

WIPO Arbitration and Mediation Center**ADMINISTRATIVE PANEL DECISION****Trinnov Audio S.A. v. [X]****Case No. DNL2017-0060****1. The Parties**

The Complainant is Trinnov Audio S.A. of Neuilly, France, represented by Astine, France (the "Complainant").

The Respondent is [X], trading under the name Ron's Activiteiten, of Arnhem, the Netherlands (the "Respondent").

2. The Domain Name and Registrar

The disputed domain name <trinnov.nl> (the "Domain Name") is registered with SIDN through Serveo.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 13, 2017. On the same day, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On October 16, 2017, 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 October 26, 2017. In accordance with the Regulations, article 7.1, the due date for Response was November 15, 2017. The Response was filed with the Center on October 31, 2017.

On November 3, 2017 SIDN, commenced the mediation process. On December 5, 2017, SIDN extended the mediation process until December 31, 2017. On December 21, 2017, SIDN informed parties that the dispute had not been solved in the mediation process.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on January 8, 2018. 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

According to the evidence submitted, the Complainant has registered, on December 2, 2003, the trademark TRINNOV by designating the Benelux in International Registration 827087. It concerns a figurative mark in which the word "Trinnov" is written in a special script:



The Complainant filed the mark for goods and services of classes 9, 41 and 42. The trademark will be referred to hereunder as "the Trademark".

The Respondent was a distributor of the Complainant's products in the Netherlands until June 1, 2017.

The Domain Name was registered on November 23, 2012 and currently resolves to a website with the heading "TRINNOV AUDIO specialist", with an "NL" sign offering advice and fine-tuning for Complainant's products.

5. Parties' Contentions

A. Complainant

The Complainant is specialized in sound recording and music publishing and develops, manufactures and sells a full line of innovative solutions that improve the quality of sound. The Complainant's products are available for sale around the world, especially through its authorized distributors listed on its website "www.trinnov.com". The Respondent was a distributor of the Complainant's products from March 2013 until June 2017. The Respondent registered the Domain Name on November 23, 2012 on its own behalf.

The Domain Name consists only of the word "trinnov" without additions and incorporates the Trademark in its entirety. The Domain Name is identical to the Trademark.

Although the Complainant did not challenge the Domain Name registration since the Respondent was its distributor at that time, the Complainant never authorized this registration in the name of the Respondent. The distribution agreement has been terminated. Therefore, the Respondent is neither entitled anymore to present the Complainant's products nor to represent the Complainant in any way (with the Domain Name and/or the Trademark) since he is no longer a distributor of the Complainant.

The Respondent refused to transfer the Domain Name to the Complainant. Since the termination of the agreement, the Respondent no longer has any rights to or legitimate interest in the Domain Name.

The Respondent uses the Complainant's Trademark logo on its website without the Complainant's consent. The Respondent describes himself as a specialist of the Complainant's products, which leads potential customers to believe that the Respondent is still the Complainant's representative. Using the Domain Name leads the public to believe that the Respondent business is operated by the Complainant or suggests that the Respondent is still the distributor of the Complainant's products in the Netherlands, which is not the case since the termination of the agreement.

Also, the Respondent may use in the future the Domain Name to take advantage of the Trademark to confuse and divert the public to his website. Consequently, by refusing to transfer the Domain Name, despite the Complainant's requests, the Respondent acts in bad faith.

B. Respondent

The Respondent has stopped offering the Complainant's products through his website as of the termination date. In accordance with this new situation, his website has also been altered. The Respondent asserts that he now only offers services for genuine Trinnov Audio hardware (the services of calibrating and fine-tuning of this hardware at the customer's place and giving advice to the dealers, which he himself trained). The Trademark logo is still used on his website, complemented with the word "specialist" and the "NL" sign. The content available on his website is merely informative and there is no element that is likely to tarnish the Trademark.

