

ADMINISTRATIVE PANEL DECISION

Amadeus IT Group, S.A. v. NVA Online Advertising B.V.
Case No. DNL2023-0022

1. The Parties

Complainant is Amadeus IT Group, S.A., Spain, represented by Ubilibet, S.L., Spain.

The registrant of the disputed domain name is NVA Online Advertising B.V., Netherlands (Kingdom of the), represented by SOLV Advocaten, Netherlands (Kingdom of the) ("Respondent").

2. The Domain Name and Registrar

The disputed domain name <amadeus.nl> (the "Domain Name") is registered with SIDN through NVA Online Advertising B.V.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 25, 2023. On July 24, 2023, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name.

On July 26, 2023, SIDN transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details of Respondent.

On August 9, 2023, the registrar in its turn transmitted by email to the Center further information about the effective domain name user and party in interest in these proceedings.

The Center sent an email communication to Complainant on August 1, 2023, and on August 14, 2023, providing the information disclosed by SIDN and the registrar, and inviting Complainant to amend the Complaint in this light. Complainant filed an amended Complaint on August 2, 2023, and on August 17, 2023. On August 1, 9, and 30, 2023, the Center received email communications from the Respondent.

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 Respondent of the Complaint, and the proceedings commenced on August 30, 2023. In accordance with the Regulations, article 7.1, the due date for Response was September 19, 2023. The Response was filed with the Center on September 19, 2023.

On September 28, 2023, SIDN commenced the mediation process. On October 25, 2023, SIDN informed parties that the dispute had not been solved in the mediation process.

The Center appointed Dinant T. L. Oosterbaan as the panelist in this matter on November 1, 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

According to the information provided in the Complaint, Complainant is a technological company dedicated exclusively to the global travel sector. Complainant was founded in 1987 in Spain and, nowadays, it operates in 190 markets, with a worldwide team of over 15,000 people. Complainant is a leading provider of technology solutions and services for the entire travel ecosystem: airlines, airports and ground handlers, car rental agencies, corporations, cruise and ferry operators, hotels and event venues, insurance providers, travel sellers, tourism boards, travelers themselves, and more. It is a truly global enterprise, made up of over 15,000 professionals serving in more than 190 countries, with offices across all continents.

Complainant owns various trademarks for AMADEUS, including:

- European Union Trade mark No. 002069375, registration date August 29, 2005, and
- European Union Trade mark No. 1321806, registration date June 22, 2016.

In addition, Complainant is the owner of a domain name identical to its AMADEUS trademark, <amadeus.com>, and multiple domain names consisting of the AMADEUS trademark and a country code Top-Level Domain ("ccTLD").

According to the information provided in the Response, Respondent is a marketing agency engaged in web design. Respondent is a small company employing one person. Over the years Respondent has built up an extensive portfolio of websites and domain names.

SIDN informed the Center that the Domain Name was first registered on May 16, 1997, and that the registration date of the current registrant is February 8, 2020, by change of registrant.

The Domain Name does not resolve to an active website. At the time of the decision and when the Complaint was filed, the Domain Name is listed for sale through the Dan.com platform where it is listed by Respondent as being for sale ("Make an offer"), or for rent at an amount of USD 108 per month.

5. Parties' Contentions

A. Complainant

Complainant submits that the Domain Name is identical to Complainant's trademark because the Domain Name incorporates its AMADEUS trademark in its entirety.

Complainant submits that Respondent has no rights or legitimate interests in the Domain Name. Complainant asserts there is no evidence of any Respondent's previous use of the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or

whether Respondent has been commonly known by the Domain Name. In general, there is not any evidence of a use of any kind by Respondent of the trademark AMADEUS. According to Complainant it is the only entity that is granted rights to exploit the trademark AMADEUS, and it has not authorized, licensed, or otherwise permitted Respondent or any other to use the trademark. The Domain Name may easily mislead consumers to relate them with the trademark and, at the same time, it impedes Complainant to use the Domain Name as the owner of the AMADEUS trademarks. The present case may mislead consumers or Internet users to think that the Domain Name and the website are operated by Complainant to market its products in the Netherlands. Therefore, because the Domain Name invokes a suggestion of affiliation with the trademark owner, such use is not fair, is not legitimate, and does not give rise to rights or legitimate interests.

