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BELGIAN CENTER FOR ARBITRATION AND MEDIATION

## **DECISION OF THE THIRD-PARTY DECIDER**

**Andrew Reynolds / On Demand Systems**

**Dispute N° 44164 : cash-on-demand.be**

### **1. Parties**

- 1.1. Complainant: Andrew Reynolds;  
Enterprise House  
10-12 Stanhope Gate  
Stanhope Road  
Camberly  
GU15 3DW  
United Kingdom

*Represented by:*

Stevens & Bolton LLP  
having their office at The Billings, Walnut Tree Close, Guildford,  
Surrey, GU1 4YD United Kingdom

- 1.2. Domain name holder:

On Demand Systems  
34 High Street  
Polesworth  
Tamworth  
West Midlands  
B78 1DU  
United Kingdom

### **2. Domain Name**

Domain Name: cash-on-demand.be  
registered on March 1<sup>st</sup>, 2009

Hereafter referred to as « domain name »

### **3. History of the procedure**

The Secretariat of CEPINA received a complaint, dated May 6, 2009, regarding the domain

name.

The third party decider was appointed by the Appointments committee of CEPINA on June 5, 2009, following submission of a Statement of Independence by the third party decider.

The deliberations were closed on June 12th, 2009. No response from the domain name holder has been received within the given deadline.

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

#### **4. Facts**

According to the Complaint, Complainant is one of the UK's leading home business experts, who shares his business techniques with others through the so-called "Cash On Demand" home study course, DVDs and CDs.

Complainant has proven to be the holder of the following trademarks:

- CASH ON DEMAND word mark, registered with the UK Intellectual Property Office, with registration number 2439427
- CASH ON DEMAND word mark, registered with the Office for Harmonization in the Internal Market under number 6082151; and
- Application for a registered trademark CASH ON DEMAND with the United States Patent and Trademark Office, with serial number 77227818.

According to the evidence provided to CEPINA, Domain name holder has offered under the domain name various copies of products which were allegedly counterfeits / pirated copies of Complainant's products. Domain name holder marketed these products via its web site and by email.

According to the WHOIS information provided by the .BE registry, DNS.be, Domain name holder has registered the domain name on March 1<sup>st</sup>, 2009.

Prior to initiating these proceedings, Complainant made various attempts to contact the Domain name holder in order to request the latter to cease and desist the use of the domain name, but Domain name holder refused to hand over the domain name. Therefore, Complainant submitted a Complaint in accordance with the Rules.

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

##### **5.1. Position of the Complainant**

The Complainant contends that:

- the Domain name is identical or confusingly similar to a sign for which Complainant enjoys trademark protection;
- the Domain name holder has no rights or legitimate interests in the domain name; and
- the domain name has been registered or used in bad faith.

The Complainant therefore requests that the domain name be transferred to the Complainant.

##### **5.2. Position of the Domain name holder**

The Secretariat of CEPINA did not receive a response from the Domain name holder.

## 6. Discussion and conclusions

According to article 15.1 of the Rules, the Third-Party Decider shall decide on the Complaint in accordance with the DNS.BE Policy and these Rules.

According to article 10,b,1 of the terms and conditions of Domain name Registration under the « .BE » for domain operated by DNS.BE., the complainant has to prove that:

- the Domain name holder'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 Domain name holder has no rights or legitimate interests in the domain name; and
- the Domain name holder's domain name has been registered or is being used in bad faith.

### 6.1. Is identical or confusingly similar to

According to the evidence provided in the Complaint, the Complainant is the holder of various registered trademarks, and also claims it has acquired substantial goodwill and reputation in the European Community and elsewhere in the CASH ON DEMAND trademark.

Complainant's trademarks are therefore considered to be identical, at least confusingly similar to the domain name cash-on-demand.be.

### 6.2. Right and legitimate interest

The correspondence between the parties show no evidence whatsoever that the Domain name holder claimed any rights or legitimate interests in the domain name, apart from the fact that it was available at the time of registration.

According to the allegations made in the complaint, at least some of which have been substantiated by evidence, it does not appear that the Domain name holder has made any bona fide or legitimate, (non)commercial, fair use of the domain name.

No proof has been given that prior to any notice to the Domain name holder of the dispute the latter used or made demonstrable preparations to use the domain name or a name corresponding thereto in connection with any bona fide offering of goods or services.

As is shown by the evidence produced, the Domain name holder did clearly not engage in conduct that qualifies as "legitimate and non-commercial or fair use of the domain name, without intent for commercial gain", and was misleadingly diverting consumers.

In particular, the fact that the Domain name holder agreed to *"de-tag the domain name cash-on-demand.be within 7 days from any server and offer this domain name up for sale on a selective domain name registration site"* shows that the Domain name holder not only gives the impression that it has no rights or legitimate interests in the domain name, it also shows clearly the bad faith intentions and conduct of the latter, as will be discussed below.

The third party decider also noted that no response from the domain name holder was received within the deadline of June 12, 2009.

On the basis of the above, the third party decider is of the opinion that the Domain name holder has not given proof of having any right or legitimate interests in the domain name concerned.

### 6.3. Registered in bad faith

The Complainant submits that the domain name was registered and used in bad faith.

On the basis of the statements made by the Complainant and the evidence produced, it is obvious that the domain name was not only registered, but also used in bad faith, as the domain name was used to misleadingly divert internet users to the web site of the Domain name holder.

We therefore believe that Domain name holder has indeed used the domain name intentionally to attract, for commercial gain, internet users to Domain name holder's web site(s) by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Domain name holder's web site. Domain name holder's bad faith is furthermore proven by its intention to offer the domain name up for sale on a selective domain name registration site, instead of outright transferring the domain name to the Complainant.

We are therefore of the opinion that also the third requirement has been complied with.

## **7. Decision**

The third-party decider decides, according to article 10, e of the terms and conditions of domain name registration under the « .BE » for domain operated by DNS.BE, to transfer to the complainant the registration of the domain name cash-on-demand.be.

Antwerpen, June 26, 2009.

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The third-party decider  
Bart Lieben

(Signed)