



Case nr. 44220/Mathieu.be

DECISION OF THE THIRD-PARTY DECIDER
Re dispute on Domainnames.be

I. Between the following parties

1.1. Complainant

Mr. Tonny Mathieu domiciled at 3080 Tervuren, Ijzerstraat 183, Belgium, hereinafter the '*Complainant*'

1.2. Licensee

Mr. Herman Dariusz domiciled at 92259 Neukirchen, Himbselstrasse 12, Germany, hereinafter the '*Licensee*'

II. Domain Name at issue

Domain Name : "*mathieu.be*"
Registered the : *8 December 2010*
Hereafter referred to as: "*Domain Name*"

III. History of the procedure

3.1. On December 20, 2010 the Complainant filed a complaint with the Belgian Center for Arbitration and Mediation (hereafter referred to as the CEPINA) relating to the domain name in hard copy and in electronic version. Following the complaint CEPINA invited the undersigned on January 17, 2011 to settle the dispute concerning the domain name as Third Party-Decider.

On January 17, 2011 the Third-Party Decider sent the statement of independence to CEPINA.

3.2. By e-mail and registered letter dated January 18, 2011, CEPINA informed the Complainant and the Licensee of the appointment of the Third-Party Decider. CEPINA stated in this e-mail that the deliberations should be concluded by January 25th, 2011 and that the Third-Party Decider must inform the CEPINA secretariat of his decision by February 8th, 2011, at the latest.

3.3. By Registered letter dated January 18th, 2011 CEPINA transferred the entire file concerning the Complaint to the Third-Party Decider.

3.4. On basis of the file, the Third-Party Decider concludes that CEPINA has adhered to the CEPINA Rules for Domain Name Dispute Resolution (hereinafter referred to as “the Rules”) in administrating this case.

3.5. According to Article 12 of the Rules, the debates were closed on January 25th, 2011.

IV . Relevant facts

The Complainant is a Belgian citizen with activity in Belgium. He is an Accredited Domestic Energy Assessor pursuant to the Flemish Decree of January 11th, 2008 (*OG* February 8, 2008) implementing the EC Decree 2002/9 of the European Parliament and Council of December 16th, 2002. The accreditation is personal. Complainant is therefore acting under his personal name, Mathieu.

At the very moment Complainant intended to offer the aforesaid services to the public on or around November 2010, the Domain Name was put in quarantine. The Domain Name became again available from DNS on December 9th 2010 at 9 am. The Domain Name was however immediately acquired by the Licensee. Thereafter and promptly the Licensee has put the Domain Name on sale through the website www.sedo.co.uk.

It is alleged that the Domain Name was offered to the highest bidder for the use of a “click-through” or diverting tool in order to generate revenue by inducing Internet users through sponsored links. The site indeed contains a link to a competitor Energy Assessor.

A preliminary research on the Internet shows that the Licensee is dealing in several domain names, which supports the presumption that the Licensee is registering names for purposes other than a normal use. It is said that the domain name is a unique name registered with DNS giving the holder an identity and localisation on the Internet. The Domain Holder must however show a particular legal right to the name it registered. No website is hosted under the Domain Name.

From the WHOIS query we learn and consider that the Domain Name was registered by the Licensee in the name of a private individual. It is therefore naturally the private individual that is the holder or owner, respondent in this case.

On December 17, 2010 the Complainant made an offer to transfer the Domain Name. No response was obtained. Upon an alternative offer within the circle of acquaintance the Licensee refused and requested 499,- euro. Parties did not come to conclusion and the Complaint was filed on December 20th, 2010.

The Licensee did not file any Response in this proceeding.

V. Position and contentions of the parties

5.1. Position of the Complainant

Complainant requests the Third-Party Decider to order the transfer of the Domain Name considering the conflict and alleged misuse of the personal and trading name of the Complainant. The Complainant therefore applies to Article 10 of the Terms and Conditions for domain name registrations under the “.be” domain operated by DNS BE (version 4.2. – 15 January 2009); hereinafter “Terms and Conditions”.

The Complainant thereby argues:

- the Domain Name is identical to a personal name in which the Complainant has rights: Mathieu is the last name of the complainant. The Complainant then refers to similar case-rulings accepting that a last name is considered as a personal name and that the registration infringes the right to the name;
- The Licensee has no rights or legitimate interests in the Domain Name. The Licensee is not known under the name 'Mathieu' and has put the Domain Name on sale.
- The Domain Name has been registered in bad Faith since the circumstances indicate that the Domain Name was registered primarily for the purpose of selling the Domain Name. According to Article 10.b.2. of the Terms and Conditions bad Faith can be established when the domain name holder registers one or more personal names without the existence of a demonstrable link between the licensee and the registered domain names. The Licensee acquired the name and immediately put the Domain Name for sale. The Domain Name was registered mainly to sell the name to the Complainant (or any other highest bidder) and for a price that exceeds the costs involved with the acquisition of the Domain Name. This should be considered cybersquatting. The Licensee is known as a cybersquatter.

5.2. Position of the Licensee

The Licensee did not reply to the Complainant's arguments and contentions.

VI. Discussion and findings

According to Article 15.1. of the Rules, the Third-Party Decider shall rule on the Complaint submitted in accordance with the Dispute Resolution Policy (hereinafter “Policy”) and the Rules.

