Panel Decision for dispute CAC-ADREU-008336

Case number	**CAC-ADREU-008336**
Time of filing	**2022-07-20 13:35:32**
Domain names	**monsantohollandbv.eu**

Case administrator

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

Complainant

Organization	**Bayer AG**

Respondent

Name	**Steven Storm**

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 not aware of any other legal proceedings pending or decided which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant's subsidiary MONSANTO TECHNOLOGY, LLC. is owner of the trademark MONSANTO in numerous countries worldwide, including EU trademark registration no. 009798471 "MONSANTO", registered on 18 August 2011 for pesticides.

The Respondent registered the disputed domain name on 25 March 2022. It has been used for a site purporting to be an official site connected to the Complainant's group of companies using the Complainant's logo as a masthead.

A. COMPLAINANT

The Complainant's submissions are summarised as follows:

1. Factual Grounds

1.1 The Complainant

The Complainant is the ultimate parent company of MONSANTO TECHNOLOGY, LLC., 800 North Lindbergh Boulevard, St. Louis, MO 63141, USA, 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.

The Complainant's subsidiary MONSANTO TECHNOLOGY, LLC. is owner of the trademark MONSANTO in numerous countries worldwide, including EU trademark registration no. 009798471 "MONSANTO", registered on 18 August 2011.

The fact that the MONSANTO Mark is registered in the name of the Complainant's subsidiary does not hinder the Complainant to enforce rights in such trademark. See Miele, Inc. v. Absolute Air Cleaners and Purifiers; WIPO Case No. D2000-0756 (<miele.net>): "The Complainant's grandparent corporation has a long-established U.S. Trademark Registration for the mark for vacuum cleaners. The Panel finds that the Complainant, through its affiliation with its grandparent corporation which owns the trademark registration, has rights in and duties concerning the mark MIELE."

Or BSH Home Appliances Corporation v. Michael Stanley / Michael Sipo; WIPO Case No. D2014-1433 (<boschappliancepro.info> et al.): "This Panel will follow that approach and allow the Complainant, the mark owner's wholly-owned subsidiary, to maintain this proceeding. This is not a case where there exists an obvious impediment to the mark owner's bringing the Complaint directly, and nothing in the

record suggests any advantage sought or gained by having the subsidiary rather than the parent file the Complaint."

Or SAP SE v. Domains by Proxy LLC / Carolina Rodrigues, Fundacion Comercio Electronico; WIPO Case No. D2018-1090 (<successfactorss.com>): “The Panel finds that the Complainant has rights in the mark SUCCESSFACTORS. Although this mark is used by and registered in the name of the Complainant’s wholly-owned subsidiary, SuccessFactors, Inc., the Panel considers that the Complainant’s connection as parent and operator of closely related businesses is sufficient to confer rights in this mark on the Complainant for the purposes of the UDRP.”

In addition, MONSANTO TECHNOLOGY, LLC. granted the Complainant the right to enforce the MONSANTO Mark registered in its name for the purpose of this proceeding.

1.2 The Respondent and the disputed domain name

The Respondent registered the disputed domain name on 25 March 2022 and is using it in connection with a scam website.

The website claims to be from Monsanto Holland B.V., one of the Complainant’s subsidiaries, but the website is in no way associated with the Complainant or Monsanto Holland B.V. The website prominently features the logo of Monsanto, which is registered as trademark in the EU, as a masthead.

Attempts have been made in the past to defraud the Complainant's and its subsidiaries’ customers with almost identical websites under the domain names <monsantoholland.nl>, <monsantoholland.com>, <monsantoholland.eu>, and <monsantohollandbv.nl>. After the Complainant became aware of the unlawful registration and use of these domain names and of the fact that customers have already became victims of the operators of the fraudulent websites (one of the Complainant’s customers has suffered a loss of € 18,000.00), the Complainant and its subsidiary MONSANTO TECHNOLOGY, LLC. successfully filed a Notice-and-take-down request with the .nl registry SIDN regarding the domain name <monsantoholland.nl> and complaints under the Dispute Resolution Regulations for .nl Domain Names, the UDRP and the Regulation (EC) No. 874/2004 with WIPO (Cases Nos. DNL2021-0022 and D2021-1345) and the Czech Arbitration Court (Case No. 08253).

