

**DECISION OF THE THIRD-PARTY DECIDER**

**AXA SA / Ms. Michelle COMPRES**

**Case n° 44461: axabankplc.be**

**I. Parties**

Complainant: AXA S.A., Avenue Matignon 25, 75008 Paris, France,

Hereafter "*Complainant*",

Represented by Mr. Patrice de Candé, attorney at law, Avenue de Messine 5, 75008 Paris, France,

Licensee/registrant: Mrs. Michelle Compres, 509w 183st Apt E, 10033 New York, United States of America,

Hereafter "*Licensee*";

**II. Domain name**

The disputed domain name is: **axabankplc.be** (hereafter "*the Domain Name*"), registered on 3 July 2018.

**III. The procedure**

Complainant filed its complaint on 17 October 2018. Licensee did not file a rebuttal.

Complainant offered the possibility to Licensee to voluntarily transfer the Domain Name within 7 (seven) calendar days as from the filing of the complaint. The file does not show any reaction from Licensee to such offer.

The Third-Party Decider was appointed on 26 November 2018. The deliberations were closed on 4 December 2018.

**IV. Facts**

Complainant invokes that it uses the trade name "AXA" for its insurance activities since 1985. Under the well-known "AXA" trade name, it has established a wide range and a long history of activities in banking, insurance and asset management, and this at international level.

It owns different trademarks containing the words 'AXA (bank)'. The related trademarks, as filed by Complainant in the present matter, are:

- Community trademark **AXA BANK** n° 008 535 361, filed on 8 September 2009 in classes 35 and 36;
- International trademark **AXA** n° 490 030, filed on 5 December 1984 in classes 35, 36 and 39;
- Community trademark **AXA** + design n° 373 894, filed on 28 August 1996 in classes 35 and 36;
- Community trademark **AXA** n° 008 772 766, filed on 21 December 2009 in classes 35 and 36;
- Benelux trademark **AXA** n° 0436317, filed on 20 November 1987 in classes 35, 36, 41 and 42.

The Domain Name is used by Licensee on a pay-per-click website. Complainant invokes that this website contains links to other service providers, even to competitors of Complainant. Complainant files screenshots of the concerned website.

Licensee has not responded to (3) three notices sent by Complainant in August and September 2018.

#### V. Claim

Complainant requests the transfer of the Domain Name.

#### VI. As to the facts and the merits

##### 1. Elements of evidence

According to Article 10, b, 1) of the terms and conditions for .be Domain Name registrations, Complainant must assert and evidence that:

- *The Domain Name is identical or confusingly similar to a trademark, a trade name, a registered name or a company name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which Complainant has rights; and*
- *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.*

##### 2. Regarding the first requirement

*The Domain Name is identical or confusingly similar to a trademark, a trade name, a registered name or a company name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which Complainant has rights.*

**a) Complainant's position**

Complainant considers that the Domain Name is '*confusingly similar*' to its trademarks. The "AXA" trademark, and at the same time the trade name and company name of Complainant are reproduced in the Domain Name.

Complainant considers that since "AXA" in itself has no particular meaning, it is a highly distinctive trademark and a highly distinctive company name. In addition, it would be 'difficult, if not impossible,' to adequately distinguish the mark from the Domain Name.

It is mentioned by Complainant that the use of the term "*bank*", in the Domain Name, refers to Complainant's financial activities, which would increase the likelihood of confusion. Complainant considers that the letters "*plc*" are 'purely descriptive'.

**b) Licensee's position**

Licensee did not file any response.

**c) Assessment**

The Domain Name consists of three parts. The first part ("*axa*"), is identical to trademarks registered by Complainant. The combination of these three letters does not have an individualized meaning, and has a distinctive character. The word "*axa*" is generally associated with Complainant and its activities.

Adding the word "*bank*" increases the probability that the public would link the Domain Name to Complainant; Complainant is generally known for activities covered under or linked to banking and the word "*bank*".

In the context of banking, and business in general, the letters "*plc*" refer to a type of company and consequently adding these letters in the Domain Name does not exclude the similarity with Complainant's trademarks and trade name. The letters are, in relation to the Domain Name, to be considered descriptive. They do not provide the Domain Name a distinctive nature so that they are not relevant for establishing the similarity.

