

ADMINISTRATIVE PANEL DECISION

Top Online Partners Group Limited v. OrangeBuddies Media B.V.
Case No. DNL2024-0047

1. The Parties

The Complainant is Top Online Partners Group Limited, United Kingdom, represented by Sheridans Solicitors, United Kingdom.

The registrant of the disputed domain name (the “Domain Name”) is OrangeBuddies Media B.V., Netherlands (Kingdom of the), internally represented (the “Respondent”).

2. The Domain Name and Registrar

The Domain Name <topcashback.nl> is registered with SIDN through Registrar.eu.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2024. On November 19, 2024, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name.

On November 20, 2024, SIDN transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 20, 2024, providing the information disclosed by SIDN, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on November 20, 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 of the Complaint, and the proceedings commenced on November 21, 2024. In accordance with the Regulations, article 7.1, the due date for Response was December 11, 2024. The Response was filed with the Center on December 11, 2024.



On December 16, 2024, SIDN commenced the mediation process. On February 10, 2025, SIDN extended the mediation process until March 10, 2025. On February 27, 2025, SIDN informed parties that the dispute had not been solved in the mediation process.

The Center appointed Wolter Wefers Bettink as the panelist in this matter on March 21, 2025. 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

Since 2005, the Complainant operates a business allowing users to earn money back on their online purchases (so-called cashbacks) by partnering with retailers worldwide. The Complainant operates internationally with active websites in the United States of America, United Kingdom, Germany, Italy, Spain and France (amongst others). In 2012 and 2013, the Complainant acted under the name TOP GROUP GLOBAL LIMITED and thereafter under the name TOP ONLINE PARTNERS GROUP LIMITED.¹ The Complainant also refers to a subsidiary of the Complainant that acted under the name UK SYSTEMS LTD from 2005 to 2014, and thereafter under the name TOPCASHBACK LIMITED.

The Complainant is the owner of various trademark registrations, including the following (hereafter the "Trade Marks"):

- European Union figurative mark  registered on March 6, 2020, under No. 018126755;
- United Kingdom figurative mark  registered on January 29, 2010, under No. UK00002528288

The trademark application by the Complainant for the word mark TOPCASHBACK in the European Union, Filing. No. 016770125, was refused as July 27, 2018.

The Domain Name was registered on February 25, 2009, and according to the information provided by SIDN, was acquired by the Respondent on February 22, 2023. However, both the Complainant and Respondent assert, with evidence, that the Respondent acquired the Domain Name on July 11, 2012. The Domain Name does not resolve to an active website.

By email of December 18, 2023, an employee of the Complainant wrote to the Respondent:

"I work for TopCashback and am currently evaluating what domains we own across the globe. Where possible, I would like to acquire more of the TopCashback domains to increase our brand protection. Please could you confirm if you are the current owner of topcashback.nl and if you would be open to a discussion about selling this domain to ourselves?"

After receiving confirmation from the Respondent, the Complainant wrote by email of January 29, 2024:

"Would you be interested in selling and transferring this domain over to ourselves? [...] we are prepared to offer you the sum of 400 USD (approx. 370 EUR) in full and final settlement, and in return you agree to transfer the topcashback.nl domain name over to us."

¹The Panel notes that UK Companies House records indicate the Complainant again changed its name to TOPCASHBACK GROUP LIMITED shortly after the submission of the Complaint.

In response to a reminder from the Complainant, the Respondent wrote by email dated May 29, 2024:

“We are not interesting to sell this domain.”

Subsequently, the Complainant’s legal representative wrote to the Respondent by email of August 28, 2024, with a counter-offer of EUR 4,500 for the Domain Name and advising that, if an agreement could not be reached, it had instructions to file a complaint seeking the transfer of the Domain Name to the Complainant.

By email of August 30, 2024, the legal representative of the Respondent reacted to this letter, stating:

“Under these circumstances, we consider the offer of EUR 4,500 proposed by TCB [the Complainant] to be grossly inadequate and does not reflect the value of the TopCashback.nl brand represents to [the Respondent]. [...] In view of our long-standing and highly successful business in the cashback industry and the registration of the [disputed] domain name since 2012, as well as the substantial value that TopCashback.nl has accrued over the years, we are prepared to consider a counter-offer of EUR 500,000 as a more reasonable starting point for further discussions”.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Trade Marks as the Domain Name consists of the word TOPCASHBACK which forms part of the Trade Marks. The ccTLD “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement.

