



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

Decision of the Third-Party decider

1) The Parties

Complainant is Begrafinissen Planckaert BVBA, listed in the Belgian Crossroads Bank for Enterprises under number 0886.516.157, Roodhuisweg 70, 8510 Kortrijk-Bellegem, Belgium, represented by Mr. Randy Couckuit, Beekweg 5, 8510 Rollegem (randy@begrafinissenplanckaert.be);

Respondent is Messiaen Oostrozebeke BVBA, listed in the Belgian Crossroads Bank for Enterprises under number 0806.368.225, Stationsstraat 156, 8780 Oostrozebeke, Belgium.

2) Domain Name

The domain name at issue is <www.planckaert.be>, registered on 8 August 2013, hereafter referred to as the “Disputed Domain Name”.

3) Procedural History

The Complainant filed its complaint on 5 July 2018.

The Respondent did not submit an administratively compliant response.

On 3 August 2018, Bart Van Besien was appointed as Third-Party Decider (hereafter also the “Panel”) to settle the dispute with regard to the Disputed Domain Name.

The deliberations were closed on 13 August 2018.

4) Elements of Fact

The Complainant is a Belgian undertaker (funeral director), located in Bellegem (Kortrijk). The Respondent is also a Belgian undertaker, located in Oostrozebeke. Both companies are located in the province of West-Flanders, relatively close to each other (approximately 30 kilometers or 28 minutes by car).

The Respondent is the registered owner of the Disputed Domain Name <www.planckaert.be>.

The Complainant alleges that it has been conducting its business under the name “Planckaert” for three generations.

The name “Planckaert” is part of the Complainant’s company name (“Begrafinissen Planckaert”).

From the articles of association of the Complainant (submitted as evidence by the Complainant), and from the Complainant’s registration in the Crossroad Bank for Enterprises, it follows that “Planckaert” is the surname of the Complainant’s manager.

5) Parties Contentions

a) Complainant

In summary, the Complainant contends that:

- The Disputed Domain Name is the most important characteristic part of the “commercial name” “Begrafenissen Planckaert BVBA”. The Complainant is a family business, which has been known for three generations as “Planckaert”. The Disputed Domain Name is identical to the surname of the Complainant’s manager (“Planckaert”).
- The Respondent has no legitimate interest in or relationship with the Disputed Domain Name.
- The Disputed Domain Name was registered in bad faith, more specifically with the aim of preventing the Complainant to use the Disputed Domain Name. The Complainant refers to an email conversation between a representative of the Complainant (Mr. Randy Couckuit) and a manager of the Respondent (Mr. Cederic Missiaen). From this email correspondence, the Complainant concludes that the Respondent registered the Disputed Domain Name to disturb the Complainant’s commercial activities. The Respondent registered the Disputed Domain Name out of dissatisfaction by the fact that the Complainant, a direct competitor, had participated in a public tender.

b) Respondent

The Respondent did not submit a response.

6) Discussions and Findings

a) Analysis of the Complaint

Article 16.1 of the Cepani Rules for Domain Name Dispute Resolution (hereafter the “Rules”) instructs the Third-Party Deciders as to the principles the Third-Party Decider is to use in determining the dispute: *“The Third-Party Decider shall decide following the Parties views and in accordance with the dispute resolution policy of DNS.be, the registration agreement and following the provisions of the present Rules.”*

By virtue of Article 10 of the Terms and Conditions for .be Domain Name Registrations (hereafter the “DNS Belgium Dispute Resolution Policy” or the “Policy”), more specifically Article 10.b.1 of the Policy, the Complainant must prove each of the following:

- “the domain name holder's 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 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.”

i. Identity or confusing similarity

The Disputed Domain Name consists of the most distinctive element of the Complainant’s corporation name, i.e. the word “Planckaert”. The corporation name of the Complainant is “Begrafenissen Planckaert”, whereby the word “begravenissen” means “funerals” in Dutch and simply describes the type of business that the Complainant is conducting (i.e., funeral services or undertaking services).

The “.be” suffix may be disregarded when it comes to considering whether a “.be” domain name is confusingly similar to a sign in which the Complainant has rights.

The Panel finds that the Disputed Domain Name is confusingly similar to the corporation name of the Complainant within the meaning of article 10.b.1 (i) of the Policy.

ii. Rights or legitimate interests

As regards article 10.b.1 (ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative.

The Panel notes the following:

- The Complainant states that the Respondent is not related in any way to the Complainant and is in fact a competitor of the Complainant, based in the same geographical area. This is not refuted by the Respondent;
- The Disputed Domain Name is currently inactive. Although the Disputed Domain Name was first registered on 8 August 2013, it follows from the email correspondence between the Parties (submitted as evidence by the Complainant) that the Respondent registered the Disputed Domain Name at a relatively recent date;
- Furthermore, in an email of the Respondent of 16 June 2018 (submitted as evidence by the Complainant), the Respondent states that he *“let himself go”* when registering the Disputed Domain Name because *“some friends and relatives”* of the Respondent might be interested in using the Disputed Domain Name.
- There is no evidence or indication that the Respondent is commonly known by the Disputed Domain Name or a name corresponding to it;
- There is no evidence or indication that the Respondent has used the Disputed Domain Name or a name corresponding to it, prior to being notified of the dispute, in connection with a bona fide offering of goods or services. Also, there is no evidence or indication of any preparations for such bona fide use;
- There is no evidence or indication that the Respondent has made a legitimate and non-commercial or fair use of the Disputed Domain Name, without intent to misleadingly divert consumers for commercial gain or to tarnish the trade name or corporation name of the Complainant;

The Panel does not know the full details of the commercial discussions or disputes between the Parties. However, from the evidence submitted by the Complainant, the Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of article 10.b.1 (ii) of the Policy.

iii. Registration or use in bad faith

From the email correspondence submitted by the Complainant, it follows that the Complainant contacted the Respondent on 16 June 2018, asking to transfer the Disputed Domain Name to the Complainant.

Later that evening, the Respondent answered stating, among others, that he was *“not amused”* when he saw the Complainant’s subpage about Zwevegem (a Belgian municipality which is also located in the province of West-Flanders). In this email, the Respondent also referred to the domain name <uitvaartartikelen.be> (the website linked to this domain name seems to be operated by the Complainant). The Respondent concluded: *“Regret always comes too late. Let us say that you have easier competitors than me. In normal circumstances, I do not disturb people of my age who invest heavily.”*

The e-mail correspondence submitted by the Complainant indicates that the Respondent has registered the Disputed Domain Name for no other reason than to disrupt the Complainant’s business activities and to prevent the Complainant from using (the dominant part of) his corporate or commercial name “Planckaert” in a domain name.

From all the factors mentioned above - in particular, the fact that the Respondent is a direct competitor of the Complainant and was fully aware that the Disputed Domain Name incorporates the dominant element of the corporation name of the Complainant and of the manager of the Complainant, and the fact that the Respondent admitted in an email that he registered the Disputed Domain Name out of dissatisfaction with some commercial actions taken by the Complainant - the Panel finds that the Respondent has registered the Disputed Domain Name in bad faith, within the meaning of article 10.b.1 (iii) of the Policy.

7) Decision

Pursuant to Article 10, e, of the Policy, the Third-Party Decider accepts the request of Complainant. The Disputed Domain Name <www.planckaert.be> is to be transferred to the Complainant.

Mechelen, 26 August 2018



Bart Van Besien
The Third-party decider