

## **ADMINISTRATIVE PANEL DECISION**

**AGC Green-Tech Co., Ltd. v. Domains By Proxy, LLC**  
**Case No. DNL2022-0024**

### **1. The Parties**

The Complainant is AGC Green-Tech Co., Ltd., Japan, represented by Pitch Law, Belgium.

The Respondent is Domains By Proxy, LLC, United States of America.

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

The disputed domain name <f-clean.nl> (“Disputed Domain Name”) is registered with SIDN through GoDaddy.com.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 27, 2022. On May 28, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name. On May 30, 2022, SIDN 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 and contact information in the Complaint. On June 6, 2022, the registrar in its turn transmitted by email to the Center further information. The Center sent an email communication to the Complainant on June 10, 2022, providing the information disclosed by SIDN and the registrar, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on June 16, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on June 17, 2022. In accordance with the Regulations, article 7.1, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 8, 2022.

The Center appointed Moïra Truijens as the panelist in this matter on July 15, 2022. 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**

The following facts are uncontested.

The Complainant is a market leader in glass manufacturing, employing over 55,000 people in Japan, Europe, and the Americas. The Complainant offers its products under various sub-brands, including “F-CLEAN”, which identifies the Complainant’s fluoropolymer (ETFE) film for greenhouses.

According to the evidence submitted by the Complainant, the Complainant has obtained several registrations for the trademark F-CLEAN, including – but not limited to – International (figurative) trademark F-CLEAN, with registration number 1492144, date of registration July 17, 2019, applicable in amongst others the European Union (hereafter: “the Trademark”).

The Complainant has also registered and uses the domain name <www.f-clean.net>.

SIDN has informed the Center that the Disputed Domain Name was registered by the Respondent on July 23, 2021.

The Disputed Domain Name resolves to a webpage where the Trademark is shown almost identically, which is falsely claimed to be the Complainant’s webpage.

#### **5. Parties’ Contentions**

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

The Complainant’s contentions may be summarized as follows.

The Complainant invokes the Trademark and asserts that the Disputed Domain Name is identical to the word elements of the Trademark and that – following standing case law – the suffix “.nl” of the Top-Level Domain should not be taken into account.

The Complainant further asserts that the F-CLEAN sign is protected as a trade name under Dutch law following the Paris Convention for the Protection of Industrial Property, as ratified by the Netherlands, as well as by the Dutch Trade Name Act. The Complainant states it is confirmed in “the Céline-case before the Court of Justice”, that a trade name can be used to distinguish goods and services when the use of the trade name is not limited to the identification of the company. The Complainant argues that the Disputed Domain Name is identical to the Complainant’s trade name, or at least that the similarity between the Trademark and the Disputed Domain Name is such that Internet users, upon seeing the Disputed Domain Name, may think that it originated from the Complainant or an affiliated company.

The Complainant asserts that the Respondent does not have any relationship, either as an employee or as a service provider, that would give rise to authorization to register the Disputed Domain Name. There is no actual proof that the Respondent is using the sign “f-clean” or any similar sign to distinguish its goods and services or its company, nor that the Respondent is generally known under the Disputed Domain Name.

The Complainant further refers to the content of the website linked to the Disputed Domain Name, which contains an address in the “Contact” section. The address refers to an “Amsterdam Office”, corresponding to a company which renders services for letterbox companies. The Complainant inspected the Dutch Company Register and found that none of the 88 companies which have their statutory seat at the aforementioned

address have any activity in films for agricultural use, nor do they use any sign which is even similar to “f-clean”. This also does not correspond with the statements made on the website, where the company presents itself as having more than 20 years of experience in the business.

The Disputed Domain Name was registered by a company within the AGC Green-Tech Group up until 2017. The day after the registration of the Disputed Domain Name lapsed, it was registered by the Respondent. According to the Complainant the Disputed Domain Name was registered and is being used in bad faith, because various sections of the original website of the Complainant were translated and copied into the website operated under the Disputed Domain Name; the website contains various references to the Complainant’s Trademark, including confusingly similar signs; and the operator of the website is knowingly and misleadingly disguising its true identity.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

b. the 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.

As the Respondent has not filed a response, the Panel shall rule on the basis of the Complaint. In accordance with article 10.3 of the Regulations, the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or in fact.

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

The Complainant has established that it is the owner of several trademarks, including the (figurative) Trademark, also valid in the European Union.

According to section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”),<sup>1</sup> trademark registrations with design elements can *prima facie* satisfy the requirement that the complainant show “rights in a mark” for further assessment as to confusing similarity.

The Panel finds the Disputed Domain Name to be identical or confusingly similar to the Trademark as it incorporates the Trademark in its entirety, noting that the country code Top-Level Domain “.nl” may be disregarded when assessing the similarity between the domain name on the one hand, and the relevant

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<sup>1</sup> In view of the fact that the Regulations are substantially similar to 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](#)).

trademark on the other hand (see, *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. [DNL2008-0008](#)).

Accordingly, the Complainant has established the first element of article 2.1 of the Regulations.<sup>2</sup>

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

As stated in [WIPO Overview 3.0](#), “while 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Complainant has made a *prima facie* case that the Respondent lacks rights to or legitimate interests in the Disputed Domain Name. The evidence on record shows that the Respondent does not make legitimate noncommercial or fair use of the Disputed Domain Name as it has been misleadingly presenting Internet users with a website impersonating the Complainant.

There are no indications before the Panel of any rights or legitimate interests of the Respondent in respect of the Disputed Domain Name. The Respondent has failed to rebut the Complainant’s assertions. Accordingly, the Panel concludes that the Complainant prevails on the second element of article 2.1 of the Regulations.

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

Conclusive evidence before the Panel indicates that the Disputed Domain Name was registered and has been used to impersonate the Complainant, so as to cause Internet users to believe that they have been dealing with the Complainant. In its attempt to mislead and defraud Internet users, as part of its impersonation attempt, the Respondent placed the Complainant’s Trademark on the website to which the Disputed Domain Name resolves, in combination with an irrelevant address. This demonstrates the Respondent’s fraudulent intentions with the Disputed Domain Name, potentially affecting the Complainant’s reputation and compromising business transactions with existing and prospective customers.

Further evidence of the Respondent’s bad faith lies in the fact that the website at the Disputed Domain Name shows a similar product (fluoropolymer (ETFE) film for greenhouses, which improves the growth efficiency of fruits, vegetables and plants inside greenhouses) as shown on the Complainant’s official website, which may mislead the Complainant’s customers. It is apparent that the Respondent had full knowledge of the Complainant and registered the Disputed Domain Name with no other intention but to profit from impersonating the Complainant.

The Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of the website linked to the Disputed Domain Name, as established by article 3.2(d) of the Regulations.

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<sup>2</sup> Noting the above, the Panel does not need to assess the Disputed Domain Name in relation to the Complainant’s tradename as asserted.

Consequently, the requirement of the third element 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 domain name <f-clean.nl> be transferred to the Complainant.

*/Moira Truijens/*

**Moira Truijens**

Panelist

Date: July 29, 2022