Panel Decision for dispute CAC-ADREU-008253

Case number	**CAC-ADREU-008253**
Time of filing	**2022-02-21 23:22:02**
Domain names	**monsantoholland.eu**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	**Bayer AG**

Respondent

Organization	**Lescongroep**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

FACTUAL BACKGROUND

The Complainant relies upon the following registered trade mark:

• EU trade mark registration no. 009798471, dated 18 August 2011, for the word mark MONSANTO, in class 5 of the Nice Classification.

(hereinafter, the “Complainant’s trade mark”; “the Complainant’s trade mark MONSANTO”; or “the MONSANTO trade mark”).

The domain name <monsantoholland.eu> was registered on 1 August 2021 (“the disputed domain name”) and it resolves to an active website, the particulars of which are set out under section "Parties' Contentions A. Complainant" below (“the Respondent’s website”).

The Complainant seeks that the disputed domain name be transferred to the Complainant, in accordance with Paragraph B1(b)(11) and Paragraph B11 (b) of the ADR.eu Alternative Dispute Resolution Rules (“the ADR Rules”). The Complainant further advises that it has complied with the eligibility requirement set out in Article 4(2)(b)(i) of the Regulation (EC) no. 733/2002.

A. COMPLAINANT

The Complainant’s contentions can be summarised as follows:

I. Identity or confusing similarity

The Complainant is the ultimate parent company of Monsanto Technology, LLC., a well-known American agrochemical and agricultural biotechnology corporation founded in 1901, which was acquired by the Complainant in 2018 as part of its crop science division. In the 1970s, Monsanto Technology, LLC developed Roundup, a glyphosate-based herbicide and became a major producer of genetically engineered crops.

The Complainant states that the disputed domain name fully incorporates the well-known MONSANTO trade mark and is confusingly similar to this mark. The Complainant further states that the specific top-level domain name is generally disregarded in the assessment of confusing similarity between the complainant’s trade mark and a domain name.

The Complainant contends that the additional term “holland” is merely descriptive as it is a geographical term which does not eliminate the similarity between the Complainant’s trade mark and the disputed domain name. The Complainant argues that, on the contrary, the

additional term may enhance the possibility of confusion in so far as it refers to a country where the Complainant is located.

On this first legal ground, the Complainant refers to prior WIPO UDRP decisions, namely WIPO Case No. D2000-0429, Rollerblade, Inc. v. Chris McCrady (in respect of the domain name <rollerblade.net>); WIPO Case No. D2010-1960, Six Continents Hotels, Inc. v. Daniel Kirchhof, Unister GmbH (in respect of the domain name <holiday-express-holland.com> et al.); and the WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 1.8 ("WIPO Jurisprudential Overview 3.0").

In view of the above, the Complainant concludes that the disputed domain name is confusingly similar to the Complainant's trade mark MONSANTO.

II. The Respondent's rights or legitimate interests in the disputed domain name

The Complainant avers that the MONSANTO trade mark is well-known and obviously connected with the Complainant and its products; and that "Monsanto" is not a word any market participant or other domain name registrant would legitimately choose unless seeking to create an impression of an association with the Complainant.

The Complainant further avers that it has not licensed or otherwise permitted the Respondent to use any of its trade marks and has not permitted the Respondent to apply, or use, any domain name incorporating the MONSANTO trade mark. In the Complainant's view, these circumstances are sufficient to constitute a prima facie showing by the Complainant of the absence of the Respondent's rights or legitimate interests in the disputed domain name.

In addition, the Complainant further claims that:

• There is no evidence of the Respondent's use of, or 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 within the meaning of Art. 21(2)(a) of the Regulation (EC) No 874/2004 ("the Regulation");

• The Respondent uses the disputed domain name in connection with an illegal scam website; and

• There is no evidence that suggests that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name under Art. 21(2)(c) of the Regulation, or is commonly known by the disputed domain name or the name BAYER-MONSANTO under Article 21(2)(b) of the Regulation.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name, and that the requirement of Article 21(2)(a) of the Regulation is also satisfied.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant argues that this legal ground is supported by a number of earlier WIPO UDRP decisions on both registration and use of the dispute domain name.

