

ADMINISTRATIVE PANEL DECISION

Pack & Co. S.P.R.L, and Sadig ALAKBAROV v. Rens Fritsen
Case No. DNL2023-0016

1. The Parties

The Complainants are Pack & Co. S.P.R.L, Belgium, and Sadig ALAKBAROV, Belgium, represented by Monard Law, Belgium.

The registrant of the disputed domain name is Rens Fritsen, Netherlands, (Kingdom of the) (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <greenmood.nl> is registered with SIDN through Metaregistrar B.V.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 12, 2023. On May 12, 2023, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name.

On May 15, 2023, 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.

The Center sent an email communication to the Complainant on May 16, 2023, providing the information disclosed by SIDN, and requesting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on May 16, 17, and 19, 2023.

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 May 19, 2023. In accordance with the Regulations, article 7.1, the due date for Response was June 8, 2023. The Response was filed with the Center on May 24 and June 6, 2023. The Center sent an email to the Parties concerning the language of the proceedings on June 7, 2023, to which the Complainant replied on the same day.

On June 12, 2023, SIDN commenced the mediation process. On July 13, 2023, SIDN informed parties that the dispute had not been solved in the mediation process. On July 13, 2023, the Respondent sent the Center an email saying that he “can supplement the documents provided” if a decision would be rendered.

The Center appointed Alfred Meijboom 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 first Complainant sells stabilized plant products throughout Europe.

The second Complainant is the CEO of the first Complainant, and owner of the following trademarks:

- Benelux stylized trademark with registration number 982066 for goods and service in classes 26, 27, 42 and 44, registered on December 2, 2015 as follows:



- European Union stylized trademark GREENMOOD with registration number 017487604 for goods and service in classes 17, 27 and 42, registered on August 3, 2018 as follows:



The Respondent established the sole proprietorship “Groenwens” (“Dutch for “Green wish”) in 2010 for, *inter alia*, outdoor and indoor greenery activities, for which he uses the website “www.moswens.nl.” The Respondent registered the disputed domain name on October 17, 2016. The disputed domain name redirects to the Respondents website “www.moswens.nl.”

5. Parties’ Contentions

A. Complainants

The Complainants allege that the disputed domain name is confusingly similar to the second Complainant’s GREENMOOD trademarks. Further, the Complainants allege that the Respondent has no rights to or legitimate interests in the disputed domain name because he just uses the disputed domain name to redirect Internet traffic to his website at “www.moswens.nl”.

The Complainants allege that the disputed domain name has been registered and is being used in bad faith because it was registered after the registration of the second Complainant’s Benelux trademark GREENMOOD, while the first Complainant and the Respondent are competitors in the market of the distribution of stabilized plant products, and the Respondent’s registration and use of the disputed domain

name intends to capture the first Complainant's customers, and to create confusion between the products and parties' brands, as an Internet user is deceived if he clicks on the disputed domain name and is immediately redirected to the Respondent's website at "www.moswens.nl".

The Complainants request the transfer of the disputed domain name to the second Complainant, Sadig ALAKBAROV.

B. Respondent

The Respondent alleges that he has registered the disputed domain name because this is in line with his activities in the Netherlands, which has "Groenwens" as its basis. When "Groenwens" was established in 2010, ideas were started such as "Greenwish", "Greenidea", "Greenmood," and "Greenthinking." The Respondent alleges that he is a Dutch company that is only active in the Netherlands and only works with ".nl" domain names. According to the Respondent, the Complainants filed the trademark GREENMOOD on November 16, 2016 and it was registered on August 3, 2018, which is 8 years after the Respondent's company was formed. Therefore, the Respondent believes that he should not transfer the disputed domain name to the Complainants.

6. Language of the proceedings

Article 17 of the Regulations provides that "[w]henver the complainant or the respondent neither resides nor is registered in the Netherlands, proceedings shall be conducted in the English language. In exceptional circumstances however (such as when both parties appear to have full command of the Dutch language), the Center (subject to the panel's determination) or panel may decide that proceedings are to be conducted in Dutch, or that the complainant or the respondent may make submissions in Dutch".

The Complainants, being a Belgian company and an individual residing in Belgium, therefore correctly filed the Complaint in the English language. The Respondent filed his Response and email of July 13, 2023 in Dutch. The Respondent did, however, not request a change of language, and there do not seem to be exceptional circumstances which would justify such change of language.

After having received the Response, the Complainants sent an e-mail to the Center on June 7, 2023 stating that they do not object against the Response having been filed in Dutch, as long as the Complainants "can continue to communicate in English" and "the rest of the procedure is to be conducted in English." The Panel shall therefore accept the Response in the Dutch language, but determines that the proceedings shall be in English.

