

ADMINISTRATIVE PANEL DECISION

A.P. Møller - Mærsk A/S v. Alexander Ruf and BrandBucket Inc.,

Lease Custodian

Case No. D2022-4361

1. The Parties

The Complainant is A.P. Møller - Mærsk A/S, Denmark, represented by Patrade A/S, Denmark.

The Respondents are Alexander Ruf (“the First Respondent”), Thailand, and BrandBucket Inc., Lease Custodian (“the Second Respondent”), United States of America (“United States”).

2. The Domain Names and Registrar

The disputed domain name <neonav.biz> is registered with Network Solutions, LLC, and the disputed domain name <neonav.com> is registered with NameSilo, LLC (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 16, 2022, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On November 16 and 21, 2022, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information (that of the Second Respondent) for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent email communications to the Complainant on November 16 and 22, 2022, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 23, 2022. The First Respondent sent an email communication to the Center on November 30, 2022.

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 Respondents of the Complaint, and the proceedings commenced on December 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2023. The Respondents did not submit a formal

Response. On January 3, 2023, the First Respondent submitted an informal communication to the Center.

The Center appointed Assen Alexiev as the sole panelist in this matter on January 25, 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 a global container logistics company with more than 100,000 employees and operations in more than 130 countries.

The Complainant is the owner of the following trademark registrations for the sign NEONAV (the “NEONAV trademark”):

- the European Union trademark NEONAV with registration No. 018288275, registered on January 1, 2021, for goods and services in International Classes 9, 35, 38, 39, and 42; and
- the International trademark NEONAV with registration No. 1595412, registered on February 1, 2021, for goods and services in International Classes 9, 35, 39, and 42.

The First Respondent registered the disputed domain name <neonav.biz> on January 18, 2022. It is currently inactive. At the time of filing of the Complaint, it redirected to the website of the company Logfret at the domain name <logfret.com>. The First Respondent claims being an investor and officer of Logfret.

The disputed domain name <neonav.com> was initially registered on April 14, 2015 but the case circumstances (described in more details below) indicate that the First Respondent acquired it in January of 2022. At the time of filing of the Complaint, it redirected to the disputed domain name <neonav.biz> and was offered for sale. It currently redirects to the third-party website at “www.navitechnologies.com”. The exact date of its acquisition by the Second Respondent is unknown.

5. Parties’ Contentions

A. Complainant

The Complainant states that the disputed domain names are identical to its NEONAV trademark.

According to the Complainant, the Respondents have no rights or legitimate interests in respect of the disputed domain names.

The Complainant assumes that the disputed domain name <neonav.com> was first acquired by the First Respondent around January 18, 2022. The Complainant notes that the Wayback Machine records shows that the disputed domain names were not used commercially between 2015 and 2022 but were only listed for sale on “brandbucket.com”. The Complainant notes that the disputed domain <neonav.com> was no longer for sale by January 18, 2022.

The Complainant points out that the First Respondent is a senior officer at Logfret (since January 2019), a global digital logistics company, and director at NEOLink (since June 2021), a global digital logistics and supply chain solution. The Complainant maintains that Logfret and NEOLink provide services that are identical to the ones offered by the Complainant under its NEONAV trademark.

The Complainant states that its NEONAV trademark rights predate the Respondents' registration and acquisition of the disputed domain names with more than a year and a half. It maintains that the NEONAV trademark is used on its own website at the domain name <maersk.com> since December 7, 2020, in relation to digital supply chain management solutions. It adds that the First Respondent, based on his position with Logfret and NEOLink, was aware of this at the time of registering and acquiring the disputed domain names. The Complainant adds that it made Logfret aware of the NEONAV trademark infringement on April 12, 2022, and with the First Respondent being a chief officer of Logfret, he was also made aware of the trademark infringement at that time. This was also indicated by the First Respondent's response of October 28, 2022, to the Complainant's cease-and-desist letter, where he stated: "I am not sure why you contact Logfret about that issue again. I made clear the last time I was in contact with you that I am the owner of both domains."

The Complainant adds that the lack of legitimate interests in the disputed domain names is further evidenced by the fact that the First Respondent declared himself willing to sell the disputed domain names to the Complainant or to another company.

The Complainant contends that the disputed domain names were registered and are being used in bad faith.

