

ADMINISTRATIVE PANEL DECISION

Yadea Technology Group Co., Ltd. v. P.J.M Philips, Philips
Case No. DNL2023-0012

1. The Parties

The Complainant is Yadea Technology Group Co., Ltd., China, represented by Chiever B.V., Netherlands.

The registrant of the disputed domain name is P.J.M Philips, Philips, Netherlands (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <yadea.nl> (the “Domain Name”) is registered with SIDN through Argeweb.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 7, 2023. On April 13, 2023, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name.

On April 13, 2023, SIDN 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;

The Center sent an email communication to the Complainant on April 25, 2023, providing the information disclosed by SIDN, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on April 26, 2023.

The Center verified that the Complaint 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 April 26, 2023. In accordance with the Regulations, article 7.1, the due date for Response was May 16, 2023. The Response was filed with the Center on May 16, 2023.

On May 17, 2023, SIDN commenced the mediation process. On July 5, 2023, SIDN informed parties that the dispute had not been solved in the mediation process. On June 5 and 22, 2023, the Complainant filed further submissions.

The Center appointed Wolter Wefers Bettink as the panelist in this matter on July 25, 2023. 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 Complainant is a global leader in developing and manufacturing electric two-wheeled vehicles, including electric motorcycles, electric mopeds, electric bicycles and electric kick scooters. To date, the Complainant has sold products to 60 million users in over 90 countries, and has a network of 40,000+ retailers worldwide.

The Complainant is owner of, *inter alia*, the following trademark registrations (the “Trade Marks”):

- International Registration of the word-device mark YADEA, registered under no. 1102684 as of December 9, 2011, designating among other countries, the Benelux, registration date December 9, 2011
- Benelux trademark registration of the word-device mark YADEA, registered under no. 1469075 as of November 1, 2022
- European Union trademark registration of the word mark YADEA G5, registered under no. 018342886 as of March 23, 2021.

The Domain Name was registered on May 6, 2016. The Domain Name resolves to a website (hereafter the “Website”) which contains the YADEA logo (part of the word-device mark) and a number of statements including the following:

- “Yadea maakt de beste e-scooters” (“Yadea produces the best e-scooters”)
- “Yadea e-scooters zijn vriendelijk, veilig, degelijk en betrouwbaar” (“Yadea e-scooters are friendly, safe, robust and reliable”)
- “Yadea maakt e-scooters en e-bikes en exporteert naar meer dan 70 landen” (“Yadea manufactures e-scooters and e-bikes and exports [its products] to more than 70 countries”).

In addition, the Website contains images and descriptions of two e-scooters (the G5 City model and the G5 Pro) manufactured by the Complainant and mentions that the Respondent has shops in Amsterdam, Breda, Haarlem and Groningen.

On June 3, 2016 the Complainant has sold 26 e-scooters to a company called Phimus B.V. The contract for the sale is signed by the Respondent on behalf of Phimus B.V. The contract provides, *inter alia*: “Buyer is permitted to use “Yadea” trade mark and pictures for the purposes of sales, advertising and promotion in the Netherlands and UK.”

5. Parties’ Contentions

A. Complainant

The Complainant submits that the Domain Name causes a likelihood of confusion on the part of the relevant public, as it consists of the element YADEA, which is identical to the Trade Marks, while the suffix ‘.nl’ in the Domain Name should be disregarded in the comparison, as it is a technical registration requirement.

According to the Complainant, the Respondent has no rights or legitimate interest in the Domain Name since it does not own trademark rights in the name YADEA and has no connection or affiliation of any kind with the

Respondent, nor has the Complainant granted the Respondent a license to or consented to the use of the Trade Marks or a similar sign. Furthermore, the Complainant contends that the Respondent does not use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services, nor is the Respondent known by the Domain Name. In this connection, the Complainant brings forward that the Respondent pretends to be an official distributor of the Complainant's E-scooters, but that there has never been any kind of cooperation between the Complainant and the Respondent, nor has the Domain Name ever been owned by a party that was known by or affiliated to the Complainant. The Complainant points out that it is not possible to buy YADEA E-scooters via the Website, which contains a 'contact us' button, directing Internet users to a subpage, which mentions four alleged suppliers of YADEA E-scooters which are not authorized resellers or distributors of the Complainant.

