), represented by Clairfort Lawyers, Netherlands (Kingdom of the).

The Respondent is Brondon Niba, United States of America.

2. The Domain Name and Registrar

The disputed domain name <benuapotheeonline.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 18, 2025. On March 18, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 18, 2025, the Registrar 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 21, 2025, 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 March 24, 2025.

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 March 25, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2025. The Respondent did not submit any formal Response. The Center notified the Parties of the commencement of panel appointment process on April 19, 2025.

The Center appointed Mireille Buydens as the sole panelist in this matter on April 28, 2025. 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 in the medical field, going back over 200 years. The Complainant currently employs over 5,400 employees and has over 3.6 million customers. It is the director and the sole shareholder of BENU Nederland B.V. BENU is the largest chain of pharmacies in the Netherlands with more than 345 BENU pharmacies.

The Complainant owns the following trademark registration for the Trademark BENU:

- The Benelux trademark registration No.1401074, for BENU IEDER MENS ANDERE ZORG (word mark), registered on November 12, 2019.

The shareholder of the Complainant, PHOENIX Pharmahandel GmbH & Co KG (Phoenix) is the owner of the Benelux trademark registration No. 902395 for BENU (word mark) registered on June 27, 2011. The Complainant has provided evidence that Phoenix has authorized the Complainant to enforce this trademark in these proceedings.

The Complainant owns and operates various domain names including the BENU Trademark, including <benu.nl>, <benushop.nl> and <benuapotheek.nl>, which redirect to official Complainant's websites, where non-prescription pharmaceutical products are sold online.

The disputed domain name was registered on October 14, 2024. The Complainant asserts that the disputed domain name redirects to a website impersonating the Complainant and selling pharmaceutical products, including prescription drugs (which is contrary to pharmacy laws in the Netherlands). The Complainant also mentions that the disputed domain name is on the List of known fraudulent trading parties (in Dutch: Lijst van bekende malafide handelspartijen) of the Dutch police.

At the date of the present decision, the Panel found that the disputed domain name redirects to an online pharmacy pretending to be the BENU pharmacy online. The website sells various pharmaceutical products (prescription and non-prescription drugs) and, when a product is selected, the Internet user is invited to provide its personal data (including banking data).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

First, the Complainant asserts that it owns – or is entitled by the owner to enforce – trademark registrations for the Trademarks BENU and BENU IEDER MENS ANDERE ZORG. The disputed domain name is confusingly similar to the Trademarks as it includes the BENU Trademark (which is the distinctive element of the BENU IEDER MENS ANDERE ZORG Trademark), while the second element of the disputed domain name (“apotheek”) is merely descriptive (meaning “pharmacy” in Dutch) and the third element of the disputed domain name (“online”) is also generic and descriptive (as it means that the pharmacy offers its services via the Internet, which the Complainant does as well).

Second, the Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not affiliated in any way with the Complainant and the Complainant (or

any of its group companies) has never authorized the Respondent to use the Trademarks. There are no indications whatsoever that the Respondent has ever been commonly known by the disputed domain name. There is no evidence that the Respondent used or prepared to use the disputed domain name in connection with a bona fide offering of goods or services or in a legitimate or fair way. On the contrary, the Complainant contends that the Respondent is misleadingly diverting consumers to its website by using the disputed domain name that is confusingly similar to the domain name and Trademark used by BENU and pretending on the website to be the Complainant itself. Besides, the Complainant asserts that the website violates pharmacy laws in the Netherlands (by selling online without prescription various drugs requiring a doctor's prescription) as well as laws and regulations governing the advertising of prescription drugs. The Complainant also mentions that the disputed domain name is on the List of known fraudulent trading parties published by the Dutch police. This would evidence the fact that the Respondent has no legitimate interest in the disputed domain name.