The Respondent has rights and legitimate interests in the Domain Name because, in short, he meets the *Oki Data* criteria. The Respondent has stopped offering the Complainant's products but still offers services related to the Complainant's hardware: no other services are offered, no other brands are promoted. The Respondent is trained and qualified to do this work. The Respondent has invested four years in becoming a Trinnov Audio specialist at his own expense and will use this experience as a source of income. The identity or reputation of the Complainant will thereby in no way be harmed. The Respondent is using the Domain Name in connection with a *bona fide* offering of services related to Trinnov Audio hardware only. *Ergo*, the Respondent has rights and legitimate interests in the Domain Name.

Furthermore, the registration of the Domain Name was done in good faith and in dialogue with the Complainant. The layout of his website was also taken care of in cooperation with the Complainant. For instance, the Respondent used the Trademark on his website because it was requested by the Complainant. The Respondent's website offers some links to the Complainant's website whenever readers want more

in-depth information about the Complainant's products. The homepage of the Respondent's website clearly states the current relationship between him and the Complainant. The identity or reputation of the Complainant will thus in no way be harmed. Consequently, the Domain Name is used in good faith.

The Complainant's presumption that the Respondent may use the Domain Name to take advantage of the Trademark to confuse and divert the public to his website in the future is false and unfounded. The Respondent does not seek to harm the Complainant, on the contrary: it is in the Respondent's interest that the brand and reputation of the Complainant are upheld in view of the services rendered by the Respondent. After the termination of the agreement, the Respondent continued to offer his services, *i.e.*, advice and calibration services for Trinnov hardware, as a Trinnov specialist. The Respondent uses the Domain Name and website to inform the public of his services. Services are solely offered for Trinnov hardware: no other brands are offered. There are no links to other services, brands or websites. Hence, the Domain Name is used in good faith.

6. Discussion and Findings

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

- a. the 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 domain name; and
- c. the 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 Trademark is figurative in nature and consists of a stylized representation of the letters "trinnov". However, the textual element "trinnov" is dominant. The non-textual elements of the Trademark do not detract in any way from the prominence of the word element of the mark which is the most prominent element. The Domain Name incorporates the entirety of the Trademark.

It is established case law that the country code Top-Level Domain ".nl" may be disregarded in assessing the similarity between the Trademark on the one hand, and the Domain Name on the other hand (see, *inter alia*, *Taylor Made Golf Company, Inc. v. Lotom Group S.A.*, [WIPO Case No. DNL2010-0067](#); *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 Trademark within the meaning of article 2.1(a) of the Regulations. Therefore, the first requirement is met.

B. Rights or Legitimate Interests

Many Uniform Domain Name Dispute Resolution Policy (UDRP) panels have recognized that resellers, distributors or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name ([WIPO Overview of WIPO Panel Views on Selected UDRP Questions](#), Third Edition ("WIPO Overview 3.0"), [section 2.8.1](#)). Outlined in the "*Oki Data* test" (see, *Oki Data Americas, Inc. v. ASD, Inc.*, [WIPO Case No. D2001-0903](#)), the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

The *Oki Data* decision has been rendered under the UDRP and has been confirmed to be of relevance for the Regulations, *inter alia*, in *Seiko EPSON Corporation v. ANEM Computers*, [WIPO Case No. DNL2010-0024](#); *Maison Louis Latour v. Jos Beeres Wijnkoperij*, [WIPO Case No. DNL2011-0074](#); and *Bayerische Motoren Werke Aktiengesellschaft v. Quispel Motoren*, [WIPO Case No. DNL2013-0026](#). The *Oki Data* principles are also appropriate to assess the rights or legitimate interests of the unauthorized reseller or distributor for purposes of this element of the Policy (see, *inter alia*, *Dr. Ing. h.c. F. Porsche AG v. Del Fabbro Laurent*, [WIPO Case No. D2004-0481](#); *Volvo Trademark Holding AB v. Auto Shivuk*, [WIPO Case No. D2005-0447](#); and *ITT Manufacturing Enterprises, Inc., ITT Corporation v. Douglas Nicoll, Differential Pressure Instruments, Inc.*, [WIPO Case No. D2008-0936](#)).