The timeline of the Respondent’s domain registrations and the subsequent proceedings is as follows:

25 December 2020: Registration of <monsantoholland.nl>
2 April 2021: SIDN delinked the nameservers that were linked to the domain name<monsantoholland.nl> and MONSANTO TECHNOLOGY LLC filed the complaint under the Dispute Resolution Regulations for.nl
13 April 2021: Registration of <monsantoholland.com>
25 June 2021: WIPO decision in re <monsantoholland.com>
2 July 2021: WIPO decision in re <monsantoholland.nl>
1 August 2021: Registration of <monsantoholland.eu>
21 February 2022: CAC decision in re <monsantoholland.eu>
7 March 2022: Registration of <monsantohollandbv.nl>
13 March 2022: Notice-and-take-down request re <monsantohollandbv.nl>
25 March 2022: Registration of <monsantohollandbv.eu>

Given the above timeline the Complainant invites the Panel to make the inference that a) all domain names are operated by the same person; and b) the disputed domain name was registered in response to the Complainant's and its subsidiaries’ successful actions with respect to the domain names <monsantoholland.nl>, <monsantoholland.com>, <monsantoholland.eu>, and <monsantohollandbv.nl> with the sole intention of continuing the Respondent's fraudulent activities.

2. Legal grounds

The Complainant is entitled to request the transfer of the disputed domain name under Art. 21 of the Regulation (EC) no. 874/2004. In support of the Complainant’s arguments, the Complainant refers to prior decisions under the Regulation (EC) no. 874/2004 as well as to prior decisions under the Uniform Domain Name Dispute Resolution Policy as both sets of rules are in the Complainant’s submission almost identical.

2.1 Identity or confusing similarity

The disputed domain name fully incorporates the well-known MONSANTO Mark and is confusingly similar to such mark.

First of all, it is well established that the specific top-level domain name is generally not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between the Complainant's trademark and the disputed domain name. See Rollerblade, Inc. v. Chris McCrady WIPO Case No. D2000-0429 (<rollerblade.net>) "It is already well established that the specific top level of the domain name such as "net" or "com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar."

Furthermore, it is also well-established that the confusing similarity is given where a trademark is recognizable as such within the domain name. In the present case, the Internet user will clearly recognize the well-known MONSANTO Mark. The additional terms "holland" as geographical term and "bv" as abbreviation of "Besloten vennootschap met beperkte aansprakelijkheid" (Dutch limited liability company) are merely descriptive and do not eliminate the similarity between the complainant's trademark and the disputed domain name. They are even enhancing the possibility of confusion as they clearly refer to the name of the complainant's subsidiary Monsanto Holland B.V. See also WIPO Overview 3.0: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

Or Six Continents Hotels, Inc. v. Daniel Kirchhof, Unister GmbH; WIPO Case No. D2010-1960 (<holiday-express-holland.com> et al.)

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

First of all, it is a consolidated principle that the burden of proof with regard to the rights or legitimate interests of the respondent lies on the complainant. However, satisfying the burden of proving a lack of the respondent's rights or legitimate interests in respect of a domain name according to Art. 21(1)(a) of the Regulation (EC) no. 874/2004 is quite onerous, since proving a negative circumstance is always more difficult than establishing a positive one. Accordingly, it is sufficient that the complainant shows a prima facie evidence in order to shift the burden of production on the respondent. See IM PRODUCTION v. SEEOR KAROLIN; CAC Case No. 07325 (<ISABEL-MARANT-FR.EU>)

Or MATEL GROUP FRANCE v. EMMANUEL VERDIN; CAC Case No. 07310 (<MATEL-GROUP.EU>)