Registration

The Complainant states that the MONSANTO trade mark is highly distinctive, well-known and solely connected with the Complainant. Therefore, it is inconceivable that the Respondent registered the disputed domain name unaware of the Complainant and the MONSANTO trade mark.

Furthermore, the Respondent operates a scam website through the disputed domain name, which deliberately targets the Complainant, such that the Respondent was obviously aware of the Complainant and the MONSANTO trade mark at the time of registering the disputed domain name.

Use

The Complainant asserts that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website, or location or of a product or service on the Respondent's website.

The Complainant further asserts that the Respondent's registration of the disputed domain name also prevents the Complainant from reflecting its trade mark in a corresponding domain name.

The Complainant adduces the further evidence on bad faith on the Respondent's part:

• The registration of a domain name that includes a trade mark that is obviously connected with a complainant and its products also supports the finding of bad faith;

• The Respondent's use of the disputed domain name is qualified to disrupt the Complainant's business as it is capable of reducing the number of visitors to the Complainant's website, which may adversely affect the Complainant's business; and

• The registration of the disputed domain name also constituted an abusive threat hanging over the head of the Complainant.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. RESPONDENT

The Respondent has not submitted a Response to the Complaint within the time prescribed under Paragraph B3(a) of the ADR Rules, or at all.

DISCUSSION AND FINDINGS

A. Preliminary Matter: standing under the ADR Proceeding

A.1 The Complainant's trade mark

As mentioned under section "Factual Background" above, the Complainant relies upon the following registered trade mark:

• EU trade mark registration no. 009798471, dated 18 August 2011, for the word mark MONSANTO, in class 5 of the Nice Classification.

The Panel notes that the MONSANTO trade mark was registered in the name of Monsanto Technology, LLC.

The Panel also notes that the Complainant has provided documentary evidence to demonstrate that the Complainant is the ultimate parent company of Monsanto Technology, LLC, and that the latter granted the Complainant the right to confer to the MONSANTO trade mark in its own name for the purpose of this ADR Proceeding.

A.2 The Panel's determination

In view of the elements articulated under section A.1 above, the Panel is satisfied that the Complainant has standing to initiate this ADR Proceeding, having met the requirements under Article 10(1) and Article 21(1) of the Regulation.

B. General

Pursuant to Article 22(1)(a) of the Regulation, an ADR procedure may be initiated by any party where the registration of a domain name is speculative or abusive within the meaning of Article 21.

Article 21 of the Regulation and Paragraph B11(d)(1) of the ADR Rules provide that it is incumbent on the Complainant the onus of meeting the following threshold:

(i) the disputed domain name is identical with, or confusingly similar to, a name in respect of which a right is recognised or established by the national law of a Member State and/or Community law and; either

(ii) the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) the disputed domain name has been registered or is being used in bad faith.

Pursuant to Paragraph B11(a) of the ADR Rules, the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with such rules. The Panel is also allowed to undertake factual research into matters available on the

public record (Paragraph 7(a) of the ADR Rules).

The evidence standard under this ADR Proceeding is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three legal grounds in turn.

The Panel has considered the evidence put forward by the Complainant and has undertaken some factual research into matters available on the public record.

C. Identical or Confusingly Similar

The test under the first ground provides for a juxtaposing approach, according to which the textual components of the disputed domain name and the Complainant's trade mark are to be compared side by side.

Nonetheless, to achieve success under this legal ground, the Complainant must first of all provide evidence that it owns rights in a trade mark, following which the Panel shall assess the degree of similarity between the trade mark and the disputed domain name.

The Panel is satisfied that the Complainant owns trade mark rights in the term "MONSANTO" dating back to at least 2011, thereby meeting the standing required under Article 10(1) of the Regulation.

