



BELGIAN CENTER FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Ryanair Ltd. / Lili Karizama

N° 44202 : ryanair.be

1. Parties

- 1.1. Complainant: **Ryanair Ltd.**, having its registered offices at Dublin Airport, Co., Dublin, Ireland,

Represented by:

Mr. Paul Maeyaert and Mr. Kristof Neefs, attorneys-at-law, with offices at Havenlaan 86C (PO box 414), 1000 Brussels, Belgium.

- 1.2. Licensee: **Lili Karizama**, residing at an unknown address, with e-mail address karizama@ymail.com.

2. Domain Name

Domain Name: ryanair.be, hereafter referred to as the “Domain Name”.

Last known date of registration: 24 May 2010 (according to the Complainant transferred to the Licensee on 28 May 2010).

3. The procedure

On 7 June 2010 the Complainant filed a complaint (hereafter the “Complaint”) with the Belgian Center for Arbitration and Mediation (hereafter “CEPINA”), requesting the transfer of the Domain Name.

The Licensee was notified of the Complaint and was invited to reply by 14 July 2010. The Licensee did not file a reply.

By e-mail and by letter dated 8 July 2010, CEPINA informed the Complainant and the Licensee of the appointment of the Third-Party Decider.

The deliberations were closed on 14 July 2010.

The Complainant declared that the dispute was not submitted to the ordinary courts.

4. Facts

- 4.1. The Complainant is a well known air carrier with a presence in several countries. The Complainant offers its tickets to the public predominantly online, through its website www.ryanair.com (which can also be accessed through various national country level domains that automatically redirect to www.ryanair.com).

The Complainant's trade name, "Ryanair", in relation to passenger air transport services, is well known internationally.

The Complainant has registered a number of trademarks solely consisting of, or incorporating the element "Ryanair", including the following:

- a word Community trademark Ryanair n° 4168721, registered on 5 December 2005, in relation to goods and services of the classes 16, 28, 35, 36, 37, 38, 39 and 42;
 - a Community word- and device mark Ryanair n° 338301, registered on 17 November 1999, in relation to goods and services of the classes 16, 35, 36, 37, 38, 39 and 42.
- 4.2. It was brought to the attention of the Complainant that the Domain Name was last registered on 24 May 2010 by an individual or a company with as a contact e-mail address: domainmanager@gmail.com. The technical agent Realtime.at Domain Services GmbH had captured the Domain Name the day after a release from quarantine by DNS.be.

The Domain Name automatically resolved to the website hosted under the domain "www.flug.eu" as appears from exhibits IV.3 and IV.4 filed by the Complainant. This website contains information in respect to airline tickets, such as price comparisons, without displaying information in respect to the Complainant's schedules or fares.

On 25 May 2010 the Complainant sent a notice letter to the Licensee's technical agent, Realtime.at Domain Services GmbH, requesting the immediate transfer of the Domain Name. Realtime.at Domain Services GmbH did not react.

On 27 May 2010, Domain Manager Ltd and Realtime.at Domainname Services GmbH, were sent a notice letter, with request to confirm before 31 May 2010 that the redirection of the Domain name to the website www.flug.eu or to any website containing information in respect to commercial goods or services would be ceased, and that the Domain Name would be transferred, upon request by the Complainant's register, in accordance with the .be trade-domain procedure.

According to the Complainant's information (based on the date of the last change recordal in the .be WHOIS records) the Domain Name instead was thereafter transferred to a new Licensee, acting under the name of Lili Karizama, on 28 May 2010.

According to the Complainant, at least since 31 May 2010, the Domain Name redirects to a parked webpage hosted under www.flyryanair.com, and containing a series of hyperlinks promoting products and services that are not related to the Complainant's business.

5. Elements of evidence

Article 10, b) (1) of the Terms and Conditions for Domain Name Registrations under the ".be" domain operated by DNS BE, requires that the Complainant evidences that:

- the 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
- the Licensee has no rights or legitimate interests in the Domain Name; and
- the Domain Name has been registered or is being used in bad faith.