According to the Complainant, the Respondent has registered and/or is using the Domain Name in bad faith by intentionally attempting to attract Internet users to its website or other online location for commercial gain and has intentionally created a likelihood of confusion with the Trade Marks as to the source of the Website. The Complainant submits that the unauthorized use of the Domain Name for identical goods, without the Complainant's consent, is unlawful as it infringes upon the Complainant's exclusive intellectual property rights, which will create confusion amongst the public and cause damage to the Complainant's reputation. The Complainant contends that this unlawful use is intended to mislead Internet users, by creating the incorrect impression that they are in contact with the Complainant or buying products from the Complainant through its website, and that such use is intended to misleadingly divert Internet users away from the Complainant's website under <yadea.com>, for commercial gain. Furthermore, the Complainant states, the content on the Website is infringing the Complainant's intellectual property rights, since the website, illegally uses the Trade Marks and the logo and artwork of the Complainant, confirming the Respondent's intention to use the Domain Name to confuse Internet users seeking or expecting a website connected to the Complainant. According to the Complainant, by using phrases like '*Buy your scooter now from one of our suppliers*' and '*You can always take a test drive at one of our dealers*' on the Website, the Respondent falsely implies to be, or to be acting on behalf of, the Complainant. In addition, the Complainant submits that because of the reputation and distinctiveness of the Trade Marks, the offer on the website of identical goods and the use of the Complainant's logo on the Website, it is evident that the Respondent registered the Domain Name with full knowledge of the Complainant and the Trade Marks. The Complainant contends that, if the Respondent would have done some basic prior rights checks at the time that it registered the Domain Name, it could have easily found the Trade Marks in the publicly accessible trademark registers and its failure to do so (or its ignoring the results thereof) demonstrates the Respondent's bad faith. In addition, the Complainant points out that the Respondent has also registered the domain names <yadeanl.com> and <yadea.dk>, which resolve to websites, similar to the Website, which shows that the Respondent is a serial domain name squatter.

B. Respondent

The Respondent states that on the basis of the sales contract between the Complainant and Phimus B.V., the Respondent was authorized to use Trade Marks and represent the Complainant in the Netherlands. The Respondent submits that the use of the Domain Name has been sincere, in good faith and with the prior knowledge and consent of the Complainant. The Respondent purports that it has been selling, renting out, maintaining and repairing "Yadea" scooters, and providing maintenance service, spare parts and technical advice to customers in order to build the brand name and the recognition of the Complainant and the Trade Marks in The Netherlands.

In addition, the Respondent points out that by bringing this dispute before WIPO, the Complainant has acted in breach of the sales contract which provides for settlement of contractual disputes through friendly consultations and, if that is not successful, arbitration in China.

C. Supplemental filings

The Panel by Procedural Order no.1 has offered the Complainant the possibility to make a supplemental filing in relation to the Response, in particular the sales contract that the Respondent has submitted with the

Response. With the same Order, the Respondent was given the opportunity to respond to the Complainant's supplemental filing.

In its supplemental filing, the Complainant states that Phimus B.V. has bought 26 scooters from a subsidiary of the Complainant in 2016 and that in the context of a standard purchase agreement this company was allowed to use the mark YADEA in order to be able to sell the goods. According to the Complainant, it was not the intention that Phimus B.V. would register the Domain Name (and corresponding domain names in Denmark and Sweden) nor that it would present itself as the official distributor of the Complainant in the Netherlands. The Complainant submits that, despite the manner in which the Respondent presents itself, it is not the official distributor nor an official dealer of the Complainant, while the use of the YADEA name and the logo is misleading consumers. Furthermore, the dealers presented on the Website are no dealers of the Complainant's "Yadea" e-scooters.

Furthermore, the Complainant submits it is forced to use the domain name <yadea-scooters.nl> for sales in the Netherlands which exists next to the infringing Website, which is very confusing for the customers. According to the Complainant the official Dutch distributor Moteo B.V. has approached the Respondent to transfer the Domain Name to them but it did not respond. It further seems that before 2021 the Respondent has tried to sell the infringing domain names <yadea.nl>, <yadea.dk> and <yadea.se> to the Complainant in China and has asked for a proposal.

According to the Respondent in its supplemental filing the sales agreement remains effective, including the representation of the Complainant in the Netherlands and it points out that the Complainant has not terminated this agreement. The Respondent further states that it will continue the rental, sales, repair and maintenance of Yadea scooters and spare parts and that the appointment of Moteo as its single importer for the Netherlands is not in conformity with applicable EU regulations. Furthermore, the Respondent submits that the Complainant did not provide a copy of a signed agreement with Moteo. The Respondent also brings forward that the various "Yadea" domain names have been reserved with a view to further market development in the United Kingdom and Scandinavia and that none of them have been sold, despite various proposals from third parties.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates the word YADEA, which is the dominant element of the Trade Marks, in its entirety (see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7)¹. 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 3.0](#), section 1.2).

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

Under article 3.1 of the Regulations, the Complainant has to make out a *prima facie* case that the Respondent does not have rights to or legitimate interests in the Domain Name upon which the burden of

¹ 1 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](#)).

production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the Domain Name ([WIPO Overview 3.0](#), section 2.1).

The Complainant has stated that the Respondent has not received the Complainant's consent to use the Trade Marks as part of the Domain Name and that it is not an authorized retailer or distributor of the Complainant's products and is not or otherwise authorized to use the Trade Marks.