Complainant asserts that the Domain Name has been registered and is being used in bad faith. According to Complainant the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. This argument could be perfectly applied in the present case because the AMADEUS trademark is well established through long and widespread use. Complainant has acquired a significant reputation and level of goodwill in its trademark internationally and the Domain Name reproduces the trademark in its entirety. Respondent cannot credibly claim to have been unaware of the existence of the prior AMADEUS trademark.

In addition, Complainant submits that several circumstances may indicate that a domain name was registered or acquired for the bad-faith purpose of selling it to a trademark owner, for example, the nature of the domain name (e.g. it incorporates a famous trademark), the distinctiveness of the trademark or the failure of a respondent to present a credible evidence-backed rationale for registering a domain name. Complainant's trademark was firstly registered in 1987, is distinctive because it has no particular meaning in the context of the services for which it is used, and it is also considered a well-known trademark (e.g., see *Amadeus IT Group, S.A. v. Connect Systems / Hostonik.com Web Hosting*, WIPO Case No. [D2018-0252](#)). In addition, if a domain name is identical to a highly distinctive or famous mark, panels have tended to view a degree of skepticism a defense that the domain name was merely registered for legitimate speculation as opposed to targeting a specific brand owner (such as the well-known Amadeus). Complainant concludes that the Domain Name is currently for sale or for rent for USD 108 per month and that the sum of these facts suggests that Respondent registered the Domain Name primarily for the purpose of selling the Domain Name to Complainant.

Complainant also submits that the Domain Name currently resolves to a make-your-offer website, without content, disrupting the business of Complainant in the sense that it is depriving Complainant of the opportunity of reflecting its own trademark in the Domain Name. Moreover, it is also disrupting the business of Complainant by creating a likelihood of confusion among users and consumers.

Finally, Complainant submits that the non-use of the Domain Name does not prevent a finding of bad faith under the doctrine of passive holding.

B. Respondent

Respondent filed a formal Response which is summarized as follows.

According to Respondent it acquired the Domain Name on February 20, 2020, through a domain name auction on "www.domainorder.nl" for an amount of EUR 448.

Respondent disputes that the Domain Name is identical or confusingly similar to a trademark protected under Dutch law, such that it is likely to be confused. Respondent submits that the term "amadeus" has no, or at least hardly any, distinctive character. At least, Complainant has not been able to make that plausible. The term can have a multitude of other meanings. Firstly, it is a common given (first or middle) name, for example known by association with Wolfgang Amadeus Mozart. On Wikipedia the name has 120 hits. In addition to being used as a common given name, the word also denotes several

other things. Amadeus is for example also the name of a venture capital firm in the United Kingdom, the name of a superhero appearing in American comic books published by Marvel Comics, the name of an oceanic anoxic event, the name of a German airline, and the name of the Austrian music award for the most successful Austrian musicians since 2000. Secondly, Respondent has, for the purposes of enquiry, conducted a search against the term “amadeus” at the Benelux Office of Intellectual Property. That search produced over 58 registrations that utilize the term “amadeus”. While accepting that a number of these registrations may refer to Complainant’s trademarks, it should be concluded on the available evidence that the name “amadeus” is in common commercial usage by a large number of different entities for a range of goods and services in a significant number of geographical territories. When zoomed in on registrations in the Benelux and Europe, the first page of registrations alone shows that Amadeus is registered for the most diverse goods and services.

Respondent submits that he has rights or legitimate interests in the Domain Name. His right is shaped by circumstances that he was the first to buy the Domain Name when it became available. His legitimate interest is that he will either use the Domain Name for his own activities in the future, or sell it for an amount acceptable to him. When Respondent was able to purchase the Domain Name, he considered it a unique business opportunity. On the one hand, this offered Respondent the opportunity to develop something in the future, so the Domain Name was immediately parked as a landing page after registration. On the other hand, the purchase was a great opportunity to sell the Domain Name later via his company that owns a large portfolio of websites and domain names, which is completely legitimate. Respondent submits that there is in fact no rule of law that prohibits the buying and selling of domain names. Domain name trading is a generally accepted and precisely defined business practice.

Respondent denies that the allegation of Complainant that he never answered the cease-and desist communication of the lawyers for Complainant; in fact Respondent answered the communication within 5 minutes with the message that “a domain parked is never infringing on anything, we are open for bidding”.

