

ADMINISTRATIVE PANEL DECISION

denkwerk GmbH v. Privacy Protected by Hostnet
Case No. DNL2024-0012

1. The Parties

The Complainant is denkwerk GmbH, Germany, represented by Selting Attorneys at Law, Germany.

The registrant of the disputed domain name is Privacy Protected by Hostnet, Netherlands (Kingdom of the), (the “Respondent”). The effective domain name user and party in interest in these proceedings is Arnoud de Neve, Netherlands (Kingdom of the).

2. The Domain Name and Registrar

The disputed domain name <denkwerk.nl> is registered with SIDN through Hostnet B.V.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 1, 2024. On March 4, 2024, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name.

On March 5, 2024, 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 March 11, 2024, 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 the Complainant on March 11, 2024, 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 March 15, 2024.

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 and the effective domain name user and party in interest in these proceedings of the Complaint and the proceedings commenced on March 21, 2024. In accordance with the Regulations, article 7.1, the due date

for Response was April 10, 2024. The Center did not receive any response. Accordingly, the Center notified the Respondent's default on April 12, 2024.

The Center appointed Alfred Meijboom as the panelist in this matter on April 23, 2024. 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 an advertising agency from Germany, that specializes in digital content and currently has 220 employees and fee turnover of EUR 18.6 million in 2019.

The Complainant is owner of the registered trademarks DENKWERK for, inter alia, printed matter and advertising material, services of advertising agencies, public relations, marketing, business consulting and advisory services, including the following trademarks which are protected under Dutch law:

- International trademark DENKWERK (figurative), with registration number 717 944 of April 28, 1999, and
- European Union trademark DENKWERK, with registration number 117 29 613 of April 11, 2014.

In addition, the term "denkwerk" is also the Complainant's company name.

The disputed domain name was registered on March 14, 2021, and is inactive.

On February 16, 2022, a Mr. Gero Nuembrecht, which the Complainant alleges is a pseudonym and whom the Panel understands to be the Complainant's front man, sent an email to the Respondent's registrar stating "I am interested to buy the domain 'denkwerkt.nl' which is hosted by you. Please tell me the prize if the owner is interested to sale it to me". On February 17, 2022, the registrar informed Mr. Nuembrecht that it does not mediate in sale of domain names, but that it could bring Mr. Nuembrecht in contact with the Respondent if so desired. On February 18, 2022, Mr. Nuembrecht asked the registrar "to forward my contact details to the domain owner as suggested, so that I can enter into sales negotiations with them directly regarding the domain". On the same date the Respondent offered the disputed domain name for EUR 1,500. On March 28, 2022, Mr. Nuembrecht advised the Respondent that he "could imagine the purchase of the domain 'denkwerkt.nl' for an amount of 1.000,00 €". And on April 2022 the Respondent replied that EUR 1,250 was "the limit."

5. Parties' Contentions

A. Complainant

According to the Complainant the disputed domain name is identical or confusingly similar to the Complainant's DENKWERK trademark as this trademark is fully contained in the disputed domain name. The Complainant alleges that the last letter "t" of the disputed domain name gives the disputed domain name no visual or aural difference nor a different meaning. As the letter "t" does not give the disputed domain name any meaning the Complainant assumes that the Respondent used the letter intentionally as a typing error of the Complainant's DENKWERK trademark in the form of typo squatting.

The Complainant further alleges that the Respondent has no rights to use or legitimate interests in respect of the disputed domain name as the Respondent has neither obtained a license nor a permission to use the earlier Complainant's DENKWERK trademark, and there is no commercial connection between the Complainant and the Respondent. The Complainant further alleges that the Respondent has also not made a noncommercial use or bona fide offering of goods or services under the disputed domain name as the Respondent used a privacy service of its registrar, which registrar did also not obtain the right to use the

Complainant's DENKWERK trademark as part of the disputed domain name. As the Respondent was prepared to sell the disputed domain name for EUR 1,250 in April 2022, and the disputed domain name never resolved to an active website, the Complainant alleges that, after almost three years it can be assumed that the Respondent never intended to place content under the disputed domain name and that it only acquired the disputed domain name in order to sell it at a significantly higher price as the initial buying price.

According to the Complainant the disputed domain name has been registered in bad faith because it incorporates the Complainant's well-known DENKWERK trademark and the disputed domain name has been inactive. The Complaint also alleges that, apparently because SIDN did not disclose the Respondent's identity on the Complainant's request, the employment of a privacy or proxy service to block or intentionally delay disclosure of the identity of the actual underlying supports an inference of bad faith. Moreover, the Complainant contends that the Respondent has registered the disputed domain name primarily for the purpose of selling or to profit in some fashion from or otherwise exploit the Complainant's DENKWERK trademark, which circumstances, alone or together, include the Respondent's likely knowledge of the Complainant's prior rights and the distinctiveness of the Complainant's DENKWERK trademark.