Third, the Complainant asserts that the disputed domain name was registered and is being used in bad faith. The Respondent was well-aware of the (Trademarks of the) Complainant when he registered the disputed domain name as the word "BENU" has no meaning in Dutch (or any other language), so the sole reason for registering the disputed domain name was in opportunistic bad faith, to take advantage of the Trademarks and the reputation of BENU in the Netherlands. The Complainant further explains that the disputed domain name seeks to ride on the goodwill of the Complainant and to take advantage of typographical errors made by Internet users who are seeking the web shop of BENU (addition of "online" and ".com" instead of ".nl") in a bad faith attempt to divert them to the Website of the Respondent.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. He only sent two short emails on March 24 and 25, 2025, explaining that he did not understand what the Complaint was about.

6. Discussion and Findings

Dealing with the Respondent's failure to file a formal Response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the BENU Trademark is reproduced within the disputed domain name. The only difference between the BENU Trademark and the disputed domain name is the addition of the words “apothek” (pharmacy in Dutch) and “online”. Although the addition of these words may bear on assessment of the second and third elements, the Panel finds the addition of such words does not prevent a finding of confusing similarity between the disputed domain name and the BENU Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Concerning the second Trademark (BENU IEDER MENS ANDERE ZORG), the dominant element of the BENU IEDER MENS ANDERE ZORG Trademark is reproduced in the disputed domain name, with the addition of “apothek” and “online”. The Panel finds this second Trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the BENU IEDER MENS ANDERE ZORG Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. For the same reasons as mentioned above, the Panel finds the addition of the words “apothek” and “online” does not prevent a finding of confusing similarity between the disputed domain name and the BENU IEDER MENS ANDERE ZORG Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Further, the generic Top-Level Domain “.com” is a standard registration requirement and does not prevent the disputed domain name from being confusingly similar to the Trademarks.

Accordingly, the disputed domain name is confusingly similar to the Trademarks for the purposes of the Policy.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent is not licensed by, nor affiliated with, the Complainant in any way. There is no evidence that the Respondent is commonly known by the disputed domain name, nor is there any evidence of use or demonstrable preparations to use the disputed domain name for a bona fide offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the disputed domain name, either. On the contrary, the Panel notes that the disputed domain name reproduces the BENU Trademark with the mere addition of the descriptive words “apothek” (pharmacy in Dutch) and “online”, and as such carries a risk of implied affiliation (Internet users could believe that the disputed domain name redirects to a Complainant’s online pharmacy).

Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of illegal pharmaceuticals and impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In the case at hand, the Panel notes that the disputed domain name redirects to a website which impersonates the Complainant (it presents itself as “BENU” and sells the same pharmaceutical products as the Complainant, with the only difference that it also offers for sale without prescription pharmaceutical products that can only be sold with a doctor’s prescription). Such use of the disputed domain name cannot confer rights or legitimate interests on the Respondent.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy. The Panel notes that the Respondent has composed the disputed domain name by combining the Complainant’s BENU Trademark with the terms “apothek” and “online” which are descriptive of the Complainant’s activities (as the Complainant operates pharmacies in the Benelux and also has web shops offering pharmaceutical products online). The website to which the disputed domain name redirects passes itself off as the Complainant (it presents itself as the online BENU pharmacy). A quick search for the term “BENU” online would have revealed to the Respondent the existence of the Complainant and its Trademarks. As a result, the Panel finds that the Respondent was more likely than not aware of the Complainant’s Trademarks at the time of the registration of the disputed domain name. [WIPO Overview 3.0](#) section 3.2.2.

Moreover, the Panel further notes that the disputed domain name resolves to a website offering drugs without prescription although, according to applicable law, these drugs can only be sold with a doctor’s prescription (Wegovy, Oxazepam, Forxiga, Saxenda). For instance, the pharmaceutical Saxenda is offered for sale with a comment explaining that, at the web shop under the disputed domain name, it can be obtained without prescription while this is not the case elsewhere. Besides, the Complainant has provided evidence showing that the disputed domain name is mentioned on the List of known fraudulent trading parties published by the Dutch police, which confirms the illegal character of the website to which the disputed domain name redirects. In light of this, the disputed domain name is used for per se illegitimate activity, which is evidence of bad faith ([WIPO Overview 3.0](#), section 3.1.4).

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 disputed domain name <benuapothekonline.com> be transferred to the Complainant.

/Mireille Buydens/

Mireille Buydens

Sole Panelist

Date: May 12, 2025