

## **ADMINISTRATIVE PANEL DECISION**

Monsanto Technology, LLC v. IBC LP1

Case No. DNL2023-0025

### **1. The Parties**

Complainant is Monsanto Technology, LLC, United States of America, represented by pm.legal, Germany.

The registrant of the disputed domain name is IBC LP1, Sweden, (the “Respondent”).

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

The disputed domain name <monsantoholan.nl> is registered with SIDN through Namecheap Inc.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 4, 2023. On August 7, 2023, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name.

On August 8, 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 Complainant on August 14, 2023, providing the information disclosed by SIDN, and inviting Complainant to amend the Complaint in this light. Complainant filed an amended Complaint on August 16, 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 Respondent of the Complaint and the proceedings commenced on August 22, 2023. In accordance with the Regulations, article 7.1, the due date for Response was September 11, 2023. The Center did not receive any response. Accordingly, the Center notified Respondent’s default on September 14, 2023.

The Center appointed Richard C.K. van Oerle as the panelist in this matter on September 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

Complainant is a well-known agrochemical and agricultural biotechnology corporation founded in 1901. In 2018, it was acquired by Bayer AG as part of its crop science division. Complainant developed Roundup, a glyphosate-based herbicide, in the 1970s, and became a major producer of genetically engineered crops. Complainant has a subsidiary in the Netherlands, namely Monsanto Holland B.V., which supplies not only the Netherlands, but the whole of Europe.

Complainant is owner of the trademark MONSANTO in numerous countries worldwide, including European Union trademark registration No. 009798471 MONSANTO, registered on August 18, 2011, hereafter referred to as the "Trademark".

The disputed domain name was registered on July 21, 2023. At the time of the Decision, the disputed domain name does not resolve to an active website. However, Complainant contends that the disputed domain name previously has been used in connection with a scam website falsely claiming to be from Complainant's subsidiary Monsanto Holland B.V.

#### 5. Parties' Contentions

##### A. Complainant

Complainant contends that the disputed domain name is identical to the Trademark.

Complainant asserts that Respondent is not authorized to use the Trademark. Furthermore, Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services, therefore lacking any legitimate rights or interests in the disputed domain name.

Complainant contends to be a victim of a series of frauds. Thus far, a total of nine domain names have been used fraudulently and Complainant's customers have already fallen victim to the operators of the fraudulent websites. Complainant and its European parent company have already commenced proceedings and obtained already 6 WIPO domain name decisions related to this series of fraud. All of the domain names have been used in connection with mostly identical websites. It is pretty obvious that a) all domain names are operated by the same person, and b) the disputed domain name was registered in response to Complainant's and its European parent company's successful actions with respect to the domain names addressed in the earlier WIPO cases, with the sole intention of continuing fraudulent activities. Complainant contends that Respondent registered and was using the disputed domain name to mislead and defraud Complainant's customers, which must be considered bad faith under the Regulations.

##### B. Respondent

Respondent did not reply to Complainant's contentions.

#### 6. Discussion and Findings

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

- b. 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 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**

Complainant established that it has rights in the Trademark, registered in the European Union and thus protected under Dutch law.

The disputed domain name is confusingly similar to the Trademark as it incorporates the term “monsanto” in its entirety, in addition to the term “holan”, obviously meant as an abbreviation of “holland”. According to section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)<sup>1</sup>, where the relevant trademark is recognizable within the disputed domain name, the addition of, e.g., a geographical term would not prevent a finding of confusing similarity under the first element.

Moreover, while the content of the website is typically disregarded under the first element analysis, the Panel here notes that the website to which the disputed domain name resolved, gave the impression that it was the website of Monsanto Holland, the Dutch subsidiary of Complainant, *inter alia* due to the prominent use of the trade name Monsanto Holland BV on the home page, as well as showing similar to identical products (seeds of crop) as shown on Complainant’s official websites, which confirms the confusing similarity. See [WIPO Overview 3.0](#), section 1.5.

The Panel finds the disputed domain name to be confusingly similar to the Trademark, 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 trademark on the other hand (see, *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. [DNL2008-0008](#)).

Complainant has thus established the first element of article 2.1 of the Regulations.

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

As is described in the [WIPO Overview 3.0](#), “while the overall burden of proof in UDRP proceedings is on 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 Respondent. As such, where a complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element”.

Complainant has made a *prima facie* case that Respondent lacks rights to or legitimate interests in the disputed domain name. The evidence on record shows that 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 Complainant. The Panel moreover notes the evidence of actual fraud perpetuated using the disputed domain name presented in the Complaint; it is self-evident that such conduct would not support a claim to rights or legitimate interests.

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<sup>1</sup> 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 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](#)).

There are no indications before the Panel of any rights or legitimate interests of Respondent in respect of the disputed domain name. Respondent has failed to rebut Complainant's assertions. Accordingly, the Panel concludes that 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 Complainant, leading Internet users to believe that they have been dealing with Complainant. In its attempt to mislead and defraud Internet users, as part of its impersonation attempt, Respondent placed the trade name of the Dutch subsidiary of Complainant on the website to which the disputed domain name resolves, as well as the email address "[...].@monsantoholan.nl". This demonstrates Respondent's fraudulent intentions with the disputed domain name, affecting Complainant's reputation and compromising business transactions with existing and prospective customers.

Further evidence of Respondent's bad faith lies in the fact that the website at the disputed domain name shows similar to identical products (seeds of crop) as shown on Complainant's official websites, which has moreover in fact misled Complainant's customers. It is apparent that Respondent had full knowledge of Complainant and registered the disputed domain name with no other intention but to profit from impersonating Complainant.

The Panel holds that 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.

Consequently, the requirement 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 disputed domain name <monsantoholan.nl> be transferred to Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Panelist

Date: September 27, 2023