Decision for dispute CAC-UDRP-101548

Case number	**CAC-UDRP-101548**
Time of filing	**2017-05-22 10:47:38**
Domain names	**koopplein.co.nl**

Case administrator

Name	**Aneta Jelenová (Case admin)**

Complainant

Organization	**Dral Concept B.V.**

Complainant representative

Organization	**Chiever B.V.**

Respondent

Name	**Ngaaje Ajang**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings related to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant uses the domain name <koopplein.nl>. The Complainant has submitted evidence, which the Panel accepts, showing that it is the registered owner of the “KOOPPLEIN.NL” trademark in Benelux. The first registered "KOOPLEIN.NL" trademark dates back to the year 2006.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

1) The domain name is identical or confusingly similar to a trademark in which the Complainant has rights

The Complainant is owner of several KOOPPLEIN.NL trademarks in the Benelux.

The Disputed domain name fully incorporates the name ‘koopplein’ and is therefore identical/confusingly similar to Complainant’s trademark and company name. The .co.nl suffix in the Disputed domain name should be disregarded as it is a technical requirement of registration.

2) The Respondent has no rights or legitimate interests in respect of the domain name

To the best of the Complainant's knowledge, no person or entity anywhere in the world, other than the Complainant, has the legal right to use any mark that includes the term 'KOOPPLEIN.NL' to identify an online market place and services related thereto.

The word 'koopplein' is an invented word. It does not appear in any dictionary and as such does not convey obvious and direct information regarding the kind, quality, intended purpose or value of the services in question, or other characteristics of the trademarked services. Therefore, the word element 'koopplein' in the Complainant's trademarks KOOPPLEIN.NL is to be considered dominant and distinctive. Furthermore, the word is clearly separated and distinguished from the other elements in the trademark registrations.

The Complainant first registered its trademark KOOPPLEIN.NL in 2006, well before the Respondent registered the Disputed domain name. The Respondent does not have any trademark registrations and registered the Disputed domain name on 28 July 2016.

The Respondent has no connection or affiliation of any kind with the Complainant, nor has the Complainant ever granted the Respondent license or consent, express or implied, to use the KOOPPLEIN.NL mark in any manner.

The Respondent does not use the Disputed domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services nor is the Respondent known by the Disputed domain name. The website active under the Disputed domain name is an online market place, which renders it in direct competition with the Complainant's trademark and website.

This results in misleading diversion of internet traffic. The Respondent unjustifiably capitalizes on Complainant's trademark value.

3) The domain name is registered and is being used in bad faith

The Disputed domain name is practically identical to the KOOPPLEIN.NL mark, and because of the long lasting and intensive use of the KOOPPLEIN.NL trademark, it is highly improbable that the Respondent registered the domain name without knowledge of the Complainant and its rights in the KOOPPLEIN.NL mark.

The Complainant's first Benelux trademark registration dates back to 18 December 2006, long before the Respondent's registration of the Disputed domain name (28 July 2016). Through long lasting and intensive use, Complainant's trademark has become well known in the Netherlands.

The Respondent could have easily found the Complainant's trademark registrations or other references to the Complainant's trademark and website if the Respondent would have done some basic prior rights checks when registering the Disputed domain name.

By using a domain name so close to the Complainant's domain name and trademark for exactly the same services (the only difference being the .co element), the Respondent deliberately creates the impression that the Disputed domain name and the website active thereunder originates from the Complainant or that there is a commercial connection with the Complainant. This misleads the public regarding the origin of the domain name and website and creates confusion amongst consumers.

Furthermore, by using the Disputed domain name and website thereunder, the Respondent takes unfair advantage of, and acts detrimental to, the distinctive character and repute of the Complainant's well known trademark KOOPPLEIN.NL. It seems that the Respondent is knowingly exploiting and free riding on the coattails of the Complainant's well known trade mark in an attempt to trade upon the Complainant's reputation. Particularly while the Respondent copied the Complainant's concept and literally copied key words from the Complainant's website 'De gratis marktplaats' and 'lokaal'.

The Complainant sent the Respondent a warning letter by e-mail on 20 April 2017, requesting to stop the infringing use of the Disputed domain name immediately. Up until now, these e-mails remained unanswered. Copy of the warning letter has been attached to the Complaint as an annex.

Finally, a reverse WhoIs check revealed that the Respondent has registered several domain names containing the word 'marktplaats' or variations thereof, namely marktplaats.xyz, marktplaats.bid, marktplaats.top, markt-plaats.site, markt-plaats.website, markt-plaats.xyz. Under the domain name marktplaats.xyz, a website is active offering services of an online marketplace.

In the Netherlands, www.marktplaats.nl is a very famous online market place. The website basically offers identical services as the Complainant on its website www.koopplein.nl. The brand MARKTPLAATS is also registered as Benelux word mark. Consequently, the Respondent's use and registration of the 'marktplaats' domain names should be considered trademark infringing as well.

The Respondent's 'marktplaats' domain name registrations further illustrate that the Respondent is acting with constructive knowledge of trademark rights of third parties and indicate a pattern of conduct of use and registration of market place domain names in bad faith.

All the above leads to the conclusion that the Respondent has registered and is using the Disputed domain name in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown that the Respondent have no rights or legitimate interests in respect of the Disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In that regard, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

B. The Respondent has no rights or legitimate interests in respect of the domain name; and

C. The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. Identical or Confusingly Similar

The Policy simply requires the Complainant to demonstrate that the Disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registrations of the trademarks "KOOPPLEIN.NL" in Benelux.

The Panel finds that the Disputed domain name <koopplein.co.nl> fully incorporates the main element of "KOOPPLEIN" of the Complainant’s trademarks “KOOPPLEIN.NL”. The Panel finds that the addition of the "co.nl" suffix is irrelevant when determining whether the Disputed domain name is confusingly similar to the Complainant's trademark.

The Panel is of the opinion that the internet users will fall into false impression that the Disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the Disputed domain name is confusingly similar with the Complainant's trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is open to a Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to you [the Respondent] of the dispute, your use of, or 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; or
(ii) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [the Respondent] are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the Disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail.

The Complainant contends that the Respondent has made no use of, or demonstrable preparations to use, neither of the Disputed domain name in connection with a bona fide offering of goods or services, is not making a legitimate non-commercial or fair use of the Disputed domain name, and is not commonly known under the Disputed domain name. Moreover, the Complainant states that the Disputed domain name is an online market place which renders it directly in competition with Complainant's trademark and website.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no

authorization to use the Complainant's trademarks in the Disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the Disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that the Complainant must prove both that the Disputed domain name was registered in bad faith and that it is being used in bad faith. The Panel is of the opinion that due to the earlier rights of the Complainant in the trademark "KOOPPLEIN.NL", as well as its extensive and intensive usage and notoriety in Netherlands, the Respondent was aware of the Complainant and its trademarks at the time of registration of the Disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107; General Electric Company v. CPIC NET and Hussain Syed, WIPO Case No. D2001 0087). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the Disputed domain name is to be considered an inference of bad faith registration. Moreover, the attempt of registering third parties' trademarks as domain names such as <www.marktplaats.nl> also depicts that the Respondent is acting in bad faith.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the Disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **KOOPPLEIN.CO.NL**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2017-06-30

Publish the Decision