It submits that since the disputed domain names are identical to the Complainant's NEONAV trademark, they carry a high risk of implied affiliation, especially if they are being used for identical services. The Complainant points out that although the disputed domain names have not yet been taken into use, the First Respondent has already stated that he wishes to use them for a digital supply chain platform or to sell them to a third party. According to the Complainant, such a platform must be considered identical, or highly similar, to the services included in the scope of protection of the Complainant's NEONAV trademark.

The Complaint states that, considering the First Respondent's position with Logfret since 2019, and with NEOLink since 2021, it is reasonable to assume that he must have had in-depth knowledge about direct competitors in the market, including about the Complainant and its use of the NEONAV trademark at the time of registering and acquiring the disputed domain names. The Complainant adds that it is well-known around the globe and had been using NEONAV trademark for directly competing services for more than a year at the time of the First Respondent's registration and acquisition of the disputed domain names. The Complainant adds that the First Respondent's knowledge of the Complainant is further shown by his response to the Complainant's cease-and-desist letter on October 28, 2022. The above circumstances, along with the Respondents' previous use of the disputed domain names for linking to Logfret's products, indicate that the First Respondent registered and acquired the disputed domain names primarily for the purpose of disrupting the business of the Complainant, a direct competitor to Logfret, and/or attempted to attract, for commercial gain, Internet users to Logfret's website, by creating a likelihood of confusion with the Complainant's NEONAV trademark.

The Complainant adds that the Respondents' offer to sell the disputed domain names to the Complainant and their statement that the disputed domain names would be sold to a competing third-party, also indicates that the Respondents have registered and acquired the disputed domain names primarily for the purpose of selling them to the Complainant or to a competitor of the Complainant.

B. Respondent

The First Respondent states that he has been involved in active roles as well as an investor in multiple entities, including NEOLink and Logfret, which are focused on software and logistics, respectively. He states that he also has investments in Internet of Things and e-commerce companies. The First Respondent maintains that he and his business partners bought multiple domain names in preparation for a new project, and that he personally bought the disputed domain names. The First Respondent states that based on existing non-disclosure agreements, he is able to give just a little background on why he bought the disputed domain names. The project he was planning to launch within 2023 had a working title "Neon AV". It involving software and Internet of Things for the creation of a solution focusing on Asset Visibility, which is important for airports/airlines, trucking companies and other asset owners within the supply chain. He claims

that at the time he purchased the disputed domain names, he was not ready to share any details of the new project with the outside world, and instead of leaving a blank page or a “coming soon” message, the First Respondent made the mistake of pointing them to <logfret.com>. He states that he did not promote the disputed domain names and there was basically zero traffic to them.

The First Respondent maintains that his actions show that he had no bad faith or bad intentions. After the First Respondent received the email from the lawyer of the Complainant, he called them immediately and when he was told that there might be a conflict with a trademark, he stopped the redirect to <logfret.com> the same day and put up a “coming soon” message. After he understood the complication of potential trademark violation, the First Respondent asked the Complainant’s lawyer twice if the Complainant would have a commercial interest in buying the disputed domain names. Both times the First Respondent did not receive an answer, but only threats of legal action. The First Respondent’s partners and he then decided that they would have to change the project name and not use Neon AV. In the process of understanding what the Complainant’s reference to a trademark was, the First Respondent found that there was a second trademark registered in the United States by the Australian company Navi Medical Technologies. The First Respondent reached out to them and asked them if they would have a commercial interest in the disputed domain names. They confirmed this and agreed on a transfer of the disputed domain names after the First Respondent’s lease with Brand Bucket was settled. The First Respondent maintains that his agreement with Navi Medical Technologies was from October or the beginning of November 2022, before the Complaint was filed. The First Respondent adds that he still owns the disputed domain name <neonav.biz> which Navi Medical Technologies were not interested in, so the First Respondent is happy to transfer it to the Complainant.

6. Discussion and Findings

6.1. Procedural issue – Consolidation of Respondents

The Complainant requests the consolidation of the proceedings in respect of the disputed domain names, maintaining that both of them are under common control of the First Respondent, at least at the time of filing the Complaint. It points out that its representative contacted Logfret in April 2022, and Logfret denied any association with the disputed domain names. On October 21, 2022, the Complainant sent a formal cease-and-desist letter to Logfret, and on October 28, 2022, the First Respondent reacted to this cease-and-desist letter. In his response, the First Respondent confirmed that he was the owner of the disputed domain names and that he was planning to use them for a new upcoming digital supply chain platform. The Complainant states that the First Respondent disregarded all claims made by the Complainant, admitted his knowledge of the NEONAV product by the Complainant and offered to sell the disputed domain names to the Complainant. The Complainant notes that on November 9, 2022, the First Respondent maintained that he would not be transferring the disputed domain names to the Complainant and indicated that he would be selling them to a third party instead. The Complainant points out that the common control over the disputed domain names is further illustrated by the fact that as of November 2, 2022, the website at the disputed domain name <neonav.com> redirected to the domain name <neonav.biz>.