7. Discussion and Findings

Based on article 2.1 of the Regulations, a request to transfer a domain name must meet three cumulative conditions:

- (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.

A. Identical or Confusingly Similar

With regard to the assessment of identity or confusing similarity, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")¹). It is also well established precedent that the country code Top-Level Domain ".nl" ("ccTLD") may be disregarded in assessing confusing similarity between the trademark on the one hand and the disputed domain name on the other hand (see, e.g., *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. [DNL2008-0008](#)).

As owner of the Benelux and European Union trademarks for GREENMOOD, the second Complainant has rights in a trademark protected under Dutch law. The textual element "Greenmood" of the trademarks predominate, and the non-textual elements of the trademarks, just as the words "Nature in Lifestyle" in significantly smaller print of the Benelux trademark, do not diminish the dominance of the element "Greenmood" of the second Complainant's trademarks, which is therefore the most prominent element (e.g., *Kawasaki Motors Europe N.V., Kawasaki Motors Ltd., Kawasaki Heavy Industries Ltd. v. B&S Media Internetmarketing*, WIPO Case No. [DNL2023-0010](#)).

As the disputed domain name wholly incorporates the element "Greenmood", the Panel is satisfied that the requirement of article 2.1 sub a. of the Regulations has been met.

B. Rights or Legitimate Interests

Article 2.1 sub b. of the Regulations requires the Complainants to establish that the Respondent has no rights to or legitimate interests in the disputed domain name. This condition is met if the Complainants make out a *prima facie* case that the Respondent has no such rights or legitimate interests and if the Respondent fails to rebut this (see, e.g., *Technische Unie B.V. and Otra Information Services v. Technology Services Ltd.*, WIPO Case No. [DNL2008-0002](#)).

The Panel understands that the Complainants allege that the Respondent is a competitor of the first Complainant, who registered the disputed domain name to mislead Internet users into believing that the Respondent's website to which the disputed domain name redirects is associated to the first Complainant, which is not a *bona fide* offering of goods and services. The Respondent, on the other hand, alleges that he already thought of the term "Greenmood" in connection to his business in 2010, which is well before the registration of the second Complainant's trademarks, so that he does have a legitimate right in the disputed domain name. The Respondent did, however, not submit any evidence of actual use of, or preparations to use the term "Greenmood," and the Respondent's e-mail of July 13, 2023, which alleges that he can submit additional documents, is an offer of proof which is too vague to justify an Procedural Order pursuant to article 11 of the Regulations and shall therefore be disregarded (see section 4.6 [WIPO Overview 3.0](#): "(..) panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance)"). The Complainants, on the other hand, did submit evidence of the registration in the Benelux of the trademark GREENMOOD in 2015, which registration predates the Respondent's registration of the disputed domain name with more than one year. In this respect, the fact that the second Complainant's European Union trademark was registered after the registration of the disputed domain name is irrelevant, and the Panel is satisfied that the Complainants can rely on a registered trademark which was registered before the registration of the disputed domain name.

The Respondent only uses the disputed domain name to redirect Internet users to his website at "www.moswens.nl", which offers goods and services which are undisputedly competing with the goods and

¹ In view of the fact that the Regulations are to an extent based on the Uniform Domain Name Dispute Resolution Policy ("UDRP"), it is well established that cases decided under both the Regulations and the UDRP are relevant to this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

services of the first Complainant. Such use of the disputed domain name does not constitute legitimate noncommercial use as meant in article 3.1(c) of the Regulations, nor does it amount to a *bona fide* offering of goods and services as meant in article 3.1(a) of the Regulations. As it has already been established that the Respondent did not show that he was commonly known by the disputed domain name or under the name "Greenmood," he can also not rely on article 3.1(b) of the Regulations.

Therefore, the Panel finds that Complainants have satisfied the requirement of article 2.1 sub b. of the Regulations.

C. Registered or Used in Bad Faith

Article 2.1 sub c. of the Regulations requires the Complainants to show that the disputed domain name was registered or is being used in bad faith.

For the reasons set forth sub 7.B. above, and based on the record, the Panel considers the Respondent's use of the disputed domain name as use for commercial gain, by attracting Internet users to the Respondent's website through the likelihood of confusion which may arise with the second Complainant's GREENMOOD trademarks as to the source, sponsorship, affiliation or endorsement of such website of the registrant as meant in article 3.2(d) of the Regulations.

The Panel is therefore satisfied that the Complainants have met the requirement of article 2.1 sub c. of the Regulations as well.

7. Decision

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

/Alfred Meijboom/

Alfred Meijboom

Panelist

Date: July 29, 2023