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

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the MONSANTO Mark. These circumstances themselves are sufficient to constitute a prima facie showing by the Complainant of absence of rights or legitimate interests in the disputed domain name on the part of the Respondent. See GGG Filmproduktion und Vertrieb e.K. v. E4 Group and Frank Jensen; WIPO Case No. D2006-1177 (<gggfilm.com>) "The Complainant has not in any way granted Respondent rights to use its mark, and is in no way affiliated with the Respondent. The Respondent has not asserted any rights or legitimate interests in the domain name. Considering this background, the Panel concludes that the Complainant has made out a prima facie showing that Respondent lacks rights or legitimate interests in the contested domain name."

F. Hoffmann-La Roche AG v. Fred; WIPO Case No. D2006-0246 (<super-tamiflu.com>): "Complainant asserted that the Respondent has neither a license nor any other permission to use the Complainant's famous trademark TAMIFLU. The Respondent has not denied these assertions. The Panel thus finds that the Complainant has made a prima facie showing that the Respondent has no rights or legitimate interests in the disputed domain names which wholly incorporate the Complainant's mark."

L'Association des centres distributeurs E. Leclerc - ACD LEC v. CC; WIPO Case No. D2005-1071 (<leclercmusic.com>): "Furthermore, as a matter of fact and absent evidence to the contrary, the Complainant has not granted any license or otherwise permitted the Respondent to use its trademark or to apply for any domain name incorporating the said marks and no commercial relationship exists between the Complainant and the Respondent. […] The Panel finds that the Complainant has established a prima facie case that the Respondent does not have any rights or legitimate interests in the disputed domain name."

Wal-Mart Stores Inc. v. Frank Warmath; WIPO Case No. DTV2008-0013 (<walmart.tv>).

Janus Interantional Holding Co. v. Scott Rademacher; WIPO Case No: D2002-0201 (<janus.info>).

Furthermore, 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. Rather, the Respondent uses the disputed domain name in connection with an illegal scam website.

Finally, there is also 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 (EC) no. 874/2004, or is commonly known by the disputed domain name or the name BAYER-MONSANTO under Art. 21(2)(b) of the Regulation (EC) no. 874/2004.

2.3 Bad faith registration or use

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

2.3.1 Bad faith registration

First of all, the MONSANTO Mark is highly distinctive, well-known and solely connected with the Complainant. It is therefore inconceivable that the Respondent registered the disputed domain name unaware of the Complainant and its MONSANTO Mark.

In addition, the Respondent is using the disputed domain name in connection with a scam website deliberately targeting the Complainant. The Respondent obviously was perfectly aware of the Complainant and the MONSANTO Mark when registering the disputed domain name.

2.3.2 Bad faith use

In addition, the disputed domain name was also used in bad faith.

The Respondent is using the disputed domain name to attract Internet users and divert Internet traffic to its scam website for the likely purpose of achieving commercial gain, through the likelihood of confusion which may arise with the MONSANTO Mark. Such use of a domain name has in many decisions been found to qualify as bad faith under Art. 21(3)(d) of the Regulation (EC) no. 874/2004, as the Respondent's use of the domain name attempts to attract for commercial gain Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website. See Monsanto Technology, LLC v. BV intergroup trading; WIPO Case No. DNL2021-0022 (<monsantoholland.nl>): "The Panel holds that the 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."

Monsanto Technology, LLC v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Leon Manders; WIPO Case No. D2021-1345 (<monsantoholland.com>): "The Respondent's Website offers agricultural products in direct competition with the Complainant, while purporting to pass itself off as being operated by the Complainant's subsidiary. In these circumstances where the Respondent has offered no plausible explanation for the registration of the Domain Name the Panel finds that that the Respondent has used the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the MONSANTO Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. As such the Panel finds that the Domain Name is being used in bad faith."

KPMG International Cooperative v. WhoisGuard Protected, WhoisGuard, Inc. / Grant Thornthon, KPMG; WIPO Case No. D2018-0255 (<kpmg-firm.com>):
"The use of the disputed domain name for a scam demonstrates bad faith registration and use for Policy purposes. This brings this case within the example of evidence of bad faith in paragraph 4(b)(iv) of the Policy, that "by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location."