Respondent denies that the Domain name has been registered or is being used in bad faith. In view of the widespread use of the term “amadeus” in commerce by a wide range of business entities, Complainant has not demonstrated that Respondent registered and has used the Domain Name with the purpose of targeting specifically Complainant’s AMADEUS trademark and the goodwill attaching to it. The trademark enquiry cited above shows that the term “amadeus” is a very common given name and is in common commercial use by a large number of different entities for a range of goods and services in a significant number of geographical territories.

Respondent also argues that according to article 3.2.a. of the Regulations bad faith registration or acquisition of the Domain Name must be related to Complainant and that registration or acquisition of the Domain Name with the aim of selling it as such, without additional circumstances, is not bad faith towards Complainant. There is no indication that Complainant was approached by Respondent to purchase the Domain Name.

Respondent submits that he uses the Domain Name for purposes of his company. The fact that Respondent uses the website for the purpose of selling, renting or otherwise transferring the Domain Name for an amount in excess of the registration fee is in itself insufficient to establish bad faith. In fact, domain name trading is a generally accepted and precisely defined business practice. Even in the event that Respondent does not use the Domain Name, the Regulations does not contain any obligation to use a domain name in order to keep it.

Respondent finally submits that Complainant is attempting Reverse Domain Name Hijacking. Respondent argues that after researching the Way Back Machine on the Domain Name “amadeus.nl”, it appears that Complainant owned the Domain Name in the years 2014-2016 as it appears that in those years, the Domain Name redirected to the website “www.amadeus.com”. It is not clear to Respondent why Complainant did not retain control of the Domain Name in subsequent years. It is also not clear to

Respondent who owned the Domain Name after the year 2016. Respondent purchased the Domain Name at an auction in 2020, where it is standard practice that the auction does not disclose to the buyer who the previous owner of the purchased domain name is. However, it does seem that Complainant is also aware of this information, since in its complaint it only submitted extracts of the Way Back Machine about the Domain Name from the years 2010 and 2020 and deliberately does not show the years 2014-2016, about which the Way Back Machine also provides information. It seems that Complainant has abandoned ownership of the Domain Name and is now, without paying a fair price for it, trying to regain ownership of the Domain Name through this complaint.

6. Discussion and Findings

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

- a. the domain name is identical or confusingly similar to a trademark or trade name protected under Dutch law in which the complainant has rights, or other name mentioned in article 2.1(a) under II of the Regulations; and
- b. the respondent has no rights to or legitimate interests in the domain name; and
- c. the domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

Complainant has established that it is the owner of European Union trademarks AMADEUS, also applicable in the Netherlands.

The Domain Name incorporates the AMADEUS trademark in its entirety. Previous panels under the Regulations have found that a domain name is confusingly similar or identical to a complainant's trademark where the domain name incorporates a dominant feature or entirety of such trademark. See also section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).¹

The ccTLD ".nl" may be disregarded for purposes of article 2.1.a. of the Regulations, see *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. [DNL2008-0008](#).

The Panel finds that the Domain Name is identical to Complainant's AMADEUS trademark for purposes of standing in accordance with the Regulations.

Complainant has satisfied the requirements of Article 2.1.a. of the Regulations.

B. Rights or Legitimate Interests

It is well established in decisions under the UDRP (see section 2.1 of the [WIPO Overview 3.0](#)) that "For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP." In such cases, however, the panel must be satisfied that the registrant did not register or acquire the domain name in question with the relevant complainant's trademark in mind and with the intention of "targeting" that trademark (see section 2.10 of the [WIPO Overview 3.0](#)).

¹In 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](#)).

In this particular case, the Panel notes the widespread use of the term “amadeus”, not only by individuals for both given names and surnames, but also by a large number of businesses in connection with their commercial activities. For purposes of enquiry the Panel notes that a search made by the Panel in the Dutch Trade Register (the “Handelsregister” of the Chamber of Commerce) results in 168 hits of businesses using the term “amadeus” either as standalone or in combination with other terms.

In addition, a search of the Benelux Office of Intellectual Property for trademarks related to the term “amadeus” submitted by Respondent and confirmed by the Panel results in approximately 24 trademarks applicable in the Netherlands with only the term “amadeus” (5 of which are owned by Complainant) and another 35 with the term “amadeus” in combination with other terms.

The Panel notes that on the website of Complainant it is mentioned that the term “amadeus” used for Complainant is not an invented term, but that the company is named after a song by Falco (“Rock me Amadeus”, or after a bar where the founders of the company met after their agreement to form the company. The Panel also notes that Complainant has not submitted any evidence or particular circumstances that the trademark or Complainant is well-known in the Netherlands.