The Complainant submits that the Respondent has no rights to or legitimate interests in the Domain Name for the following reasons:

- the Domain Name was registered in February 2009 but acquired by the Respondent on July 11, 2012 (the “Acquisition Date”);
 - there is no evidence to suggest that the Respondent has made any use of the Domain Name since the Acquisition Date, nor have they made any demonstrable preparations to use the Domain Name (or a name corresponding to the Domain Name) in connection with a bone fide offering of goods or services;
 - the Respondent is not commonly known by the Domain Name;
 - the Respondent is not making a legitimate noncommercial use of the Domain Name;
- and
- the Complainant has not granted any license, permission or authorisation to the Respondent to use the sign TOPCASHBACK (the “Sign”).

The Complainant further submits that, considering the Complainant’s longstanding use of the Sign since 2005, and the fact that the parties are competitors, both operating within the same industry and sector and therefore offering the same goods/services, and that the Sign is wholly incorporated within the Domain Name, the Respondent has no rights or legitimate interests in the Domain Name. The Complainant adds that, since it operates and is commonly known under the Trade Marks, it is difficult to see how the Respondent could use the Domain Name in a way that could be deemed legitimate, fair or without intent for commercial gain to misleadingly divert consumers or to tarnish the Trade Marks or Sign. According to the Complainant, this is evident on account of the fact that, despite offering cashback services, the Respondent has made no discernible use of the Domain Name since acquiring it in 2012.

The Complainant also submits that the Domain Name was registered and/or is being used in bad faith. According to the Complainant, it is clear that the Respondent was aware of the Complainant’s existence and of their use of the Sign in relation to the provision of cashback services:

- the Complainant’s business enjoyed considerable commercial success by the Acquisition Date;

- the Complainant and the Respondent operate in competition with one another, so the Respondent would have been aware of the Complainant as one of its competitors;
 - the Respondent operates in the Netherlands, United Kingdom, Germany, Italy, Spain and France – territories in which the Complainant also operates;
 - a director at the Complainant's subsidiary company TOPCASHBACK LIMITED met representatives of the Respondent at a conference in March 2019, this initial contact was followed up with a LinkedIn message being sent to him by a representative of the Respondent on March 14, 2019;
 - several online articles demonstrate that the Respondent was aware of the cashback market within the United States and Europe, and specifically England, where the Complainant has been trading since 2005 under its company TOPCASHBACK LIMITED (then called UKC SYSTEMS LIMITED), and of the Complainant's trading activities:
- in an article published on the Respondent's website dated March 6, 2012, the Respondent stated that "In the Netherlands, cashback is still in its infancy (compared to American and England)".
 - In an article dated March 9, 2022, also published on the Respondent's website, in response to the question "How did you get the idea to start OrangeBuddies" [the] CCO of the Respondent [] stated "We saw the cashback trend from America slowly spreading to Europe and immediately knew that it had potential, also in the Netherlands. After a few months of preparation, we launched our first cashback platform in the Netherlands in 2009: ShopBuddie (now renamed ShopBuddies internationally). In the years that followed, we expanded further, first in neighboring countries and later to all of Europe, with various cashback concepts. The e-commerce share is still increasing in all countries and we also notice this with our cashback websites".
 - In an article dated April 29, 2015, published on the Respondent's website, the Respondent made reference to the Complainant stating that "Within Europe, Britain is a few years ahead of other countries in the field of cashback. There, 'cashback' is a household word, and consumers shop online with cashback through well-known cashback websites such as Quidco and TopCashback".

Furthermore, the Complainant contends that the fact that the Respondent has made no use of the Domain Name since acquiring it is highly indicative that the Respondent never intended to use the Domain Name or that use of the Domain Name would likely result in an objection being raised by the Complainant.