The Respondent's registration of the disputed domain name also prevents the Complainant from reflecting its trademarks in a corresponding domain name.

In addition, as the elements expressly mentioned in Art. 21(3) of the Regulation (EC) no. 874/2004 are non-exhaustive, practice has

regarded a number of other indications and aspects as establishing bad faith.

The fact that the Respondent registered a domain name which includes a trademark that is obviously connected with the Complainant and its products also supports the finding of bad faith as the very use of such domain name by someone with no connection with the products suggests opportunistic bad faith. See America Online Inc. v. Chinese ICQ Network; WIPO Case No. D2000-0808 (<4icq.com>): "4icq.com" is obviously connected with services provided with world-wide business. Its very use by someone with no connection with the product suggests opportunistic bad faith."

General Motors LLC v. desgate; WIPO Case No. D2012-0451 (<cadillacuae.com>): "As to bad faith use, the Panel finds that the Respondent acted in opportunistic bad faith when registering the disputed domain name, as the disputed domain name is so obviously connected with the Complainant and its products that already its very use by the Respondent, which has no connection with the Complainant, clearly suggests the disputed domain name has been selected with a deliberate intent to create an impression of an association with the Complainant."

RapidShare AG, Christian Schmid v. Ali Private Company, Ali Kamran; WIPO Case No. D2010-0610 (<rapidsharedownload.org>): "The selection of the Disputed Domain Name by the Respondent clearly speaks of a deliberate intent to create an impression of an association with the Complainant and indicate opportunistic bad faith registration and use of the Disputed Domain Name."

It is further established that the Respondent's use of the disputed domain name is qualified to disrupt the Complainant's business and that it is capable of reducing the number of visitors to the Complainant's website, may adversely affect the Complainant's business and therefore constitutes bad faith. See BR IP Holder LLC v. Registrant [1966810]: Tech Administrator; WIPO Case No. D2009-1358 (<baskinrobins.com>): "The Panel also accepts the Complainant's contentions, absent any response or reply from the Respondent, that the Respondent's use of its website with the disputed domain name was also, in part, undertaken for the purpose of disrupting the Complainant's business. Such actions are capable of reducing the number of visitors to the Complainant's website and may adversely affect the Complainant's business"

Or Estée Lauder Inc. v. estelauder.com, estlauder.net and Jeff Hanna; WIPO Case No. D2000-0869 (<estelauder.com> et al.): "Respondent is, moreover, clearly competing with Complainant for the attention of internet users, which it hopes to divert to its sites."

The registration of the disputed domain name by the Respondent also constitutes an abusive threat hanging over the head of the Complainant, which also supports a finding of bad faith. See Akbank Turk A.S. v. Mustafa Ismet Cinar; WIPO Case No. D2009-0642 (<akbank.asia>): "on the basis that nobody registers a domain name for no purpose, it is reasonable in the circumstances of this case for the Panel to infer that the Respondent's purpose in registering the Domain Name was abusive. Thus, the Domain Name in the hands of the Respondent represents an abusive threat hanging over the Complainant's head, which in the view of this Panel is tantamount to bad faith use of the Domain Name."

Digital Platform Iletisim Hizmetler A.S. v. Digiturk Co.; WIPO Case No. D2008-0111 (<digiturk.com>): "[…] it is fair to assume that the Respondent's intentions are predatory and represent an unfair, abusive threat hanging over the head of the Complainant."

Novo Nordisk A/S v. Service, Customer; WIPO Case No. D2009-0160 (<novopenecho.com>): "[…] in the view of the Panel, the Domain Name constitutes a continuing and unjustifiable commercial threat hanging over the head of the Complainant while it remains in the hands of the Respondent."