With its Response, the Respondent has submitted a document from the Complainant dated June 3, 2016 concerning the sale by the Complainant of 26 e-scooters to a company called Phimus B.V. The contract for the sale is signed by the Respondent on behalf of Phimus B.V. The contract provides, *inter alia*: "Buyer is permitted to use "Yadea" trade mark and pictures for the purposes of sales, advertising and representation in the Netherlands and UK." The Panel understands reference to 'the "Yadea" trade mark' to concern the international word-device mark YADEA (hereafter the "YADEA word-device mark"), as this was the only one of the Trade Marks registered when the sales contract was concluded in 2016.

The Panel notes that the contract is not in the name of the Respondent and that the permission in the contract does therefore not in itself pertain to the Respondent. Still, if it is assumed that the contract party can be identified with the Respondent, the contract does not provide for permission for the Respondent to register the YADEA name as part of the Domain Name. The Panel further notes, in general, that the permission to use a trade mark does not automatically include consent for registration of a domain name comprising that trade mark (or the dominant element thereof). Furthermore, as the Respondent has not submitted any evidence demonstrating that such consent has otherwise been given by the Complainant in relation to the registration of the Domain Name, the Panel concludes that the Respondent has not received the Complainant's consent to use the YADEA name or any of the Trade Marks as the Domain Name.

While this is not strictly necessary (see, "*Dr. Martens*" *International Trading GmbH* and "*Dr. Maertens*" *Marketing GmbH v. Katja Braun's nets*, WIPO Case No. [DNL2016-0060](#) and *Coccinelle S.p.A v. Kaoyuanws Trade*, WIPO Case No. [DNL2017-0008](#)), the Panel adds that the Respondent's use of the Domain Name in relation to a website selling the Complainant's products bearing the Trade Mark (*i.e.* as a possible reseller or distributor of such products) may qualify as a *bona fide* offering of goods or services, in accordance with article 3.1 (a) of the Regulations, but only if such use would satisfy the following conditions (see, *Oki Data Americas, Inc., v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)):

- (1) the respondent must actually be offering the goods or services at issue;
- (2) the respondent must use the site to sell only the trademarked goods (otherwise, there is the possibility that the respondent is using the trade mark in a domain name to bait consumers and then switch them to other goods);
- (3) the site itself must accurately disclose the respondent's relationship with the trade mark owner; and
- (4) the respondent must not try to "corner the market" in all relevant domain names, thus depriving the trade mark owner of the ability to reflect its own mark in a domain name.

The Respondent has stated that the sales contract of 2016 allows it to use the Trade Marks, that this contract has not been terminated and that it has been selling, renting out, maintaining and repairing e-scooters from the Complainant in the Netherlands. Based on the evidence submitted, the activity relating to YADEA e-scooters started in 2016 and has apparently been limited to 26 e-scooters purchased in 2016, the rental of two of these e-scooters to a hotel in 2017, the repair of the rented scooters in 2018 and the sale of two used e-scooters in 2019. The Respondent has not submitted any evidence of a sale, rental, maintenance and/or repair of a YADEA e-scooter by the Respondent since 2019.

In view of these facts, the Panel notes that the Respondent was authorized at least for some period of time to resell the Complainant's e-scooters and use the word-device mark YADEA for that purpose, that the contract does not contain a time limit on that use and that the agreement has not been terminated.

However, the Respondent has not accurately disclosed its relationship with the Complainant on the Website. The Panel also notes that the confusing similarity of the Domain Name to the YADEA word-device mark, encompassing the dominant element of the Trade Marks without the addition of other terms, is highly likely to result in initial interest confusion, while the use on the Website of both the Yadea logo, the YADEA word mark and the statements quoted in paragraph 4 above together with the Domain Name create the incorrect impression that the Website is owned or sponsored by the Complainant. Given the foregoing considerations, the Respondent has not met the fair use principles under *Ok! Data*.

The Panel concludes from the above mentioned circumstances reflected in the record of this case that the Respondent is not using the Domain Name in connection with a *bona fide* offering of goods or services within the meaning of article 3.1 of the Regulations, and that the Respondent otherwise has not established rights or legitimate interests in the Domain Name.

The Panel concludes that the 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, the Complainant has to show that the Domain Name was registered or is being used in bad faith.

Based on the record of this case, the Panel finds that at the time of registration of the Domain Name the Respondent was aware of the Complainant and the Trade Marks and that it registered the Domain Name, containing the YADEA name, prior to concluding the sales contract, without authorization from the Complainant. Such authorization is not contained *ex-post* in the sales contract nor can this be derived from the permission 'to use "Yadea" trade mark' in the sale contract. Therefore, noting also its considerations under section 6B above, the Panel finds that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Trade Marks as to the source, sponsorship, affiliation or endorsement of its website.

The Panel concludes that the Complainant has shown that the Domain Name has been registered and/or is being used in bad faith in accordance with article 3.2 of the Regulations.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the domain name <yadea.nl> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Panelist

Date: August 28, 2023