The Complainant states that, is difficult to discern how the Domain Name, which the Respondent never used, could have accrued a "substantial value" for the Respondent, as stated in its letter of August 30, 2024, other than on account of the Complainant's extensive and much longer use of the Trade Marks. In fact, the Complainant adds, the Domain Name it is valuable to the Respondent only because it is valuable to the Complainant. The Complainant submits that, in view of the Respondent's counter-offer of EUR 500,000 the Respondent also registered and holds the Domain Name for the purpose of selling, renting or transferring it to the Complainant for valuable consideration in excess of the costs of registration (contrary to Article 3.2.1 of the Regulations).

B. Respondent

The Respondent submits that the Complainant has not obtained rights to the trade name TOPCASHBACK, since it is insufficiently distinctive.²

The Respondent contends that it has been operating in the cashback business since 2009 and is active across 13 countries. As part of its business strategy, the Respondent operates its business via a number of domain names under various country code TLDs ("ccTLDs") and generic Top-Level Domains ("gTLDs") incorporating "cashback" with several other dictionary terms. According to the Respondent, as part of its business strategy for many years it has been the owner of numerous domain names including combinations of the term "cashback" with various ccTLDs.

²The Panel notes that the Respondent's contentions are primarily in relation to potential trade name protection, but the Respondent also provided evidence of a refused trademark application for the work mark TOPCASHBACK in the European Union filed by the Complainant.

The Respondent points out that it has owned the Domain Name since July 11, 2012, and that it holds all rights, including the manner in which the Domain Name is used. At the time, the Domain Name was not claimed by the Complainant or any third party and although the Domain Name is not being actively used, the Respondent may consider changing its business strategy and actively using the Domain Name in the future.

The Respondent contends that the Complainant is not present with its business in the Netherlands and has never been active in the Netherlands since the start of its business in 2005, so that the Dutch public is not familiar with the name TOPCASHBACK and cannot be confused by it.

With respect to the contact at the conference in 2019, the Respondent submits that its representative was there in a commercial activity and was not normally involved in the registration of domain names. With respect to the correspondence between the parties in 2024 concerning the possible sale of the Domain Name, the Respondent submits that it did not receive a substantive reply to its email of August 30, 2024, and that normal business practice would have been that the Complainant would have requested a meeting to discuss the matter. Instead, after a silence of three months, without further notice the Respondent was informed by the Center that the Complainant had initiated this case.

6. Discussion and Findings

A. The Complainant's rights

Under the Regulations, article 2.1 sub a, a complainant may rely, inter alia, on relying on rights in a trade mark or a trading name protected under Dutch law. In the Complaint it is argued in relation to the first element that the Domain Name is confusingly similar to the Trade Marks. Here, the Complainant apparently relies on its trade mark rights. As set out below under section B, the Panel accepts that the Complainant has such rights.

On the other hand, the Complainant claims to have amassed considerable goodwill and reputation in the Sign through use thereof in relation to cashback services since 2005. In this context, the Panel understands that the reference to the Sign in the Complaint relates to rights to the trade name TOPCASHBACK. The question is whether the use of that trade name by the Complainant qualifies for protection of the trade name TOPCASHBACK under the Dutch Trade Name Act.

As evidence of its rights to the trade name TOPCASHBACK, acquired since the Complainant started its business in the United Kingdom in 2005, the Complainant has submitted screen prints from the WayBack Machine ("www.archive.org") for past websites under its domain names <topcashback.co.uk>, <topcashback.com>, <topcashback.de>, <topcashback.fr>, <topcashback.es>, and <topcashback.it>. The Complainant has also submitted a Directors' Report of UKC Systems Limited – according to the Complaint an old company name of the Complainant's subsidiary – for the year ended on January 31, 2012, in which it is mentioned that the company is trading as "topcashback.co.uk". In addition, a Directors' Report has been submitted for a company called TOP ONLINE PARTNERS GROUP LIMITED for the period of 12 September 11, 2012 until 31 January 31, 2014. According to this report, this company apparently acquired UKC Systems Limited during that period.