6. Position of the Parties

6.1. Position of the Complainant

The Complainant considers that all conditions provided for in Article 10, b) (1) of the Terms and Conditions for Domain Name Registration under the ".be" domain operated by DNS BE, are fulfilled and requests the transfer of the Domain Name to the Complainant.

6.1.1. The Licensee's Domain Name is identical or confusingly similar to the trade name and the trademarks of the Complainant

The Complainant invokes that it has used the sign "*Ryanair*" as a trade name since 1985. The Complainant underlines that it uses the sign as a uniform indicator of its company and its products and services in all countries where it operates.

According to the Complainant, furthermore the Domain Name is identical to the Complainant's registered Community word trademark "*Ryanair*", without the addition of the .be suffix. The Complainant also invokes that the Domain Name is confusingly similar to its word-and-device trademark which it is using for the offering of its air transport services. According to the Complainant, the most distinctive element of these trademarks consists of "*Ryanair*" and also the Domain Name consists of this most distinctive element. The Complainant considers that in order to assess whether the Domain Name and the trademarks are identical or confusingly similar, the suffix ".be" does not have to be taken into account. The Complainant

considers that the public may erroneously believe that the Domain Name is related to the Licensee and that the Complainant would no longer offer air transport services in Belgium or for the Belgian public.

6.1.2. The Licensee has no rights or legitimate interest in the Domain Name

The Complainant understands that the Licensee acquired the Domain Name from the previous registrant, who knew or should have known that registering the Domain Name would infringe the Complainant's rights. The Complainant never provided a license of use for its trademarks or its trade name to the Licensee or to the previous registrant.

The Licensee did not demonstrate that it has rights or legitimate interests in the Domain Name:

(i) The Licensee did not use the Domain name, prior to any notice of the dispute, in connection with a bona fide offering of goods or services or did not make demonstrable preparations for such use

The Licensee would use the Domain Name for "pay-per-click" advertisements, without authorization, which is not a bona fide offering. The utilisation of the notoriety of the Complainant's trade name or/and trademarks to promote activity on the www.flyryanair.com website cannot constitute a legitimate or bona fide use of the Domain Name.

The Complainant considers a.o. that such redirecting of the Domain Name leads to unfair revenue out of click streams, diverted from the Complainant's home page where internet users inserting the Domain Name in their browsers more than likely seek to end up.

(i) Licensee is not well-known for its activity under the Domain Name

There would be no indication of a business for which the use of the Domain Name by the Licensee is commonly known.

(ii) No legitimate, non-commercial or honest use of the Domain Name

According to the Complainant, the Licensee does not make a legitimate, non-commercial or honest use of the Domain Name.

The Complainant invokes that the website connected to the Domain Name is active and resolving to a landing webpage (previously to www.flug.eu and since 31 May 2010 to www.Flyryanair.com), which is totally unrelated to the Complainant. The Licensee is an unaffiliated, unrelated third party who has no legitimate, conceivable reason to utilise the Complainant's trade name and/or trademarks to offer click through links.

According to the Complainant, the Domain Name is being used to mislead internet users and thus to damage the reputation of the Complainant's established brand. A substantial part of the internet users attempting to reach

the Complainant's home page (www.ryanair.com) by visiting the Domain Name likely intends to purchase an airline ticket. Following the redirection, there would be a threat that some of these sales are lost. Part of the internet users would even be misled into believing that the Complainant no longer services the Belgian market.

6.1.3. The Licensee's Domain Name has been registered or is being used in bad faith

The Complainant considers that the Licensee and the previous registrant very well knew that the registration as well as the use of the Domain Name are an act of illicit cybersquatting.

The Complainant considers that the Domain Name was registered to prevent it from reflecting its own trade name and/or trademarks in a corresponding domain name: the circumstances in which the Domain Name was obtained by the Licensee on the day of release and with intervention of a technical agent, combined with the immediate redirection to a website containing pay-per-click advertisements, would show that the Licensee acted intentionally, even in bad faith.