It is plausible that internet users consider the website that corresponds to the Domain Name to be an official website of Complainant, or to be related to Complainant.

**It is to be concluded that the Domain Name is confusingly similar to Complainant's trademarks, trade name and company name.**

**3. Regarding the second requirement**

*Licensee has no rights or legitimate interests in the Domain Name.*

**a) Complainant's position**

Complainant declares that it has never given any permission to Licensee to use its trademarks or company name. '*There is no relationship whatsoever between the parties involved.*'

Complainant claims the absence of evidence demonstrating: the use by Licensee of the Domain Name in connection to a *bona fide* offering of goods or services, Licensee doing business under the Domain Name and / or Licensee being commonly known under the Domain Name.

Licensee is, according to Complainant, using the Domain Name “*in order to unfairly capitalize upon or otherwise take advantage of the trademarks belonging to (Complainant)*”.

**b) Licensee’s position**

Licensee did not file a response.

**c) Assessment**

There is no evidence whatsoever that the Domain Name would be used by Licensee in connection to a *bona fide* offering of goods or services, or that Licensee would be commonly known under the Domain Name.

Licensee failed to respond to the complaint. No elements that would evidence Licensee’s rights or legitimate interests on the Domain Name were brought forward.

With the use of the Domain Name, Licensee may take advantage of Complainant’s reputation. The confusing similarity to Complainant’s trademark(s), trade name and company name may mislead internet users in their search for services offered by Complainant. The Domain Name leads internet users to a parking page, that is proposing links to services, including banking services, and Domain Name registration websites. These links as shown in the screenshots filed by Complainant, also refer to competitors of Complainant. Using Complainant’s reputation in order to obtain *pay-per-click* remuneration, or leading internet users to Complainant’s competitors and other service providers, cannot be qualified as a legitimate interest.

In absence of a shown *bona fide* offering of goods or services or other legitimate or fair use of the Domain Name by Licensee, and Licensee not being commonly known under the Domain Name, it must be concluded that Licensee makes use of the Domain Name to capitalize on Complainant’s trademarks, trade name and company name.

**Licensee has no right or legitimate interest in the Domain Name.**

**4. Regarding the third requirement**

*The Domain Name has been registered or is being used in bad faith.*

**a) Complainant’s position**

According to Complainant, the Domain Name was registered in bad faith, and is used in bad faith: *‘there is no valid reason why (Licensee) would choose the Domain Name other than to take advantage of the reputation and goodwill established in the AXA trademarks.’*

Complainant states that no answer has been given to the notices that it has sent to Licensee, which would confirm the bad faith.

**b) Licensee’s position**

Licensee did not file a response.

### c) Assessment

The Domain Name leads internet users to a parking page that proposes links to other services. These links also refer to competitors of Complainant. Licensee aims at earning money on a *pay per click* basis, at obtaining revenue from visitors who click on the links.

The Domain Name therefore is intentionally used to attract, for commercial gain, internet users to Licensee's website or other on-line location(s), by creating confusion with Complainant's trademark(s), trade name and company name. Using Complainant's trademarks, trade name and company name in a Domain Name, for a website containing links that are re-directing the users to a.o. Complainant's competitors, is to be considered a use in bad faith. Taking advantage of Complainant's trademark(s), trade name and company name for obtaining click-through revenues in the circumstances as described by Complainant also may be considered as a use in bad faith.

The absence of an answer to Complainant's 3 (three) notices made an amicable settlement impossible; the lack of response in the present matter also may be considered as an indication of a use in bad faith from Licensee's part.

**The evidence submitted by Complainant sufficiently shows that the Domain Name is being used in bad faith by Licensee.**

## VII. Decision

**Based upon the circumstances as explained in the complaint and based upon the evidence supplied by Complainant, the Third-Party Decider holds that the three cumulative conditions of Article 10 b) 1. of the DNS terms and conditions for .be Domain Name registrations, are met.**

**Therefore, the Third-Party Decider orders that, pursuant to Article 10 e) of the DNS terms and conditions for .be Domain Name registrations, the Domain Name be transferred from Licensee to Complainant.**

Brussels, 13 December 2018.

Cathérine ERKELENS  
Third-Party Decider