Assuming, for the sake of argument, that these documents together can be considered to evidence the Complainant's rights to the trade name TOPCASHBACK, they all apparently concern use outside the Netherlands. However, under the Trade Name Act, a foreign trade name – one that is used abroad – is protected in the Netherlands against confusion among the public only if it has a protectable reputation ("beschermenswaardige bekendheid") in the Netherlands. If that is the case, it can oppose any later use of a similar trade name for similar activities in the Netherlands, to the extent that such use may cause confusion among the public in the Netherlands. However, the Complainant has not submitted evidence concerning its use or the reputation of the trade name TOPCASHBACK in the Netherlands, without which there is no evident risk of confusion among the public in the Netherlands. The article of April 29, 2015, to which the

Complainant refers, does not change that. The statement that in the United Kingdom, “cashback” is a household name confirms that there this is a descriptive or, at least a non-distinctive term. The assertion in that article that “consumers Shop online with cashback through well-known cashback websites such as Quidco and TopCashback” is not supported by evidence, but even if it is assumed on this basis that at the time the Complainant’s website was well-known in the United Kingdom, this does not show that it had a reputation in the Netherlands. It follows that the Complainant has not provided evidence of a protectable reputation with respect to the trade name TOPCASHBACK in the Netherlands.

The Panel therefore concludes that in this case, if and to the extent that the Complainant has sought to invoke rights to the trade name TOPCASHBACK, such rights – leaving aside to what extent they actually exist – cannot support its claim as set out in the Complaint and these trade name rights, therefore, do not need to be discussed further in this case.

B. Identical or Confusingly Similar

The Complainant relies on its rights in the Trade Marks, registered in, inter alia, the United Kingdom and in the European Union. Under the Regulations, article 2.1 sub a, the rights in a trade mark on which a complainant may rely should be protected under Dutch law. This implies that in this case the Complainant can only rely on its rights in the European Union Trade Mark that was registered in 2020 (hereafter the “EU Trade Mark”).

The EU Trade Mark consists of a design element and the term TOPCASHBACK in green letters. In view of the size and composition of both elements, the public will recognize TOPCASHBACK as the dominant element of the EU Trade Mark for purposes of the first element of the Regulations. As set out in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.10, in case of a figurative mark the assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark.³ On this basis, trademark registrations with design elements would prima facie satisfy the requirement that the complainant show “rights in a mark” for further assessment as to confusing similarity. The Respondent has argued, in essence, that the term TOPCASHBACK lacks distinctiveness. If and to the extent that the Respondent thereby intends to argue that the Complainant cannot rely on the element TOPCASHBACK in the EU Trade Mark, the Panel notes that the trade mark registration does not contain a disclaimer of the textual element of the EU Trade Mark. In the absence of a decision of a court or trade mark authority canceling or invalidating the EU Trade Mark or imposing a disclaimer as to the element TOPCASHBACK, the Panel accepts the evidence of the registration of the EU Trade Mark in the name of the Complainant as sufficient evidence of the Complainant’s trade mark rights. For completeness’ sake, the Panel notes that the existence of a design element and a textual element may be relevant to the assessment of the second and third elements, e.g., in considering possible legitimate trademark co-existence or scenarios where the textual elements correspond to a dictionary term (see [WIPO Overview 3.0](#), section 1.7).

The Panel notes that the Domain Name incorporates the dominant element TOPCASHBACK of the EU Trade Mark in its entirety (see [WIPO Overview 3.0](#), section 1.7), while the ccTLD “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11). Therefore, the Panel finds that the Domain Name is confusingly similar to the EU Trade Mark in which the Complainant has rights.

³In 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](#)).

C. Rights or Legitimate Interests

Under article 3.1 of the Regulations, the Complainant has to make out a prima facie case that the Respondent does not have rights to or legitimate interests in the Domain Name, upon which the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the Domain Name ([WIPO Overview 3.0](#), section 2.1).

Article 3.1 of the Regulations provides that the Respondent “may demonstrate such rights or legitimate interests on its part inter alia through the following circumstances:

- a. before having any notice of the dispute, the registrant made demonstrable preparations to use the domain name (or a name corresponding to the domain name) in connection with a bona fide offering of goods or services;
- b. the registrant as an individual, business or other organization is commonly known by the domain name;
- c. the registrant is making a legitimate noncommercial use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish or otherwise damage the relevant trademark, trade name, personal name, name of a Dutch public legal entity or name of an association or foundation located in the Netherlands.”

