



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Auto Satellites S.A. / D-Max Ltd

Case no. 44209 : socco.be

1. The parties

- 1.1. Complainant: Auto Satellites S.A.
with registered office at Rue Gustave Boël 23/A
7100 La Louvière;
listed in the BCE under number 416.768.220.

Represented by:

Mr. Jean-Claude Gathon, Chairman of the Board of Directors.

- 1.2. Licensee: D-Max Ltd, PO Box 598
Fort Charles
N/A Charlestown
Saint Kitts and Nevis

2. Domain name

Domain name: socco.be
Registered on: 8 July 2009

hereafter referred to as "the Domain Name".

3. Background to the case

On 10 August 2010, Complainant filed a complaint concerning the Domain Name.

On 11 August 2010, Cepani Secretariat asked for a translation of said complaint in the language of the domain name registration contract (EN).

On 13 July 2011, the translated complaint form was re-submitted, together with a special proxy.

Complaint was communicated to Licensee who did not submit any response.

On 13th of September 2011, Cepani appointed third-party decider to settle the dispute.

4. Factual information

Complainant and its sister company Autoland Distribution SA have been together operating a business of buying, refurbishing and selling used motor vehicles under the trade name "Soco" for over 30 years.

Garages bearing the tradename "Soco" are located in several Belgian cities.

Complainant has been active on the web for more than 10 years (soco.be domain name registered on 3 December 1998).

In July 2009, D-Max Ltd company registered the Domain Name.

Since Licensee did not submit any answer, third-party decider tried to find some explanation on socco.be website and noted that it exclusively contained sponsored links to used cars resellers (Complainant competitors).

5. Position of the parties

5.1. Position of the Complainant

Domain Name is confusingly similar to "soco" tradename and "soco.be" domain name both used by Complainant.

Among other things, some people who hear an advertising for Soco on the radio may spontaneously think that "Soco" is spelled with two C. It can also be the case when we tell people over the phone to visit Complainant website without specifying the correct spelling.

Google Analytics shows lots of internet users are visiting Complainant website after a Google search based on a "socco" (with two "c"). It confirms a risk of confusion between both signs.

Licensee seems not to have any activity related to "socco" sign (no proper products or services provided through this sign). No legitimate interest is therefore proven.

The fact that Licensee website contains sponsored links to Belgian companies from automobile industry indicates a willingness to make profit from the confusion with well-known tradename of Complainant.

5.2. Position of the Licensee

Licensee did not submit any response to the complaint.

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 Complainant trade name

Complainant established prior rights on "soco" trade name:

- Pursuant to the BCE (Banque Carrefour des Entreprises) database (since 1 April 2006), socio trade name is being used by Complainant for several of its garages (Appendixes 2 and 3 to the complaint form)
- socio.be domain name was registered on behalf of Complainant more than 10 years before the Domain Name (3 December 1998, pursuant to dns.be whois database).

Domain Name is confusingly similar to "Soco" trade name.

Adding a "c" to Complainant's trade name is not sufficient to enable average consumer to make a clear distinction between both signs.

On the contrary, as indicated by Google Analytics report (Appendix 7 to the complaint form), lots of internet users make first a Google search on the "socco" term while looking for Complainant web site.

This highlights a spelling mistake risk.

Domain Name is therefore confusingly similar to Complainant trade name (see B. Docquir, "Le contentieux des noms de domaine", J.T., 2007, p. 61 and ff., spec. nr. 13, about typo-squatting).

First condition is met.

6.2. Rights and legitimate interests

Since Licensee did not submit any response, the content of its web site is the main element to consider on this point.

However, the content of the "socco.be" web site did not convince third-party decider on the existence of a Licensee legitimate interest on the Domain Name.

"Socco.be" content is indeed exclusively made of sponsored links to used cars resellers (mainly in Belgium). In third-party decider's view, it is difficult to consider hosting of sponsored links to Complainant competitors as an element justifying a legitimate interest on the Domain name.

D-Max Ltd does not seem to have any "real" activities which could justify the choice of the Domain Name.

Third-party decider therefore considers Licensee use of Domain Name did not show any legitimate interest thereon.

In the absence of response, no contrary evidence is submitted to balance this appreciation.

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

6.3. Registration or use in bad faith

Sponsored links system implies that links hoster receives money each time a user click thereon.

It is therefore obvious that Licensee registration and use of Domain name is made to attract, for commercial gain, internet users to Licensee web site, by creating a likelihood of confusion with Complainant trade name.

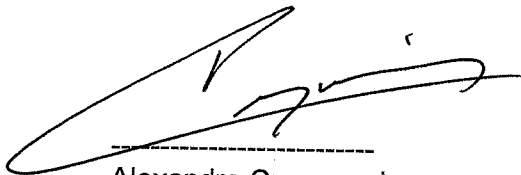
Furthermore, since Licensee behaviour can reasonably be qualified as "typo-squatting", it has to be considered as bad faith registration and use of the Domain name (see CEPANI, cases nr. 44105, nr. 44112, nr. 44124).

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 "**socco.be**" domain name is to be transferred to the complainant.

Namur, 29/09/2011.

A handwritten signature in black ink, consisting of a large, sweeping initial 'A' followed by several fluid, connected letters. The signature is written over a horizontal dashed line.

Alexandre Cruquenaire,
The Third-party decider