

DECISION OF THE THIRD-PARTY DECIDER

Silvertours GmbH / Mr. Malcolm Johnson

Case no. 44453: camperdays.be

1. The Parties

1.1. Complainant: SILVERTOURS GmbH
Konrad-Goldmann-Strasse 5d
79100 Freiburg
Germany

Represented by:

Jens Meyer
Ingenit GmbH&Co. KG
Emil-Figge-Strasse 76
44227 Dortmund
Germany

Hereafter referred to as “the Complainant”

1.2. Domain name holder:

Mr. Malcolm JOHNSON
Montalvo Avenue 18,
00000 Belmopan, Belize

Hereafter referred to as “the Respondent”

2. Domain name

Domain name: “**camperdays.be**”
Registered on: 11 January 2018

Hereafter referred to as “the Domain Name”.

3. Procedure

On 17 July 2018, the Complainant filed a Complaint concerning the Domain Name with Cepani, the Belgian Centre for Arbitration and Mediation, in accordance with the Cepani Rules for Domain Name Dispute Resolution (hereafter referred to as the “Rules”) and the Dispute

Resolution Policy of DNS, incorporated in its General terms and conditions for .be domain name registration (hereafter referred to as the “Policy”).

On 16 August 2018, Cepani appointed the undersigned, Mrs Veerle Raus, as a Third Party Decider (hereafter referred to as the “Third-Party Decider”) to settle the dispute involving the Domain Name.

The deliberations were closed on 24 August 2018.

The Respondent did not file a response to the Complaint.

In accordance with article 6.4. of the Rules this decision is based solely on the Complaint including the Complainant’s exhibits.

4. Factual Background information

The Complainant is the operator of the booking portal CamperDays and has several CamperDays trademarks.

The Domain Name was initially registered in the name of Yury Korkuts, Belarus (yury666@gmail.com) and was offered for sale on SEDO for 8.500 EUR, together with various other “camperdays” domains.

On 18 April 2018 the Complainant’s attorney-at-law sent an injunction letter to Mr. Korkuts regarding the illicit registration of the Domain Name and requested a transfer of the Domain Name by 4 May 2018. Mr. Korkuts was informed that further action would be taken if the Domain Name was not transferred by that date.

The Complainant received no answer to this letter, but found subsequently that the Domain Name was removed from the SEDO website and was transferred to the current holder, i.e. the Respondent.

5. Position of the parties

5.1. Position of the Complainant

The Complainant requests the transfer of the Domain Name because the three cumulative conditions for such transfer are met: (i) the Complainant has various prior trade-mark rights relating to “Camperdays”, (ii) the Respondent has no rights or legitimate interests in the Domain Name and (iii) the Domain Name was registered in bad faith as follows from the historical background information given above. The Domain Name was registered for the purpose of selling it and was subsequently transferred to the current holder only to obfuscate the legal complaint.

5.2. Position of the Domain name holder

The Domain name holder did not file any response or observations.

6. Discussion and findings

According to Article 16.1 of the Rules, 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.

According to Article 10 b) 1) of the Policy, the Complainant must provide evidence of the following:

- *"the Domain name holder 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. The Domain Name is identical or confusingly similar to trademarks in which the Complainant has rights

The Complainant submits proof of its earlier trademark registrations, in particular

- EU Trademark Registration number 014320675 filed on 1 July 2015 for various goods in classes 35,36,38,39,42 and 43
- EU Trademark Registration number 014320691 filed on 1 July 2015 for various goods in classes 35,36,38,39,42 and 43

The aforementioned trademark registrations concern the word 'Camperdays'.

The relevant Domain Name "camperdays.be" is thus identical to the prior trademark registrations, so that the first condition stated in article 10 b) 1) i of the Policy is fulfilled.

6.2. The Domain name holder has no right or legitimate interests in the Domain Name

According to article 10 b) 3 of the Policy, the domain name holder's rights or legitimate interest to the Domain Name can be proved by certain circumstances. Article 10 b) 3 of the Policy gives a non-exhaustive list of such circumstances:

- *"prior to any notice of the dispute, the registrant 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 registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if he has acquired no trademark; or*

- *the registrant is making a legitimate and non-commercial or fair use of the domain name, without intent to misleadingly divert consumers, for commercial gain 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.”*

The Respondent did not demonstrate his rights or legitimate interests to the Domain Name by any of the elements mentioned above. The Respondent has indeed not filed any Response. He has therefore *a fortiori* not provided any explanation or evidence, which may establish its rights and/or legitimate interests in the Domain Name, so that Complainant’s contentions in this respect are not contradicted.

The Third Party Decider therefore concludes that the Respondent has no right or legitimate interests in the Domain Name.

Consequently, the second condition of article 10 b) 1) ii of the Policy is also fulfilled.

6.3. The Domain name holder’s Domain Name has been registered or is being used in bad faith

Bad faith must be reasonably proven and may be proved by any means, including presumptions and circumstances that indicate with a reasonable degree of certainty the existence of bad faith (see e.g. CEPANI cases No. 44171 and 44441).

According to article 10 b) 2) of the Policy, the evidence of such in bad faith registration or use of a domain name can *inter alia* be demonstrated by the following circumstances:

- *circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity, or to a competitor of the complainant, for a price that exceeds the costs that the registrant can show are directly related to the acquisition of the domain name; or*
- *the domain name was registered in order to prevent the owner of 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 a name of a geographical entity to use the domain name and that the registrant has engaged in a pattern of such conduct*

In the absence of evidence to the contrary from the Respondent, the Third Party Decider accepts the arguments and proof submitted by the Complainant with respect to the bad faith condition.

It appears that the Domain Name was registered initially in order to sell it for a price that exceeds the costs that are directly related to the acquisition of the Domain Name. The initial domain name holder Mr. Yury Korkuts has engaged in a pattern of such conduct. After receipt of the injunction letter from Complainant’s attorney-at-law, the Domain Name was removed from the SEDO website and was transferred to the current holder, i.e. the Respondent. This was done in order to obfuscate the legal complaint.

No (other) explanation is given by the Respondent.

The non-use of the Domain Name by the Respondent furthermore supports the evidence of the bad faith use. Indeed, using in bad faith is not limited to positive action, but also inaction is within the concept (see e.g. WIPO case No. D2000-0140).

The Third Party decider finds that the above elements constitute sufficient evidence of bad faith. As a consequence, also the condition stated in Article 10 b) 1 iii of the Policy is fulfilled.

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 " **camperdays.be** " domain name is to be transferred to the Complainant.

Brussels, 5 September 2018.



Veerle Raus
The Third-party Decider