The Panel thus observes based on the available evidence that the term “amadeus” is in common commercial usage by a large number of different entities for a range of goods and services in the Netherlands.

The Panel also notes the rather unusual fact that based on the Way Back Machine documents produced by both Complainant and Respondent it appears that previously (in particular the years 2014, 2015, and 2016) the Domain Name redirected to “www.amadeus.com”, the website of Complainant, that afterwards the Domain Name was offered for sale by an unknown third party and that after February 2020, it was offered for sale by Respondent. This previous redirection of the Domain Name to the website of Complainant may suggest that Complainant or a party associated with Complainant had some interest in the Domain Name and failed to maintain that interest.

Taking all of the above circumstances into account, the Panel is unable to conclude, on the balance of probabilities, that Respondent had Complainant’s trademark in mind, and targeted that trademark, when he acquired the Domain Name in 2020 at an auction and offered the Domain Name for general sale on the Dan.com platform. This means Complainant has not demonstrated that Respondent does not have rights to or legitimate interest in the Domain Name and that Complainant has not satisfied the requirements of Article 2.1.b. of the Regulations.

C. Registered or Used in Bad Faith

According to article 3.2. of the Regulations evidence that a domain name has been registered or is being used in bad faith may be provided *inter alia* through the following circumstances:

- a. the domain name has been registered or acquired primarily for the purpose of selling, renting or transferring it to the complainant or to the complainant’s competitors for valuable consideration in excess of the cost of registration;
- b. the domain name has been registered in order to prevent the complainant from using it;
- c. the domain name has been registered primarily for the purpose of disrupting the complainant’s activities;
- d. the domain name has been or is being used for commercial gain, by attracting Internet users to a website of the registrant or other online location through the likelihood of confusion which may arise with the trademark, trade name, personal name, name of a Dutch public legal entity or name of an association or foundation registered in the Netherlands as to, for example, the source, sponsorship, affiliation or endorsement of the website of the registrant or other online location(s) or of products or services on the domain registrant’s website or another online location.

In view of the facts mentioned above, in particular that there are multiple trademarks applicable in the Netherlands with the term “amadeus” and considerably more companies in the Netherlands using the term “amadeus”, the Panel finds that Complainant did not put forward convincing evidence that Respondent acquired the Domain Name having the trademark of Complainant in mind, or for the purpose of selling it specifically to Complainant (and not to the general public) or to prevent Complainant from using it. As there is no active website, the Domain Name is not used for the purpose of disrupting the activities of Complainant or causing confusion.

As the Domain Name does not resolve to an active website, Complainant also relies upon the doctrine of passive holding. The factors that panels typically consider under the doctrine of passive holding are set out in section 3.3 of the [WIPO Overview 3.0](#): (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

None of these factors tip the balance in Complainant’s favor. As mentioned above, there are many third parties not connected to Complainant that use the term “amadeus” as a trademark applicable in the Netherlands or as part of a company name in the Netherlands. There is lack of evidence that Complainant’s trademark is distinctive and widely known in the Netherlands. The Panel is therefore not convinced that the evidence in the record establishes Respondent’s targeting of Complainant, specifically as the Domain Name is available for general sale or rent. Without more, Respondent’s Domain Name could just as conceivably be registered for a non-infringing unrelated purpose. Given that it is on Complainant to prove its case, on balance of probabilities the Panel finds that there is insufficient evidence of bad faith targeting of Complainant.

Complainant has not satisfied the requirements of Article 2.1.c. of the Regulations.

D. Reverse Domain Name Hijacking (“RDNH”)

Unlike the UDRP (paragraph 15(d) of the UDRP Rules) the Regulations do not contain a specific article mentioning the possibility that a complaint is brought in bad faith and constitutes an abuse of the administrative proceeding. The Panel is thus unable to rule on the RDNH request of Respondent. However, the Panel mentions that mere lack of success of a complaint is not sufficient for a finding of RDNH and that Complainant brought a well-reasoned case which does not constitute an abuse of administrative proceeding.

7. Decision

For all the foregoing reasons, the Complaint is denied.

/Dinant T. L. Oosterbaan/

Dinant T. L. Oosterbaan

Panelist

Date: November 15, 2023