According to Article 10.b.1 of the Policy must prove cumulatively that :

- i) *the Licensee’s Domain Name is identical or confusingly similar to a trademark, a trade name, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights, and*
- ii) *the Licensee has no rights or legitimate interests in the Domain Name; and*
- iii) *the Licensee’s Domain Name has been registered or is being used in bad Faith.*

The Respondent however duly notified, did not reply. The proceeding shall continue and the Third-Party Decider will rule the conflict on basis of the Complaint and the evidence presented such pursuant to Article 5.4. of the Rules. The decision shall be rendered based on and pursuant to the Terms and Conditions and the Law of June 23, 2003 (OG September 9, 2003, 45225).

1. The Licensee’s Domain Name is identical to a personal name in which the Complainant has right

- 1.1. Undoubtedly the last name of the Complainant is identical to the Domain Name. It has already been stated in previous Decisions that the suffix “.be” is irrelevant when assessing the similarity between the disputed domain name and the name on which the Complainant claims a right (CEPINA, case nr. 4003).

The name is not only a personal identification but also in this matter used for offering services to the public.

Considering that the term “*personal name*” is not defined in the Terms and Conditions nor in the terms of the Law of June 23, 2003. The common sense of personal name is the proper name of an individual (Van Dale dictionary). A proper name is defined as the single name to identify and distinguish a person from another. A personal name is therefore to be distinguished from any other generic term.

- 1.2. The Belgian law foresees in its Decree of August 23, 1794 (still applicable) that a citizen may not use any other name than the name mentioned in its birth certificate. Only the titular is entitled to the name. The right to the name is not protected by any rule of law but is subject to protection in constant jurisprudence. It is considered a personal right. The personal rights include the right to use the name, to alter the name, to require third-parties to indicate the person by its name and to act against any appropriation by a third-party of the name (P. Senaevé, *Personenrecht*, p. 108; Cass. May 25, 1962, *Pas.* 1962, I, 1088).
- 1.3. In the opinion of the Third-Party Decider by “*personal name*” as enumerated in Article 10.b.1 is meant the name as given in the birth certificate certainly (Cfr. CEPINA Case nr. 4015; CEPINA Case nr. 4207; but also every other name that clearly and publicly identifies and distinguishes a person.
- 1.4. Considering that the Complainant has rights to the name, identical to the Domain Name.

It results from the foregoing that the conditions set forth in Article 10.b.1 (i) of the Policy are fulfilled.

2. No right or legitimate interest

- 2.1. The Complainant argues that the Licensee has no rights or legitimate interests in the Domain Name. The Licensee is not known under the name ‘Mathieu’ and has put the Domain Name on sale.
- 2.2. According to Article 10.b.3. if a complaint is filed, the Licensee can demonstrate his rights or legitimate interests to the Domain Name by the following circumstances:
 - prior to any notice of the dispute, the domain name holder used the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use; or

- the domain name holder (as an individual, business or other organization) has been commonly known by the domain name, even if he has acquired no trademark; or
 - the domain name holder is making a legitimate and non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity at issue.
- 2.3. The Licensee did not submit any response. Licensee has therefore not challenged any of the Complainant's contentions. To the contrary. Prima facie the Licensee has no link to the name. There is no indication of a bona fide use of the domain name or commonly knowledge of the Licensee under the name. Furthermore from the absence of any response one may conclude that the Licensee cannot demonstrate any legitimate interest.

The Third-Party Decider considers that the Licensee has no right or legitimate interest in the Domain Name and that therefore the condition of Article 10b.1 (ii) of the Policy is fulfilled.

3. The Licensee's domain name has been registered or is being used in bad faith

- 3.1. Article 10.b.2 of the Policy sets out, without limitation, certain circumstances which, if found, are deemed to be evidence of use and registration in bad Faith. The circumstances enlisted are not exclusive but merely intended to assist the parties in establishing the strengths or weaknesses of their position (WIPO Case nr. D2000-1228; CEPINA Case nr. 4010; CEPINA Case nr. 4002).

Bad Faith is an element in fact and may therefore be evidenced by all means, including presumptions and circumstances that indicate with reasonable degree of certainty, the existence of bad faith.

- 3.2. The assertion of bad Faith is not disputed by the Licensee. The Licensee did not submit any Response.

3.3. Moreover the Third-Party Decider finds that the arguments of the Complainant, summarized below, are sufficiently shown and evidence registration and use of the Domain Name in bad faith as illustrated in Article 10.b.2 of the Dispute Resolution Policy :

- circumstances indicate that the Domain Name was registered primarily for the purpose of selling the Domain Name.
- The Licensee has registered numerous domain names without the existence of a demonstrable link between the licensee and the registered domain names. The Licensee has a history of bad Faith registrations.
- The Licensee acquired the name and immediately put the Domain Name for sale. The Domain Name was registered mainly to sell the name to the Complainant (or any other highest bidder) and for a price that exceeds the costs involved with the acquisition of the Domain Name.

It is very unlikely that the Licensee who is established in Germany would actually need a domain name in the “.be” domain. The Domain Name is a family name. There is prima facie no connection between the Licensee and the name. It is indicated that the Licensee might have registered this Domain Name to resell and/or redirect Internet traffic.

As a consequence, considering the above, also the condition in Article 10.b.1 (iii) of the Policy is fulfilled.

VII. Decision

Pursuant to Article 10 e) of the Policy, the Third-Party Decider orders that the domain name “*mathieu.be*” be transferred from the Licensee to the Complainant.

Brussels, January 26th, 2011

Francis de Clippele
Third-Party Decider