

## ADMINISTRATIVE PANEL DECISION

Altro Limited v. Handelonderneming H.M.S. B.V.  
Case No. DNL2012-0047

### 1. The Parties

The Complainant is Altro Limited of Letchworth Garden City, United Kingdom of Great Britain and Northern Ireland, represented by Bird & Bird, the Netherlands.

The Respondent is Handelonderneming H.M.S. B.V. of Dronten, the Netherlands.

### 2. The Domain Name and Registrar

The disputed domain name <autoglym.nl> (the “Domain Name”) is registered with SIDN through Registrar.eu.

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 6, 2012. On August 6, 2012, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On August 7, 2012, SIDN transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the Complaint satisfied 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 August 9, 2012. In accordance with the Regulations, article 7.1, the due date for Response was August 29, 2012. On August 29, 2012, the Center received an email communication from the Respondent *inter alia* requesting an extension of the Response due date. The Center acknowledged receipt of the request on that same day, and asked the Complainant for any comments it had on the Respondent’s request. On August 30, 2012, the Complainant indicated it would not agree to an extension of the due date for the Response. The Respondent did not submit any Response either before or after the due date for Response. The Center notified the Respondent’s default on August 30, 2012.

On September 24, 2012, the Center appointed Richard van Oerle as the panelist in this matter. 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**

The Panel will proceed on the facts as stated by the Complainant, and not contested by the Respondent. Furthermore, the Panel will take account of the information provided by the Center and by SIDN.

The Complaint is based on registration of the device mark



as International Registration, registration number 980366, registered on September 19, 2008, designated for the European Community, for a range of goods and services in the classes 2, 3 and 37; as well as Benelux registration, registration number 429928, registered on April 28, 1987, for goods in the classes 2 and 3. The registrations are held by the Complainant.

Both registrations have been duly renewed and are still valid. These registrations will jointly be referred to as the "Trade Mark".

The Domain Name was first registered on December 17, 1998, by the Respondent.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant presents itself as one of the world's leading manufacturers of high-quality vehicle care products, marketed under the well-known trade mark AUTOGLYM.

In 1996 the Complainant and the Respondent entered into a distribution agreement whereby the Respondent was authorized to sell Autoglym products and to use the AUTOGLYM trade mark for this purpose for the duration of the agreement.

The agreement was terminated on April 30, 2011 and pursuant to the agreement the Respondent was obliged to cease using the AUTOGLYM trade mark immediately. However, the Respondent continued to use the Complainant's Trade Mark in its course of business.

The Complainant has summoned the Respondent by registered letter of January 9, 2012 to further cease and desist the use of the Trade Mark and to transfer the Domain Name while offering to bear the costs of the domain name transfer.

From a telephone conversation between the parties it became clear to the Complainant that the Respondent is of the opinion that the agreement should have been handled differently by the Complainant and on that basis is seeking financial compensation for the termination of the agreement.

##### **B. Respondent**

The Respondent did not respond to the Complainant's contentions.

#### **6. Discussion and Findings**

Article 10.3 of the Regulations provides that in the event a respondent fails to submit a response, the complaint shall be granted unless the panel considers it to be without basis in law or fact.

The Panel notes that the Respondent has not filed a response. However, the Panel also notes that this does not mean that the requested remedy should automatically be awarded. The Panel will have to determine whether the Complainant's *prima facie* case meets the requirements of article 2.1 of the Regulations (*Taylor Made Golf Company, Inc. v. Lotom Group S.A.*, WIPO Case No. DNL2010-0067, *Société Air France v. Helo Holdings LTD*, WIPO Case No. DNL2010-0082 and *Nutri-Akt b.v. v. Edoco LTD.*, WIPO Case No. DNL2011-0003).

Based on article 2.1 of the Regulations, a claim to transfer a domain name must meet three cumulative requirements:

- a. the disputed domain name is identical or confusingly similar to a trademark, or trade name, protected under Dutch law in which the complainant has rights, or other name mentioned in article 2.1(a) sub II of the Regulations; and
- b. the registrant has no rights to or legitimate interests in the disputed domain name; and
- c. the disputed domain name has been registered or is being used in bad faith.

Considering these requirements, the Panel rules as follows:

#### **A. Identical or Confusingly Similar**

The Complainant has established that it is the owner of the Trade Mark.

Numerous .nl panels have found that a domain name that wholly incorporates a complainant's registered mark may be sufficient to establish confusing similarity for the purpose of the Regulations (see, e.g., *Stichting VVV Groep Nederland v. C. Henriquez*, WIPO Case No. DNL2008-0040 and *LEGO Juris A/S v. Nick Terlouw*, WIPO Case No. DNL2011-0023).

