

ADMINISTRATIVE PANEL DECISION

RHOSS S.p.A. v. Kees Eijkelboom

Case No. DNL2024-0026

1. The Parties

The complainant is RHOSS S.p.A., Italy, represented by Merkenbureau Knijff & Partners B.V., Netherlands (Kingdom of the), (“Complainant”).

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

2. The Domain Name and Registrar

The disputed domain name <rhoss.nl> (the “Disputed Domain Name”) is registered with SIDN through Cronon GmbH.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 17, 2024. On June 17, 2024, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name.

On June 18, 2024, 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.

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 Respondent of the Complaint and the proceedings commenced on June 25, 2024. In accordance with the Regulations, article 7.1, the due date for Response was July 15, 2024. The Center did not receive any response. Accordingly, the Center notified Respondent’s default on July 16, 2024.

The Center appointed Moïra Truijens as the panelist in this matter on July 18, 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

Complainant, Rhoss S.p.A., is an Italian company specializing in the design, manufacturing, and marketing of systems for air conditioning and air handling. Established in 1968, Complainant has developed a strong reputation in the HVAC (heating, ventilation, and air conditioning) industry, providing a wide range of products and solutions for commercial, industrial, and residential applications. The company operates both domestically and internationally, serving a wide range of clients in various sectors.

Complainant owns many trademarks worldwide, including several RHOSS trademarks covering multiple European jurisdictions, amongst which:

- International Trademark Registration No. 374167, designating the Benelux, registered on December 29, 1970;
- European Union Trademark Registration No. 003079662, registered on June 21, 2004.

Furthermore, the name RHOSS constitutes the registered company name of Complainant, and the domain name <rhoss.it> registered since July 23, 1997, is being used internationally.

The RHOSS trademark registrations predate the registration of the Disputed Domain Name as the Disputed Domain Name was registered on June 1, 2015. At the time of filing the Complaint and the Decision, the Disputed Domain Name resolves to a parked website stating “This domain is now reserved. As of now, no content has been uploaded”.

5. Parties’ Contentions

A. Complainant

The Disputed Domain Name incorporates Complainant’s RHOSS trademark in its entirety. Furthermore, Complainant holds that the country code Top-Level Domain (“ccTLD”) “.nl” may be disregarded when assessing the similarity between a domain name and the relevant trademark.

Complainant therefore finds the Disputed Domain Name confusingly similar to Complainant’s RHOSS trademark.

Complainant further claims that Respondent has no rights to or legitimate interests in the Disputed Domain Name.

Complainant has never granted Respondent any right to use the RHOSS trademark in the Disputed Domain Name, nor is Respondent affiliated to Complainant in any form. Complainant further asserts that Respondent was and is not known as “RHOSS”.

Another argument held by Complainant, is that the principles set out in WIPO Case No. [D2001-0903](#), *Oki Data Americas, Inc. v. ASD, Inc.* are not met.

Additionally, Complainant states that the Disputed Domain Name is registered and used in bad faith as Respondent is passively holding the Disputed Domain Name, and offering it for sale.

B. Respondent

Respondent did not reply to Complainant’s contentions in these Proceedings. It did reply to a cease and desist letter that was sent in May 2024, summarized shortly, by stating it did have a legitimate interest at the time of registration of the Disputed Domain Name, as Respondent claims to have been representing Thermofrost B.V., a former, non-exclusive distributor of RHOSS products. Respondent also stated that he was open to sell the Disputed Domain Name.

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.

In accordance with article 10.3 of the Regulations, the Panel shall determine the admissibility, relevance and weight of the evidence submitted; if no response has been submitted, the Panel shall rule on the basis of the complaint; and the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or fact.

A. Identical or Confusingly Similar

Complainant has shown registered rights in the RHOSS trademark under the Regulations. The Disputed Domain Name is confusingly similar to this trademark as it incorporates RHOSS in its entirety.

The ccTLD “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11)¹.

