

ADMINISTRATIVE PANEL DECISION

Royal Leerdammer Leerdammer B.V. v. Fanny Angel, SHGB
Case No. D2023-3004

1. The Parties

The Complainant is Royal Leerdammer Leerdammer B.V., Netherlands (Kingdom of the), represented by Nameshield, France.

The Respondent is Fanny Angel, SHGB, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <foudeleerdammer.com> (the “Domain Name”) is registered with CV. Jogjacamp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 13, 2023. On July 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 14, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 17, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 11, 2023.

The Center appointed Ian Lowe as the sole panelist in this matter on September 1, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is the producer of LEERDAMMER, one of Europe's iconic cheese brands, since 1974. The cheese was created by two Dutch dairymen. The Complainant (together with its associate companies) is the proprietor of a number of registered trademarks comprising LEERDAMMER, including International trademark number 465749 LEERDAMMER figurative mark registered on December 17, 1981, International trademark number 920722 LEERDAMMER registered on February 27, 2007 designating some 35 countries, and Indonesia trademark number IDM000289715 LEERDAMMER registered on January 17, 2011.

The Complainant is also the owner of a number of domain names comprising LEERDAMMER including <leerdammer.com>.

The Domain Name was registered on June 8, 2023. It does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is identical or confusingly similar to its LEERDAMMER trademark (the "Mark"), that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in the Mark, both by virtue of its trademark registrations and as a result of the goodwill and reputation acquired through its use of the Mark for over many years. Ignoring the generic Top-Level Domain ("gTLD") ".com", the Domain Name comprises the entirety of the mark together with the term "fou de" which means "crazy about" in the French language. In the Panel's view, the addition of this term does not prevent a finding of confusing similarity between the Domain Name and the Mark. Accordingly, the Panel finds that the Domain Name is identical or confusingly similar to a mark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has submitted strong *prima facie* evidence that the Respondent can have no rights or legitimate interests in respect of the Domain Name. The Domain Name is not being used for an active website and the Respondent has not made any use of the Domain Name that might give rise to such rights or interests. The Domain Name comprises the entirety of the Mark, which could only refer to the Complainant, and the additional term “fou de”. The Complainant has provided evidence that it previously used the slogan “Fou de Leerdammer” for a competition (Annex 7 of the Complaint). The Complainant has not authorized the Respondent’s use of the Domain Name.

The Respondent has chosen not to respond to the Complaint and has accordingly failed to counter the *prima facie* case established by the Complainant. In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

The Panel considers that there is no doubt that given the notoriety of the Mark, and its unique nature, the Respondent must have had the Complainant and its rights in the mark in mind when it registered the Domain Name, and that it did so with the intention of using the Domain Name to deceive Internet users into believing that it was registered by or associated with the Complainant. The Panel cannot conceive of a legitimate use to which the Respondent could put the Domain Name. Although the Respondent has made no active use of the Domain Name, section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), notes that, from the inception of the UDRP, panelists have found that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. It depends on the facts of the case, including “(i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put”.

The Complainant’s LEERDAMMER mark is distinctive and has been used by the Complainant for many years; there has been no response to the Complaint; and in the Panel’s view there is no good faith use to which the Domain Name could be put. In the circumstances, the Panel finds that the Domain Name was registered and is being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <foudeleerdammer.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: September 15, 2023