



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

## DECISION OF THE THIRD-PARTY DECIDER

**Tom De Ridder, TDR Media bvba / Friso Haringsma**

**Case no. 44249 : tdr.be**

### 1. The parties

#### 1.1. Complainants:

- Mr Tom DE RIDDER  
Domiciled Langensteenweg 53  
1785 Merchtem ;
- TDR MEDIA bvba  
with registered office at Langensteenweg 53  
1785 Merchtem  
Registered at the CBE under number 0882.420.975.

*Represented by* Mr. Tom DE RIDDER, acting in his capacity as manager.

- #### 1.2. Licensee:
- Mr Friso HARINGSMA  
Domiciled Viesenboslaan 65  
2242 Pulderbos

### 2. Domain name

Domain name: tdr.be  
Registered on: 14 October 2011

hereafter referred to as "the Domain Name".

### 3. Background to the case

On 4 November 2011, Complainants filed a complaint concerning the Domain Name.

On 22 November 2011, Licensee submitted a response.

On 2 December 2011, Cepani appointed third-party decider to settle the dispute.

#### **4. Factual information**

Complainant Tom De Ridder is a DJ and musician being known under “TDR” pseudonym since 1996.

Mr De Ridder conducts business through the Belgian “TDR MEDIA” limited liability company (company incorporated in 2006).

Licensee registered the Domain Name on 14 October 2011.

#### **5. Position of the parties**

##### **5.1. Position of the Complainants**

Complainants argue they’ve been holding the Domain Name since 2003. An administrative mistake prevented them from renewing their license.

The loss of Domain Name is commercially disastrous and causes problems since Complainants use email addresses @tdr.be at several online payments and media distribution services.

Licensee seems having no real activity related to “tdr.be” (lack of legitimate interest) and tried to sell the Domain Name to Complainants for EUR 1,500. The registration of Domain Name by Licensee is therefore purely speculative (bad faith).

##### **5.2. Position of the Licensee**

Licensee explains he wants to set up a webstore called “The Domain Registry” (“TDR” in short) to sell domain names (activities directed to the Belgian market).

Licensee web site is not yet implemented, which is why the Domain Name is linked to a page “online soon”.

Licensee denies any attempt to sell the Domain Name to Complainants and argues he immediately indicated to Complainants his intent to set up an online store.

Licensee also invokes:

- the absence of “TDR” trademark ;

- his regular use of abbreviations for registration on forums or sites ;
- the Domain Name remained inactive for the 40 days period which enabled Complainants to notice their argued mistake ;
- he is dealing almost every day with domain names and he knows very well the rules which cannot apply here since bad faith is not proven ;

## 6. Discussion and findings

Pursuant to Article 15.1 of the *CEPANI rules for domain name dispute resolution*, the Third-party decider shall rule on domain name disputes with due regard for the Policy and the CEPANI rules for domain name dispute resolution.

Pursuant to Article 10b(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, the Complainant must provide evidence of the following:

- *" the licensee's domain name is identical or confusingly similar to a trademark, a tradename, 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 licensee's domain name has been registered or is being used in bad faith."*

### 6.1. Domain Name is identical or similar to Complainants trade name and corporate name

Complainants establish prior rights on "TDR" trade name and personal name:

- Pursuant to Belgian State Official Gazette, Complainant TDR MEDIA has been using "TDR MEDIA" trade name for its activities since at least 10 July 2006 (Appendix to the complaint)
- According to a statement from SABAM (Belgian Collecting Society), Mr De Ridder has been using "TDR" pseudonym since 1996 (Appendix to the complaint)

"TDR" pseudonym is made of Complainant's personal name initials (Tom De Ridder). It is not obvious it could be considered as a "personal name" in the meaning of dns.be general terms and conditions. However, one could refer to some UDRP case law which admits protection for pseudonyms under the UDRP ("Madonna" case, WIPO, D2000-0847).

In the third-party decider's opinion, this issue is not decisive.

Indeed, pursuant to the Belgian law, a trade name is a sign which is used to distinguish activities carried out by a company or a merchant (D. Kaesmacher (dir.), *Les droits intellectuels*, Bruxelles, Larcier, 2007, p. 207, nr. 95).