B. Respondent

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

6. Discussion and Findings

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 panelist considers it to be without basis in law or in fact.

The Panel notes that, in accordance with article 16.4 of the Regulations, the Center has fulfilled its obligation to employ reasonably available means to achieve actual notice of the Complaint to the Respondent. Based on article 2.1 of the Regulations, a request to transfer the disputed 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 Top-Level

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](#),

Domain “.nl” may be disregarded in assessing identity or 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](#)).

Applying the criteria of article 2.1 of the Regulations, the Panel finds that the disputed domain name incorporates the Complainant’s DENKWERK trademarks in its entirety, with the mere addition of the letter “t”, which addition does not prevent a finding of confusing similarity under the Regulations.

Consequently, the Panel finds that the requirement of article 2.1 sub a. of the Regulations has been satisfied.

B. Rights or Legitimate Interests

Article 2.1(b) of the Regulations requires the Complainant to demonstrate that the Respondent has no rights to or legitimate interests in the disputed domain name. This condition is met if the Complainant makes 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 Respondent has not disputed the Complainant’s contention that it was never authorized to register or use the disputed domain name, and that the disputed domain name has been passively held. Because the Respondent has not put the disputed domain name to any use, and in absence of a Response, the Panel cannot determine if the Respondent made any demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute, and therefore finds in favor of the Complainant.

Consequently, the Panel finds that the Complainant has satisfied the requirement of article 2.1(b) of the Regulations.

C. Registered or Used in Bad Faith

Article 2.1(c) of the Regulations requires the Complainant to show that the disputed domain name was registered and/or is being used in bad faith. The Panel is not satisfied that the Complainant has met its burden of proof for the following reasons.

The Panel first observes that the disputed domain name consists of a common Dutch dictionary word “denkwerk” – Dutch for “thinking” – with an additional “t”, which merely gives the term the appearance of a verb that is related to the noun “denkwerk”. Although the Complainant alleges that its DENKWERK trademark is well known, it provides no further explanation, let alone evidence of the DENKWERK trademark’s reputation in the Netherlands. The Panel also notes that the commercial register lists already some 20 companies in the Netherlands whose company name includes “Denkwerk,” and the trademark register, in addition to the Complainant’s DENKWERK trademarks, several other trademarks incorporating “Denkwerk” that are protected under Dutch law. Under these circumstances, the Panel finds that the Complainant failed to show that it is likely that the Respondent had the Complainant’s DENKWERK trademark in mind when it registered the disputed domain name. Therefore, the Panel is not satisfied that the disputed domain name has been registered in bad faith.

The Complainant also did not succeed in showing that the Respondent has been using the disputed domain name in bad faith. The Panel first notes that the disputed domain name has only been passively held. It is, however, well established that non-use of a domain name does not prevent a finding of bad faith use under the doctrine of passive holding. This doctrine of passive holding is, however, not absolute, but needs to consider relevant factors, such as (i) the degree of distinctiveness or reputation of the complainant’s mark,

may be relevant to the determination of this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

(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 (see section 3.3. of the [WIPO Overview 3.0](#)). As explained in paragraph 6.B, the Panel considers that the Complainant did not succeed in demonstrating that its DENKWERK trademark has a high reputation in the Netherlands, with a rather low degree of distinctiveness, making it questionable that the Respondent registered the disputed domain name with the Complainant's DENKWERK trademark in mind. The Panel further observes that SIDN, in accordance with its privacy policy, does not provide names of individuals in the Whois register ("<https://www.sidn.nl/en/nl-domain-name/sidn-and-privacy>"). As the Respondent appears to be such individual, the fact that its identity was not published in the Whois register cannot be held against it, and the Complainant, through Mr. Nuembrecht, was able to quickly and easily retrieve the Respondent's contact details (which the Complainant did not allege to be false), so that the Panel is not satisfied that the Respondent has taken precautions to block or intentionally delay disclosure of its identity. The Panel is also not satisfied that the Respondent acquired the disputed domain name in order to sell it for an amount that significantly exceeds valuable consideration for the costs of registration of the domain name, as the Complainant, via a front man, contacted the Respondent for sales negotiations. In this situation, the Complainant cannot blame the Respondent for giving a sale price, and it certainly does not show that the Respondent registered the disputed domain name in order to sell it to the Complainant for a fee in excess of valuable consideration.

Consequently, the Panel does not find that the disputed domain name has been registered or is being used in bad faith, and the requirement of article 2.1(c) of the Regulations has not been met.

7. Decision

For all the foregoing reasons, the Complaint is denied.

/Alfred Meijboom/

Alfred Meijboom

Panelist

Date: May 3, 2024