The Domain Name incorporates the entirety of the textual components of the Trade Mark.

It is established case law that the top level domain ".nl" may be disregarded in assessing the similarity between the relevant trademark on the one hand, and the domain name on the other hand (see: *Caterpillar Inc. v. H. van Zuylen Materieel*, WIPO Case No. DNL2011-0073; *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. DNL2008-0008).

The Panel finds that the Domain Name is confusingly similar to the Complainant's Trade Mark within the meaning of article 2.1(a) of the Regulations. Therefore the first requirement is met.

#### **B. Rights or Legitimate Interests**

The Complainant claims that the Respondent has no rights to or legitimate interests in the Domain Name since the Respondent is not publicly known by the name. The Complainant further claims that it has not licensed or otherwise permitted the Respondent to use the Trade Mark.

The record does not include any indication that the Respondent has any relevant trade mark or trade name rights in the term "autoglym". As the Respondent has failed to file a Response, the Respondent has not provided any evidence that it does possess such rights.

However, the Panel notes that a reseller of branded products may have a legitimate interest in a domain name which consists of the product's trade mark. For such interest to be present, established case law

under the Regulations (e.g., *General Electric Company v. V.O.F. Aquacombi*, WIPO Case No. DNL2008-0042; *Akzo Nobel Coatings International B.V. v. E. Kroon*, WIPO Case No. DNL2009-0003; and *Honda Nederland B.V. v. Hode BV*, WIPO Case No. DNL2010-0077) requires that:

1. the reseller actually offers trademark products and/or - services under the domain name;
2. on the website that is linked to the domain name, only products and services that bear the trade mark owner's trade mark are sold;
3. the relationship, or absence thereof, with the trade mark owner is clearly indicated on the website that is linked to the domain name; and
4. the trade mark owner is not barred from using its trade mark as a domain name (which may be the case if the reseller has registered a large amount of obvious domain names).

In this case, the Panel finds that the Respondent does not comply with these requirements. From the facts as stated by the Complainant, and not contested by the Respondent, the Respondent is no longer an authorized reseller of the Complainant's products in the Netherlands. Notwithstanding that fact, the Respondent refers (see website "www.autoglym.nl", submenu "contact") to itself as "Importeur van AUTOGLYM onderhouds producten sedert 1974" (in English: "importer of AUTOGLYM maintenance products since 1974"). This means that the absence of a relationship with the Trade Mark owner is not clearly indicated on the website that is linked to the Domain Name.

The Panel did not find any indications that the Respondent has rights to or legitimate interests in the Domain Name in any other way.

The Panel therefore finds that the Respondent does not have any rights or legitimate interests in the Domain Name within the meaning of article 2.1(b) of the Regulations.

### **C. Registered or Used in Bad Faith**

From the evidence it is clear that the Domain Name has been registered with the consent of the Complainant. This implies that the Domain Name was registered and was subsequently used in good faith, which would normally seal the fate of the Complaint. However, this consent was ended upon the termination of the agreement, which has turned the Respondent's use of the Domain Name into use in bad faith.

This is further evidenced by the reference on the website. Indicating that the Respondent is still the importer of Autoglym maintenance products whereas the agreement between the Respondent and the Complainant has been terminated, is to be regarded as use in bad faith.

It furthermore appears that the Respondent is using the Domain Name for a certain e-mail address ("[...]@autoglym.nl") which could create confusion among Internet users who will presume that the Respondent is still an authorized distributor of the Complainant (see *Normalu SA v. Cover BV*, WIPO Case No. DNL2011-0040).

Having refrained from submitting a Response, the Respondent has failed to provide any evidence to the contrary.

The Panel is mindful of the long duration of the distribution relationship which the parties enjoyed. Likewise, the Panel notes that the Respondent's registration of the Domain Name dates back as far as 1998. On the other hand, differences which may exist between the parties as a result of the subsequent termination of that relationship could not justify the continuing use of the Domain Name in violation of the applicable regulations to which all .nl domain names are subject (cf. *Ocean Accessories LLC v. Wic B.V.*, WIPO Case No. DNL2012-0014). In the present case this matters all the more, as the termination of the distribution agreement took effect well over a year before the Complainant filed the present case in follow-up of its

earlier cease-and-desist demands.

The Panel finds that the Domain Name is being used in bad faith, and that the requirement of registration or use in bad faith of the Domain Name pursuant to article 2.1(c) of the Regulations has therefore been met.

## **7. Decision**

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the Domain Name <autoglym.nl> be transferred to the Complainant.

**Richard van Oerle**

Panelist

Dated: September 26, 2012