

Decision for dispute CAC-UDRP-104495

Case number CAC-UDRP-104495

Time of filing 2022-05-26 09:32:13

Domain names agfa.co.nl

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization AGFA-GEVAERT N.V.

Complainant representative

Organization Novagraaf Belgium NV/SA

Respondent

Name Sanne Parlevliet

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks and domain names including the word AGFA.

In particular, the Complainant is the owner of the following AGFA trademarks:

- EU trademark registration N° 3353463 for the word mark "AGFA", in classes 1, 2, 7, 9, 10 and 42, registered on 24 January 2005;
- EU trademark registration N° 008133167 for the figurative mark "AGFA" in classes 1, 2, 7, 9, 10 and 42, registered on 17 February 2010;
- EU trademark registration N° 009440801 for the figurative mark "AGFA" in classes 1, 2, 7, 9 and 10, registered on 20 March 2011;
- EU trademark registration N° 011649803 for the word mark "AGFA" in class 2, registered on 7 August 2013;

- EU trademark registration N° 013086251 for the figurative "AGFA" in classes 1, 2, 3, 5, 7, 9, 10, 17, 24 and 42, registered on 2 March 2015;
- EU trademark registration N° 015553662 for the figurative mark "AGFA" in class 9, registered on 6 January 2017;
- EU trademark registration N° 015598113 for the figurative mark "AGFA" in classes 1, 2, 3, 7, 9, 10, 17, 24 and 42, registered on 27 February 2017.

(the "Complainant's trademarks").

The Complainant asserts to have domain names consisting of the word "AGFA", such as <AGFAGRAPHICS.COM> and <AGFAGRAPHICS.NL>, which are connected to the official website of the Complainant ("the Complainant's domain names").

FACTUAL BACKGROUND

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

The Complainant is a reputable Belgian-based corporation that develops, manufactures, and distributes a wide range of analog and digital imaging products and IT solutions, primarily focusing on the healthcare and printing industries. The Complainant offers its services worldwide.

The Complainant uses its trademarks and domain names in connection to its activities worldwide.

The Respondent registered the disputed domain name <AGFA.CO.NL> on 22 August 2021 ("the disputed domain name").

The Complainant sent an e-mail to the registrar <abuse@metaregistrar.com> asking to suspend the disputed domain name. The Complainant notes that the disputed domain name's status remained active and was not suspended according to its status up until the filing of the complaint.

The Complainant has not received a response from the Respondent.

The Complainant requests that the language of the proceedings is English.

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 the Respondent to 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 that 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.

The Czech Arbitration Court operates as a .co.nl domain name dispute resolution provider and is therefore competent.

The language of the Registration Agreement for the disputed domain name is Dutch. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language. The Complainant filed its Complaint in English and requested that English be the language of the proceedings.

The Panel notes that:

- (a) the Complainant requested a change of the language from Dutch to English;
- (b) the whole case file is in English;
- (c) the Respondent has been given the opportunity to present its case in these proceedings and to respond formally to the issue of the language of the proceedings;
- (d) the Respondent has not responded to nor contested the Complainant's request for a change of the language from Dutch to English.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceedings is fair to both parties and is not prejudicial to either one of the parties in his or her ability to articulate the arguments for this case.

PRINCIPAL REASONS FOR THE DECISION

I. The disputed domain name is identical to the Complainant's trademarks

The Panel finds that the disputed domain name <AGFA.CO.NL> is identical (and thus a fortiori confusingly similar) to the Complainant's trademarks.

The Complainant rightfully contends that the disputed domain name fully incorporates the AGFA trademarks and is identical to Complainant's trademarks. The Panel finds that the addition of the "co.nl" suffix is irrelevant when determining whether the disputed domain name is identical or confusingly similar to the Complainant's trademarks (See, for example, UDRP n°101548, <KOOPPLEIN.CO.NL>; UDRP n°100862, <FXCM.CO.NL>).

II. The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name

The Panel notes that the Complainant has never granted the Respondent any license, consent, permission, or authorization to use the Complainant's trademarks for the disputed domain name, nor is the Respondent affiliated with the Complainant in any way.

The Panel notes that the Respondent's name or contact details contain no reference to AGFA or similar words or names and that the Respondent is not commonly known under the disputed domain name. Moreover, the Respondent has not by virtue of the content of the website, nor by its use of the disputed domain name shown that it will be used in connection with a bona fide offering of goods or services.

Given the lack of an administratively compliant Response from the Respondent, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

III. The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name was registered and is being used in bad faith

The Complainant contends that its AGFA trademarks are well known and predate the registration of the disputed domain name, so the Respondent must have been fully aware of them when it registered the disputed domain name merely consisting of the AGFA trademarks. In the absence of a plausible explanation for copying the Complainant's trademarks, this copying supports a finding that the Respondent knew of the Complainant's trademarks and intentionally copied them. The Panel finds that, in the absence of a reasonable explanation, the Respondent intended to create a domain name that would appear to be the Complainant's.

The failure of the Respondent to respond and hence to present a credible evidence-backed rationale for registering and using the disputed domain name, plus the fact that the Respondent uses a privacy shield to conceal its identity in the Whois records, confirms the finding of bad faith.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AGFA.CO.NL**: Transferred

PANELLISTS

Name	Tom Joris Heremans
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DATE OF PANEL DECISION **2022-07-05**

Publish the Decision