The Domain Name is intentionally used to attract, for commercial gain, internet users to the Licensee's website or other on-line locations, creating a likelihood of confusion with the Complainant's trademarks or trade name as to the source, sponsorship, affiliation, or endorsement of the Licensee's website or of a product or service on its website.

The Complainant purports that the Licensee benefits from the redirected clickstream since such landing pages generate revenue for every click on the displayed links. This would concern free-riding on the reputation of the Complainant's trade name and trademarks, as internet users typing in the Domain Name expect and intend to be automatically directed to the Complainant's home page www.ryanair.com.

6.2. Position of the Licensee

An excerpt of a search within the DNS BE WHOIS database conducted by the Complainant on 31 May 2010 provides "Lili Karizama" as registrant with email address karizama@ymail.com.

The address mentioned in the WHOIS records is referred to as "34367 &# 350; i&# 351; li 0312 Türkiye & # 8206 TR TR".

The Licensee did not file any reply to the complaint.

7. **Discussion and conclusions**

7.1. **The Domain Name is identical or confusingly similar to a trade name and trademarks in which the Complainant has rights**

The Complainant uses “Ryanair” as a trade name. From the evidence filed by the Complainant it flows that this is the case since the airline was set up in 1985 by the Ryan family.

The Domain Name is similar to the trade name used by the Complainant, so that the first condition of Article 10, b) (1) of the Terms and Conditions for Domain Name Registrations under the “.be” domain operated by DNS BE is fulfilled.

It can be added that the evidence filed by the Complainant shows that its invoked trademarks for classes including air transportation and travel services but also internet related services, were registered long before the registration date of the Domain Name, i.e. 24 May 2010 and a fortiori, before 28 May 2010, the date on which the Licensee became the beneficiary of the transfer.

The Domain Name is also identical to the word trademark and identical or confusingly similar to the word- and device mark registered by the Complainant.

The suffix “.be” can be considered as irrelevant for determining the similarity between the Domain Name and the trade name/trademark(s) (cf. e.g. CEPINA case nr. 44018, JT International Company Netherlands B.V./ Amstel Meer Land B.V.).

7.2. **The Licensee has no right or legitimate interests in the Domain Name**

Pursuant to Article 10, b), (3) of the Terms and Conditions for Domain Name Registration under the “.be” domain, the Licensee’s rights or legitimate interest to the Domain Name can be evidenced by the following circumstances:

- *prior to any notice of the dispute, the licensee 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 licensee (as an individual, business or other organization) has been commonly known by the domain name, even if it has acquired no trademark; or*
- *the licensee 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.*

(i) No elements that show that the Licensee used the Domain Name in connection with a bona fide offering

In the absence of a reply or of any evidence of the existence of rights or legitimate interest as referred to in Article 10, b), (1), (ii) of the Terms and Conditions for Domain Name Registrations under the “.be” domain, the Licensee does not show neither explain that it has any rights in the Domain Name.

The contrary can be deduced from the file as submitted by the Complainant: the circumstances in which the transfer to the Licensee took place, at the moment of release after quarantine, and the re-directing indeed indicate at least some intentional behaviour of the original registrant and of the Licensee.

(ii) The Licensee is not known under the Domain Name as a person, a company or another organisation

The Licensee appears to be an individual whose name is not “Ryanair” or “Ryan” and who has omitted its registrant’s address details from the WHOIS database. The Licensee is not associated or related to the Complainant and is not permitted by the Complainant to use the Complainant’s trade name or trademarks. The Licensee does not show in any way whatsoever that it would be employed or an agent of the Complainant. The Licensee does not show any legitimate interest in the Domain Name. The registration of the Domain Name was unauthorised and unapproved by the Complainant.

The Licensee does not contest that it is not or has never been commonly known as an individual or company by the name “Ryanair” and does not provide any evidence to the contrary.

The only reason for the Licensee to use the name “Ryanair” seems to be the use as a trademark for air transport services by the Complainant in many countries, so that the Licensee can take advantage of its reputation to present hyperlinks to third party products or services.