B. RESPONDENT

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

DISCUSSION AND FINDINGS

Preliminary Decision: Standing under the ADR Proceeding

The Complainant relies upon the EU trade mark registration no. 9798471, dated 18 August, 2011, for the word mark MONSANTO, registered for pesticides (the Trade Mark'). The Panel notes that the Trade Mark is registered in the name of Monsanto Technology, LLC. The Complainant is the ultimate parent company of Monsanto Technology, LLC which has granted the Complainant the right to enforce the Trade Mark in its own name for the purpose of this ADR Proceeding.
The Panel holds 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.

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 the Complainant must show on the balance of probabilities (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.

Identical or Confusingly Similar

The disputed domain name registered in 2022 consists of the Trade Mark MONSANTO (registered, inter alia, as a trade mark in the EU for pesticides since 2011), the generic terms 'Holland' and 'BV' and the .eu TLD.

The addition of generic terms like 'Holland' or 'BV" does not prevent the disputed domain name being confusingly similar to the Complainant's mark.

TLD suffixes such as .eu are typically disregarded in the assessment of confusing similarity as they are a necessary part of a domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the 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.

Rights or Legitimate Interests

The Complainant has not authorised the Respondent to use the Trade mark and there is no evidence or reason to suggest that the Respondent is commonly known by the disputed domain name. The use being made of the disputed domain name is commercial so it cannot be legitimate non-commercial fair use.

The Panel notes the assertions of the Complainant that due to their being prior registrations of domain names including the Trade Mark in similar domain names pointing to similar web sites that have been the subject of adverse domain name dispute resolution decisions which predate the registration of the disputed domain name the disputed domain name must be registered by the same person or entity, however there is no actual evidence presented in this proceeding that this is actually the case, the registrant name is different and the Panel was not afforded the chance to look at the web sites in these previous cases. Accordingly the Panel does not accept the Complainant's submissions in this regard.

However, the disputed domain name points to a web site which purports to be an official site of the Complainant using the Trade Mark and the Complainant's logo as a masthead. The Panel finds this deceptive and confusing and therefore cannot amount to a bona fide offering of goods or services.

The Respondent has not submitted a Response in this Proceeding or offered any explanation which can lead to adverse inferences (Paragraph B10(a) of the ADR Rules and Article 22(10) of the Regulation).

Accordingly the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

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.

Registration or Use in Bad Faith

The bad faith ground is an alternative requirement to a finding that a respondent has no rights or legitimate interests in a disputed domain name under the Regulation and the ADR Rules. Therefore, having determined that the Respondent does not have rights of legitimate interests in the disputed domain name the Panel is not required to make a determination on bad faith.
Nonetheless, the Panel will make a brief determination on registration or use in bad faith for the sake of completeness.

Both the Regulation and the ADR Rules enumerate non-exhaustive circumstances which would evidence bad faith registration and use of a domain name including '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 disputed domain name has been pointed to a site which falsely purports to be an official site of the Complainant using the Trade Mark and the Complainant's logo as a masthead. The Panel finds this deceptive and disruptive. The use of the Complainant's logo shows that the Respondent was aware of the Complainant's rights, business and services.

Accordingly the Panel holds that the disputed domain name has been intentionally used to attract Internet users for commercial gain by creating a likelihood of confusion between the Trade Mark and the disputed domain name, the website attached to it or services offered on that web site, and to disrupt the Complainant's business.

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 Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name MONSANTOHOLLANDBV.EU be transferred to the Complainant

PANELISTS

Name	Dawn Osborne

DATE OF PANEL DECISION 2022-07-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: monsantohollandbv.com

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

III. Date of registration of the domain name: 25 March 2022

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in EU, reg. No. 009798471 for the term MONSANTO registered on 18, August 2011 in respect of goods and services in classes 4

V. Response submitted: No

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

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1.No
2. Why: disputed domain name used for a scam website

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: disputed domain name used for a scam web site

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: Trade mark owned by Complainant as a parent company. Panel held Complainant

has standing to bring this ADR Proceeding

XII. [If transfer to Complainant] Is Complainant eligible? Yes