Generally speaking, panels have found that, when a domain name consists of the trade mark in its entirety it carries a high risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1). However, in this case the Domain Name consists (only) of the textual element TOPCASHBACK of the EU Trade Mark and there is no evidence of use by the Respondent of the EU Trade Mark in its entirety, including the figurative element. Furthermore, in this case the registration of the Domain Name occurred 11 years (and the acquisition by the Respondent eight years) before the registration of the EU Trade Mark, while there is no evidence in the file that the Complainant has objected to the use of the Domain Name before January 2024 – therefore almost 15 years after its registration and 12 years after the acquisition by the Respondent. There is no indication in the case file that during those 15 (or 12) years the Complainant perceived a risk of implied affiliation. Although the mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits ([WIPO Overview 3.0](#), section 4.17), the Panel here finds that, given the apparent inactivity of the Complainant with respect to the registration and acquisition of the Domain Name in the period 2009/2012 - 2024, the Complainant would need to advance further circumstances, beyond the Domain Name consisting of the textual element of the EU Trade Mark.

The Complainant submits that there is no evidence to suggest that the Respondent has made any use of the Domain Name, nor have they made any demonstrable preparations to use the Domain Name (or a name corresponding to the Domain Name) in connection with a bona fide offering of goods or services. In addition, the Complainant has brought forward that the Respondent is not commonly known by the Domain Name and is not making a legitimate noncommercial use of the Domain Name. The Respondent has submitted that, as part of its business strategy, it operates its business via a number of domain names including the term “cashback”, registered over the years in various ccTLDs. The Respondent states that, although the Domain Name is not being actively used, it may consider changing its business strategy and actively using the Domain Name in the future.

The primary question is whether the holding of a domain name, without making any actual use thereof, can constitute a legitimate interest under the Regulations. In the circumstances of the case at hand, this question is to be answered in the affirmative.

The term “topcashback” consists of the dictionary words “top” and “cashback”. According to the Cambridge Dictionary the term “cashback” means “a system in which banks or businesses encourage people to buy something by giving them money after they have bought it”. Indeed, both the Complainant and the Respondent are in the business of providing cashback services to customers in relation to purchases they

have made at retailers they represent. According to the Merriam-Webster dictionary the term “top” as an adjective means “chief, leading” or “of the highest quality, amount, or degree”. In light of this, the term “topcashback” in relation to a company in the cashback business denotes a company that is a leading company in the business, a company offering cashback services of the highest quality. Therefore, the term “topcashback” may be considered a descriptive term in relation to the cashback business.

The Panel considers that a respondent has a right to register and use a domain name to attract Internet traffic based on the appeal of commonly used descriptive or dictionary terms, in the absence of circumstances indicating that the respondent’s aim in registering the disputed domain name was to profit from and exploit the complainant’s trademark. (See *Harvard Lampoon, Inc. v. Reflex Publishing Inc.*, WIPO Case No. [D2011-0716](#); *National Trust for Historic Preservation v. Barry Preston*, WIPO Case No. [D2005-0424](#)). The Complainant has not provided any clear evidence indicating that the Respondents’ aim in acquiring the Domain Name was to profit from and exploit the EU Trade Mark. In this context, the Panel also takes note of the facts that while both parties are active in the cashback business, the Complainant has not objected to the registration of the Domain Name for almost 15 years after its registration and 12 years after the acquisition by the Respondent, and there is no indication in the case file that during those 15 (or 12) years the Complainant perceived a risk of implied affiliation.

The Panel finds that the Respondent’s offer to sell the Domain Name to Complainant is not relevant as Respondent was first approached by the Complainant to sell the Domain Name (See *Javier Narvaez Segura, Grupo Loading Systems S.L. v. Domain Admin, Mrs. Jello, LLC*, WIPO Case No. [D2016-1199](#)).

On the basis of all of the above, the Panel concludes that the Complainant has not succeeded to show that the Respondent lacks rights to or a legitimate interest in the Domain Name.

D. Registered or Used in Bad Faith

As the Complainant has not succeeded on the above second element under the Regulations, the Panel need not discuss the third element, registration or use in bad faith.

7. Decision

For all the foregoing reasons, the Complaint is denied.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Panelist

Date: March 26, 2025