The disputed domain name <monsantoholland.eu> was registered on 1 August 2021, and it is composed of the terms "Monsanto" and "holland".

The Complainant's trade mark MONSANTO is wholly incorporated into the disputed domain name. The additional term "holland" in the disputed domain name string merely identifies the country which carries this name. In fact, the Panel agrees with the Complainant that the geographic term "holland" enhances the visual and phonetic confusion with the MONSANTO trade mark, in so far as it may well trigger an inference of association with the Complainant.

The Panel further notes that TLD suffixes (<.eu> in this matter) are typically disregarded in the assessment of confusing similarity for being part of the anatomy of a domain name (see, for comparative analysis, paragraph 1.11 of the WIPO Jurisprudential Overview 3.0).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark, the result of which being that the Complainant has succeeded under Article 21(1) of the Regulation and Paragraph B11(d)(1)(i) of the ADR Rules.

D. Rights or Legitimate Interests

The Respondent has defaulted in this ADR Proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Paragraph B10(a) of the ADR Rules and Article 22(10) of the Regulation).

The Panel notes that the Complainant denies categorically any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant further argues that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Complainant contends, in particular, that the Respondent's website diverts Internet users seeking for the Complainant's services, by intentionally creating a likelihood of confusion with the Complainant's trade mark as to an affiliation of association between the Complainant and the Respondent and/or between the Respondent and the Complainant's trade mark (the consequences of which are particularised under section E below).

The Complainant has provided evidence to support its contentions, whereas the Respondent did not rebut any of the Complainant's assertions.

The Panel has considered the available evidence and finds it to lend sufficient credence to the Complainant's case.

In addition, in the Panel's view, the choice of a domain name which incorporates a complainant's trade mark wholly (as in this case) or virtually wholly, and is unaccompanied or unsupported by any credible explanation as to the reason for this coincidence, could further evidence a lack of rights or legitimate interests.

The Panel therefore finds that the Complainant has succeeded under Article 21(1)(a) of the Regulation and Paragraph B11(d)(1)(ii) of the

ADR Rules.

E. Registered or Used in Bad Faith

The bad faith ground is an alternative requirement under the Regulation and the ADR Rules. Therefore, having successfully satisfied the preceding (cumulative) grounds in this ADR proceeding (sections C and D above), the Panel is not required to rule on the bad faith ground. Nonetheless, given that the Complainant has advanced a claim under this ground, the Panel considers that it is proper to make a brief determination on this matter for completeness. In order to meet this ground under the Regulation and the ADR Rules, the Complainant must provide evidence that the disputed domain name was registered or is being used in bad faith.

Both the Regulation and the ADR Rules enumerate non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

1. circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognised or established by national and/or European Union law, or to a public body; or

2. the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or European Union law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) the Respondent has engaged in a pattern of such conduct; or

(ii) the disputed domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) there are circumstances where, at the time the ADR Proceeding was initiated, the Respondent has declared its intention to use the domain name, in respect of which a right is recognised or established by national and/or European Union law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated;

3. the disputed domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

4. the disputed domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other online location, by creating a likelihood of confusion with a name on which a right is recognised or established, by national and/or European Union law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or

5. the disputed domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered.

E.1 Registration in bad faith

The following elements are compelling indicia to this Panel that the disputed domain name was registered in bad faith:

• The Panel accepts the Complainant's assertion that the disputed domain name is virtually identical to the Complainant's trade mark MONSANTO differing only by the addition of the geographical term "holland", which actually enhances the confusion;

• The Complainant is the owner of the domain name <monsanto.com>, which was registered in 1989;

• The disputed domain name <monsantoholland.eu> was registered in 2021;

• The Respondent's prima facie pattern of behaviour in so far as the Respondent appears to be behind the registration of the domain names <monsantoholland.com> and <monsantoholland.nl>, both of which were subject to administrative proceedings which resulted in said domain names being transferred to the Complainant;

• The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name; and

• The Respondent's lack of participation in this ADR Proceeding.