Complainants have proven they've been using "TDR" sign to distinguish their commercial activities. Complainants therefore (at least) enjoy rights on "TDR" sign as a trade name.

Furthermore, Complainant TDR MEDIA has registered the sign "TDR" within its corporate name (also protected as a trade name).

Domain Name is confusingly similar to "TDR MEDIA" trade name and identical to Complainants trade name "TDR".

First condition is therefore met.

## 6.2. Rights and legitimate interests

Licensee explains having projects to set up an online domain name store under the Domain Name.

The choice of the Domain Name is justified by the fact the planned business would be conducted under "The Domain Registry" (in short "TDR") trade name, for the Belgian market (which justifies the .be registration).

Domain Name is linking to an empty web site ("online soon"). Licensee argues web site platform is not yet ready to be put online, which is why no real online activity exists under the Domain Name.

Licensee explanation does not convince the third-party decider.

Concerning the Domain Name choice, the asserted will to set up an activity of domain name sale and management is not sufficient to constitute a legitimate interest with regard to "tdr" domain name.

Indeed, the third party decider observes "domainregistry.be" domain name is available for registration and would have been more logical in this context. For an average consumer (Licensee declares his activities would have been directed to consumers – B2C), the "tdr" sign is not obvious at all for domain name management services web site.

Furthermore, pursuant to DNS BE rules (article 10 general terms and conditions), serious preparation efforts to set up an activity under the disputed domain name could constitute a legitimate interest. However, are insufficient : vague allegations and/or a web site linking to a page "under construction" (B. Docquir, "Le contentieux des noms de domaine: examen de jurisprudence (1995-2005)", *J.T.*, 2007, p. 66 and quoted references).

Lastly, Licensee assertions with regard to the time required for the setting-up of his domain name store web site seem curious compared with the following Licensee declaration "*On a professional level I deal with domain names almost every day and I'm very much aware of the rules and obligations concerning domain names*" (response to the complaint) and his current exploitation of similar activities through another web site (see 6.3 hereunder).

In these circumstances, combined with the duly established previous use of the Domain Name by Complainants in the framework of their professional activities, third party decider considers there is no credible element likely to prove a Licensee right or legitimate interest on the Domain Name.

Second requirement of article 10 of ".be" registration terms and conditions is therefore met.

### 6.3. Registration or use in bad faith

Complainants argue Licensee tried to sell the Domain Name for EUR 1,500. This element is disputed and Complainants have no evidence thereof. Third party decider cannot take this element into account.

Licensee insists on the following : "*On a professional level I deal with domain names almost every day and I'm very much aware of the rules and obligations concerning domain names. In this case there is no case of bad faith, I have professional plans with this domain.*" (response to the complaint).

To prove his good faith, Licensee shows a copy of the current state of his web site platform (Annex 2 to response). This document seems to be a screenshot from a web site under construction.

However, the IP address mentioned on this document (46.18.33.61) is linking to a server which is also hosting the <http://www.inforbusiness.be/> website (as indicated by a "tracert 46.18.33.61" request) which is exploited by Licensee (as indicated by dns.be whois database). This latter web site is dedicated to IT services and notably domain name registration services. Licensee allegations relating to the time required to set up his planned domain name online store are therefore not credible.

In present case, it seems therefore that Licensee is trying to exploit Complainants error in the renewing of their domain name and that registration of the Domain Name is, in third party decider's opinion, made primarily in the purpose of disrupting Complainants business.

There is no other credible explanation to the registration of a domain name which is not semantically linked to the concerned activities in the average consumer's view.

The setting up of a new online store seems to be alleged solely in the context of an attempt to put the dispute out of the scope of this procedure, which is well known by Licensee.

The combination of these elements establishes that the registration and use of the Domain Name are made in bad faith, in the meaning of DNS BE rules.

Also third condition is therefore met.

## 7. Decision

Consequently, pursuant to Article 10(e) of the *Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE*, the Third-party decider hereby rules that the domain name registration for the "**tdr.be**" domain name is to be transferred to the Complainants.

Namur, 21/12/2011.

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Alexandre Cruquenaire,  
The Third-party decider