The Center has discharged its duties to notify the persons listed as registrants of the disputed domain names. While none of the listed registrants (Brand Bucket) of the disputed domain names has submitted a formal Response or objected to the consolidation request of the Complainant, the informal communications sent by the First Respondent confirm that the disputed domain names are under his control.

Paragraph 10(e) of the Rules grants a panel the power to consolidate multiple domain name disputes, and paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder. As discussed in section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), where a complaint is filed against multiple respondents, UDRP panels look at whether the domain names or corresponding websites are subject to common control, and whether the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a

consolidation scenario. UDRP panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as the naming patterns in the disputed domain names, or other arguments made by the complainant.

The Panel is satisfied that the Complainant has shown good reasons why the consolidation of the Respondents and disputes related to the disputed domain names in a single proceeding is justified and appropriate in the circumstances. There is no dispute between the Parties that the two disputed domain names are under the control of the First Respondent, and the Respondents have not objected to the Complainant's consolidation request.

None of the Respondents has advanced any reasons why it may not be equitable to allow the consolidation of the disputes in respect of the disputed domain names. It appears that the consolidation would lead to greater procedural efficiency, and the Panel is not aware of any reasons why the consolidation would not be fair and equitable to all parties.

Therefore, the Panel decides to allow the consolidation of the disputes in relation to the two disputed domain names in the present proceeding.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain names:

- (i) each of the disputed domain names is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names were registered and are being used in bad faith.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”

A. Identical or Confusingly Similar

The Complainant has filed evidence that it holds rights in the NEONAV trademark.¹

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the [WIPO Overview 3.0](#). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” and “.biz” gTLD sections of the disputed domain names for the purposes of their comparison to the Complainant's NEONAV trademark.

The disputed domain names all incorporate the NEONAV trademark and include no other elements. This satisfies the Panel that the disputed domain names are identical to the Complainant's NEONAV trademark.

¹ The NEONAV trademark was registered in 2021, while the disputed domain name <neonav.com> was first registered on April 14, 2015 – but see below as to the apparent acquisition date (January 2022) by the First Respondent. As discussed in section 1.1.3 of the [WIPO Overview 3.0](#), while the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed. The fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant's standing to file a UDRP case, nor a panel's finding of identity or confusing similarity under the first element. Therefore, the Panel accepts that the Complainant has standing to file the Complaint the present proceeding.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the First Respondent has no rights or legitimate interests in the disputed domain names. It points out that at the time of registering and acquiring the disputed domain names, the First Respondent, being an officer at Logfret, must have had knowledge about its direct competitors on the market, including the Complainant and its NEONAV trademark, which had at that time been used for directly competing services (a digital supply chain platform) for more than a year. The Complainant adds that this, along with the First Respondents’ previous use of the disputed domain names for linking to Logfret’s products, indicates that the First Respondent has registered and acquired the disputed domain names for the purpose of disrupting the business of the Complainant, a direct competitor to Logfret, or have attempted to attract, for commercial gain, Internet users to Logfret’s website, by creating a likelihood of confusion with the Complainant’s NEONAV trademark. The Complainant adds that the First Respondent has offered to sell the disputed domain names to the Complainant and to a third-party.

The First Respondent maintains that he had no bad faith or bad intentions. He states that he bought the disputed domain names for the purposes of a new project with a working title “Neon AV”, planned for launch in 2023, involving software and Internet of Things for the creation of a solution focusing on asset visibility. The First Respondent admits that the disputed domain name <neonav.biz> has redirected to the website of Logfret, in which the Respondent is a senior officer and investor.

The Parties’ correspondence prior to the submission of the Complaint contains a different description of the project mentioned by the First Respondent: “I am interested in the domain neonav.com as it is an acronym for the new upcoming digital supply chain platform.” This description of the Respondent’s project coincides with the content of the website at the disputed domain name <neonav.biz> in April 2022, which stated:

“NeoNav.com Welcomes You
Digital Supply Chain Solution
on www.logfret.com you find with Neolink the answer to your global supply chain needs.
Carriers, such as Maersk, MSK, Hapag Lloyd, etc. are providing logistics solutions tailored to their assets, whereby Logfret is able to provide a control tower solution and gateway to the asset-based providers.”