(iii) No legitimate, non-commercial or honest use of the Domain Name

The Licensee makes a commercial use of the Domain Name to the extent that the landing website page is created to contain pay-per-click links. It is not unlikely that the use of the Domain Name attracted/could attract possible profits for the Licensee because of the reputation of the Complainant, and thus allowed/could allow the Licensee to take advantage thereof. Although no conclusive evidence was submitted in this sense, the Complainant rightfully can ask the question whether the Licensee has subscribed to an affiliate advertisement scheme of a domain name parking website, whereby the Licensee gets compensated for the number of click-throughs by visitors that the Licensee attracts to the website “Flyryanair.com”.

The Licensee can take advantage of the known trade name or trademarks of the Complainant, whereas its own name or contact details do not appear on the redirected “Flyryanair.com” website.

Finally, the Licensee does not invoke other circumstances that could substantiate a right or a legitimate interest in the Domain Name.

From the evidence submitted by the Complainant, it can sufficiently be deduced that the Licensee has no rights or legitimate interests in the Domain Name. Consequently, the condition under Article 10, b), 1, ii) of the Terms and Conditions for Domain Name Registration under the “.be” domain is fulfilled.

7.3. **The Licensee’s Domain Name has been registered or is being used in bad faith**

Article 10, b), 2 of the Terms and Conditions for Domain Name Registrations under the “.be” domain enumerates in a non-exhaustive way a number of circumstances by which the Complainant can demonstrate that the Licensee registered or uses the Domain Name in bad faith.

Bad faith can indeed be evidenced by any means including presumptions and other evidence showing, with a reasonable degree of certainty, the existence thereof (see e.g. CEPANI case nr. 44019, Verfaillie Bauwens BVBA / Stichting Juridisch Eigendom Domeinen).

It flows from the file submitted by the Complainant that the Licensee likely acquired the Domain Name from the previous registrant, who had been put on notice by the Complainant’s counsels.

Given the notoriety of the Complainant’s trade name and trademarks, it is improbable that the Licensee was unaware of the Complainant’s rights. It is unlikely, if not impossible, that the Licensee, and the previous registrant, would independently, without deliberately seeking a business opportunity, have chosen to register and acquire the Domain Name (cf. CEPINA case nr. 44013, Guinness UDV North America Inc/ Mr. O. Noël).

It appears from the file that it is likely that the Licensee is using the Domain Name to obtain a commercial advantage, namely by attracting, for commercial gain, visitors to a landing webpage.

Furthermore by registering the Domain Name, the Licensee (both Ms. Lili Karizama and her predecessor) had to know that the Complainant would be prevented from registering the same, whereas business that would normally go to the Complainant, via ryanair.com, would be directed to “Flyryanair.com”.

At no point the use of the Domain Name by the Licensee, which diverts traffic from internet users who are looking for services from the Complainant, has been authorised by the Complainant.

The specific chronology of circumstances relating to how the Domain Name was captured, on the day of its release after a quarantine period, by the intervention of a technical agent Realtime.at Domain Services GmbH, shows that the Licensee and/or its predecessor were/are well-aware of the various techniques to use the “*first come, first served*” –practice. Combined with the fact that the page redirects to a website containing pay-per-click links, which shows a commercial purpose, it is indeed improbable that the previous registrant, upon receiving a cease and desist notice from the Complainant’s counsels, almost immediately transferred the Domain Name to the Licensee without both parties being well aware of the fact that they were committing an act of domain name squatting.

From the above, it appears to the Third-Party Decider that the Domain Name was registered in bad faith. The Domain Name in addition also appears to be used in bad faith. The condition under Article 10, b), 1, iii) of the Terms and Conditions for Domain Name Registrations under the “.be” domain is fulfilled.

8. Decision

The Third-Party Decider decides, according to Article 10, e) of the Terms and Conditions for Domain Name Registrations under the “.be” domain operated by DNS BE, to order the transfer to the Complainant of the registration of the Domain Name “ryanair.be”.

Brussels, 16 July 2010.

Catherine ERKELENS

The Third-Party Decider