The Panel finds that the Disputed Domain Name is confusingly similar to the RHOSS trademark and that Complainant has thus established the first element of article 2.1 of the Regulations.

B. Rights or Legitimate Interests

A complainant bears the burden of prima facie showing that the respondent has no rights to or legitimate interests in the domain name. If a complainant succeeds in making a prima facie case, the burden of production shifts to the respondent, which will then have to come forward with appropriate allegations or evidence demonstrating a right to or legitimate interest in the domain name (*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Article 3.1 of the Regulations provides circumstances in which such rights or legitimate interests to a domain name may be demonstrated. These circumstances include: i) use of the domain name in connection with a bona fide offering of goods or services; ii) being commonly known by the domain name; and iii) making legitimate noncommercial or fair use of the domain name.

¹In 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](#)).

Based on the evidence and the undisputed submissions of Complainant, the Panel concludes that Respondent has not received Complainant's consent to use the RHOSS trademark as part of the Disputed Domain Name, nor that it has otherwise been authorized to use the RHOSS trademark.

Respondent has not provided evidence, nor is there any indication in the record of this case that Respondent is commonly known by the Disputed Domain Name. Respondent did not demonstrate any use or demonstrable preparation to use the Disputed Domain Name in connection with a bona fide offering of goods or services.

Moreover, in so far as there may have been a legitimate interest at the time of registration, which, considering the case records, it is not possible for the Panel to make a conclusory finding in this regard, the circumstances of the case indicate that the requirements of the OKI Data test established on *Oki Data Americas, Inc. v. ASD, Inc.* WIPO Case No. [D2001-0903](#) are not met in the present case as:

- i. Respondent has not provided any evidence that it has actually offered any goods or services on the Disputed Domain Name. The company on whose behalf Respondent claims to have registered the Disputed Domain Name for, did so in the past, but this relationship has ended in 2020 and it is currently not doing so.
- ii. The website resolving from the Disputed Domain Name is currently not in use and following from the screenshots from the WayBackMachine, it has never been used. No goods or services seem to ever have been offered, hence no trademarked goods or services either;
- iii. As the website resolving from the Disputed Domain Name has never been used, the requirement to accurately and prominently disclose the registrant's relationship with the trademark holder is not met either.

Currently the Disputed Domain Name is still being passively held.

Moreover, the Panel notes the Disputed Domain Name is identical to Complainant's mark, which also prevent a finding of rights or legitimate interests. [WIPO Overview 3.0](#), section 2.8.2.

Finally, in the circumstances of this case, the Panel finds that a lack of rights to or legitimate interests in the Disputed Domain Name on the part of Respondent is further supported by the fact that no formal response was filed by Respondent, but that he did reply to the cease and desist letter, with an email in which Respondent offered to sell the Disputed Domain Name.

The Panel concludes that 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, Complainant has to show that the Disputed Domain Name was registered or is being used in bad faith. Several circumstances put forward by Complainant make that the Panel finds that this is so.

The Disputed Domain Name is identical to Complainant's RHOSS trademark. When Respondent registered the Disputed Domain Name, the RHOSS trademark had already been registered and was being used by Complainant for its products and services for decades. Given the reply to the cease and desist letter, in which Respondent claims to have been a representative of Thermafrost B.V. (a former, non-exclusive distributor of Complainant), the Panel finds that, at the time of registration of the Disputed Domain Name, Respondent was aware of Complainant and its RHOSS trademark.

Respondent is not actively using the Disputed Domain Name, the current and past use can be seen as passive holding of the Disputed Domain Name. Furthermore, aside from passive holding, Respondent has also offered the Disputed Domain Name for sale in its response to Complainant's letter. Since Respondent has no independent right or legitimate interest in the Disputed Domain Name, an offer to sell that name is evidence of bad faith.

The Panel concludes that 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 <rhoss.nl> be transferred to Complainant.

/Moira Truijens/

Moira Truijens

Panelist

Date: August 1, 2024