Cases applying the *Oki Data* test usually involve a domain name comprising a trademark plus a descriptive term (e.g., "parts", "repairs", or "location"), whether at the second-level or the top-level. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation ([WIPO Overview 3.0, section 2.5.1](#)). The risk of misrepresentation has led panels to find that a respondent lacks rights or legitimate interests in cases involving a domain name identical to the complainant's trademark ([WIPO Overview 3.0, section 2.8.2](#)).

In the present case, the Domain Name is identical to and only consists of the Trademark: no descriptive term is added. It is reasonable to assume that consumers would normally associate the Trademark, and therefore the Domain Name, with the Complainant's products and not in first instance with services rendered in relation thereto by a third party (however expert that party may be). In this light, the Respondent is not actually offering the goods at issue in the sense of the *Oki Data* test.

With regard to the second criterion of the *Oki Data* test, examination of the Respondent's website following submission of the dispute to this Panel reveals that it promotes goods of other suppliers and services not related to goods of the Complainant:

"Naast deze dienstverlening zijn wij ook actief met andere methoden om de audio-installatie in te regelen in een ruimte. Daarnaast leveren wij ook apparatuur (processors, versterkers, spanningsbescherming, luidsprekers, kabels) en doen wij akoestisch onderzoek om de akoestische problemen in uw kamer vast te stellen. Wij leveren géén losse apparatuur, maar altijd apparatuur in samenhang met de inpassing en inregeling ervan in uw audioset en kamer. De kwaliteit van de muziekbeleving staat voorop!"

Translated into English:

"In addition to this service, we are also active with other methods for arranging the audio installation in a room. We also supply equipment (processors, amplifiers, voltage protection, loudspeakers, cables) and we carry out acoustic research to determine the acoustic problems in your room. We do not supply separate equipment, but always equipment in connection with the integration and adjustment of it in your audio set and room. The quality of the music experience is our top priority!"

From this passage it becomes clear that the Respondent at least also offers other/competing products. The Respondent's statement that it solely offers services related to the Complainant's products on the website is thus incorrect. In these circumstances the Panel finds that the second condition of legitimate use identified in the *Oki Data* decision is not met.

Examination of the Respondent's website also reveals that the Respondent prominently uses the device mark of the Complainant, complemented with the word "specialist" and the "NL" sign.

Bearing the above considerations in mind, read in conjunction with one another, the Panel finds that the Respondent has no rights or legitimate interests in the Domain Name within the meaning of article 2.1(b) of the Regulations.

The Respondent further states that he made investments in becoming a Trinnov Audio specialist for several years and therefore wants to keep offering the current services (related to the Complainant's products). If the Panel orders that the Domain Name be

transferred to the Complainant this causes the Respondent to suffer damage, according to the Respondent.

These are circumstances which make an interest of the Respondent in the retention of the Domain Name plausible, but which do not as such constitute rights to or legitimate interests in the Domain Name within the meaning of article 2.1(b) of the Regulations (*Dienst Wegverkeer (RDW) v. Versio / Moonshots Online Marketing*, [WIPO Case No. DNL2016-0023](#)). The Panel adds here that, depending in part on the goods and services actually on offer, the Respondent may have other registration options at his disposal that could constitute a legitimate interest.

The Panel concludes that the Respondent has no rights to or legitimate interests in the Domain Name. Therefore, the second requirement is met.

C. Registered or Used in Bad Faith

The Panel notes that the Domain Name has indeed been registered for the primary purpose of commercial gain by the Respondent: initially by offering the Complainant's products and later by offering services relating to those products. Nevertheless, from the previous section (B. Rights or legitimate interests) it is clear that the Respondent fails to meet two elements of the applicable *Okidata* test. Even if the website accurately discloses the relationship between the Complainant and the Respondent, this finding results in the conclusion that the Domain Name is used in bad faith (article 3.2 of the Regulations).

The Panel finds that the Domain Name has been registered or is being used in bad faith within the meaning of article 2.1(b) of the Regulations. Therefore, the third requirement is 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 be transferred to the Complainant.

Richard C.K. van Oerle
Panelist
Date: January 22, 2018