The Panel considers the statements made by the First Respondent in his pre-Complaint correspondence with the Complainant and on the website at the disputed domain name <neonav.biz> as genuine and revealing his true intentions at the time. The description, and even the name, of his project made in his correspondence in the case are contradicted by these statements and unsupported by evidence. The website at the disputed domain name <neonav.biz> mentions “NeoNav” (as written on the Complainant’s website in December 2020), rather than “Neon AV” (as alleged in the First Respondent’s correspondence).

As pointed out by the Complainant, the offering of a “digital supply chain platform” would overlap and compete with the services offered by the Complainant and protected with the NEONAV trademark. The First Respondent does not deny that he had knowledge of the Complainant and its business at the time he acquired control over the disputed domain names, and as noted by the Complainant, such knowledge is likely, given the First Respondent’s position in Logfret, which is a competitor to the Complainant. This knowledge is also confirmed by the content of the website at the disputed domain name <neonav.biz>, cited above, which mentions the Complainant. As discussed in the section on bad faith below, it is likely that the

First Respondent acquired control over the disputed domain names in the beginning of 2022.

Taking all the above into account, the Panel accepts that it is more likely than not that the First Respondent had knowledge of the Complainant and its NEONAV trademark at the time it acquired control over the disputed domain names in the beginning of 2022, and that their acquisition was made targeting the Complainant's NEONAV trademark for the purposes of offering competing services. The Panel does not regard such conduct as giving rise to rights or legitimate interests of the Respondents in the disputed domain names.

On this basis, the Panel finds that the Respondents do not have rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The NEONAV trademark was registered in 2021, while the disputed domain name <neonav.com> was first registered on April 14, 2015. As discussed in section 3.8.1 of the [WIPO Overview 3.0](#), merely because a domain name is initially created by a registrant other than the respondent before a complainant's trademark rights accrue does not mean that a respondent cannot be found to have registered a domain name in bad faith. Irrespective of the original creation date of the domain name, if a respondent acquires it after the complainant's trademark rights accrue, the panel will look to the circumstances at the date the respondent itself acquired the domain name. In view of this, the Panel will consider the Respondents' conduct at the time they acquired control and ownership over the disputed domain names.

The exact date of the acquisition of the disputed domain name <neonav.com> by the Respondents is unknown, but the First Respondent claims having acquired both disputed domain names for the purposes of the same project through a Brand Bucket lease, where the last payment was to be made on December 8, 2022, and the transfer of the disputed domain names was to take place after that payment. It appears from the words of the First Respondent that the Respondents have taken control over the two disputed domain names at the same time in the beginning of 2022 (the disputed domain name <neonav.biz> was registered on January 18, 2022, and the First Respondent does not differentiate between the two disputed domain names when describing their acquisition by him). Therefore, the Panel will consider the Respondents' conduct at that time as the acquisition date of the disputed domain names.

The Complainant has submitted evidence that it was promoting services under the NEONAV trademark in December 2020. As discussed in the section on rights and legitimate interests, the First Respondent, in view of his senior position at Logfret since 2019, and the content of the website at the disputed domain name <neonav.biz> in April 2022, (which mentions the Complainant and offers competing services under the name “NeoNav”, written the same way as written by the Complainant in December 2020), must have been aware of the activities of the Complainant under the NEONAV trademark at the time of acquisition of the control over the disputed domain names in the beginning of 2022. As described by the First Respondent in his pre-Complaint correspondence with the Complainant and on the website at the disputed domain name <neonav.biz> in April 2022, the disputed domain names were intended to be used for the offering of a digital supply chain platform. Such service would overlap and compete with the services offered by the Complainant and protected with the NEONAV trademark. The disputed domain name <neonav.biz> was actually used for offering such services on the associated website and through reference to Logfret - a competitor of the Complainant and a company in which the First Respondent is a senior officer and investor.

Taking all the above into account, the Panel finds that by registering and using the disputed domain names, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to their websites, by creating a likelihood of confusion with the Complainant’s NEONAV trademark as to the source, sponsorship, affiliation, or endorsement of the Respondents’ websites or of a product or service on their website.

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 disputed domain names <neonav.biz> and <neonav.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: February 8, 2023