E.2 Use in bad faith

The Complainant contends that the Respondent has engaged in the conduct described in circumstances 2 and 4 above, which provide as follows:

“2. The domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or European Union law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) the Respondent has engaged in a pattern of such conduct; or

(ii) the disputed domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) there are circumstances where, at the time the ADR Proceeding was initiated, the Respondent has declared its intention to use the disputed domain name, in respect of which a right is recognised or established by national and/or European Union law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated;

(…)

4. the disputed domain name was intentionally used to attract Internet users, for commercial gain to the Respondent’s website or other online location, by creating a likelihood of confusion with a name on which a right is recognised or established, by national and/or European Union law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent;”

The Panel does not look favourably upon the Respondent, in particular owing to these factual components: (i) the Respondent’s website contains specific references to the Complainant’s company “Monsanto Holland B.V.”; (ii) the Respondent’s website offers agricultural products in direct competition with the Complainant; and (iii) rather worrisomely, whilst the Respondent’s website informs that the products offered are branded “Nickerson-Zwaan”, “SEMINIS”, and “Nunhems”, there is no explanation whatsoever as to reason(s) why the disputed domain name incorporates the word “Monsanto” and/or the Respondent is named “Monsanto Holland”.

Taken together, the Respondent’s behaviour suggests that the disputed domain name was registered for a potential financial gain, i.e. to misleadingly diverting Internet users (most likely the Complainant’s - existing or potential - customers because of the use of the Complainant’s trade mark within the disputed domain name string and on the Respondent’s website) to the Respondent’s website and inviting them to consume their products through the Respondent’s website (circumstance 4 above). In particular, the Panel finds that the Respondent has attempted to suggest an affiliation with, or a connection to, or an endorsement of the Complainant or even to impersonate the Complainant through the use of the Complainant’s trade mark MONSANTO in the dispute domain name string and on the Respondent’s website in the manner described above.

In view of the finding under circumstance 4 above, the Panel does not consider it to be relevant a ruling under circumstance 2.

The Panel therefore finds that the Complainant has succeeded under Article 21(1)(b) of the Regulation and Paragraph B11(d)(1)(iii) of the ADR Rules.

DECISION

For all the foregoing reasons, in accordance with Paragraph B12 (b) of the Rules, the Panel orders that the disputed domain name <monsantoholland.eu> be transferred to the Complainant.

PANELISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2022-02-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <monsantoholland.eu>

II. Country of the Complainant: Germany, country of the Respondent: The Netherlands

III. Date of registration of the domain name: 1 August 2021

IV. Rights relied on by the Complainant (Art. 21(1) Regulation (EC) No 874/2004) on which the Panel based its decision:

• EU trade mark registration no. 009798471, dated 18 August 2011, for the word mark MONSANTO, in class 5 of the Nice Classification.

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21(2) Regulation (EC) No 874/2004):
1. No
2. Why: on balance, the Panel has found that the Respondent lacked any rights or legitimate interests in the disputed domain name, and that the Complainant had made out a prima facie case on the basis of the available record, most compellingly the categorical denial on the Complainant's part of any affiliation and/or association with, or authorisation for, the Respondent of any nature.

VIII. Bad faith of the Respondent (Art. 21(3) Regulation (EC) No 874/2004):
1. Yes
2. Why: on balance, the Panel has determined that the disputed domain name was registered in bad faith to target and take advantage of the Complainant's trade mark. The Respondent has attempted to suggest an affiliation with, or a connection to, or an endorsement of the Complainant or even to impersonate the Complainant through the use of the Complainant’s trade mark in the dispute domain name string and on the Respondent’s website.

IX. Other substantial facts the Panel considers relevant: None.

X. Dispute Result: transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant: None.

XII. Is Complainant eligible? Yes