

BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

## DECISION OF THE THIRD-PARTY DECIDER

**B.V. Albert Heijn/ High Tech Investments – Domain Admin**

**Case n° 44224: albertheyn.be**

### 1. Parties

- 1.1. **Complainant:** B.V. Albert Heijn  
with registered office at 1506 MA Zaandam, Nederland,  
Provincialeweg 11;

*Represented by:*

Nederlandsch Octrooibureau (De Heer Friso Onderdelinden),  
with office at 2517 JS Den Haag, Nederland, J.W. Frisolaan  
13.

Hereafter referred to as "the Complainant"

- 1.2. **Licensee:** High Tech Investments – Domain Admin  
with registered office at Providence Mahe, Seychelles, Suite 1  
– Mec Complex, Avenue D'Aroha 1;

*Not represented*

Hereafter referred to as "the Respondent"

### 2. Domain name

Domain name: "albertheyn.be"  
Registered on: 24 December 2009

Hereafter referred to as the "Domain Name".

### **3. History of the Procedure**

On 11 January 2011, 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 and the Dispute Policy of DNS, incorporated in its general conditions.

The Respondent did not file a response to the Complaint.

On 16 February 2011, Cepani informed the Complainant and the Respondent that the undersigned, Mrs Veerle Raus, with offices at Terhulpesteenweg 178 – 1170 Brussels – Belgium, was appointed as a Third Party Decider to settle the dispute involving the Domain Name.

The undersigned has filed the Statement of Independence with the Secretariat of Cepani.

The deliberations were closed on 23 February 2011.

### **4. Factual information**

The Complainant is the largest supermarket chain in The Netherlands with over 830 shops.

In this regard, "Albert Heijn" is a well known trademark in The Netherlands, and even in Belgium.

The Complainant has trademark rights regarding the sign "Albert Heijn" dating back to 1971 for the entire Benelux and dating back to 1963 with respect to Belgium.

Moreover, Albert Heijn is the Complainant's trade name, social name and corporation name.

The representative of the Complainant tried to contact the Domain Name owner without any success, so that it filed the current complaint on 11 January 2011.

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

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

The Complainant requests the Third Party decider to order the transfer of the Domain Name since all conditions provided for in the Dispute Resolution Policy, contained in article 10 of the General Terms and Conditions for Domain Name Registration under the ".be" domain operated by dns.be (hereinafter the "Policy") are fulfilled.

Summarized, the Complainant argues the following:

*1. The Respondent's Domain Name is identical or highly similar to the Complainant's registered trademarks.*

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

- a Benelux Trademark Registration number 0019955 of 13 March 1971 for various goods in classes 1, 2, 3, 4, 5, 8, 16, 21, 29, 30, 31, 32, 33 and 34 and
- a Benelux Trademark Registration number 0413647 of 25 October 1985 for various goods in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34.

The aforementioned trademark registrations concern the word mark 'Albert Heijn'.

The relevant Domain Name "www.albertheyn.be" is nearly identical to the prior trademark registrations. Orally, the signs are completely similar and visually, the minor difference is almost undetectable.

Moreover, the Complainant pretends that in the past, the name "Albert Heijn" was also used as "Albert Heyn".

*2. The Respondent has no rights or legitimate interest in the Domain Name.*

According to the Complainant, the Respondent is not known as Albert Heyn, nor has it any rights to the name.

The Domain Name was registered by someone using a gmail address: [hightechinvestments@gmail.com](mailto:hightechinvestments@gmail.com).

The website was never used.

*3. The Respondent's Domain Name has been registered or is being used in bad faith.*

According to the Complainant, it is likely that the Domain Name was registered or acquired primarily for the purpose of selling, renting or otherwise transferring the Domain Name to the Complainant. In that respect, reference is made by the Complainant to the fact that Albert Heijn is the largest supermarket chain in The Netherlands with over 830 shops. The Complainant states that "Albert Heijn" is one of the most famous trademarks in The Netherlands, and even in Belgium, because it is market leader in the supermarket industry in The Netherlands with a market share of 32,8%. According to the research "Reputation of supermarkets 2002" made by TNS and IPO, Albert Heijn is known by 99% of all people in The Netherlands.

High Tech Investments – Domain Admin, with a registered place of business at the Seychelles, has no reason to register the relevant Domain Name since this sign, i.e. Albert Heijn, obviously originates from the Dutch or German speaking countries. The sign has no relevance or link with the Seychelles. Therefore, the Respondent has been aware of the reputation and value of the trademark Albert Heijn and thus of the value of the Domain Name.

Furthermore, the Complainant states that the Respondent registered in the past also the Domain Name [www.api.be](http://www.api.be). The sign Api is a very common abbreviation for Albert Heijn in The Netherlands. Api is also a registered trademark of the Complainant. The Respondent released the Domain Name [www.api.be](http://www.api.be) into quarantine after being summoned to transfer the Domain Name [www.api.be](http://www.api.be) to the Claimant.

According to the Claimant, the Domain Name was registered in order to prevent the Complainant from reflecting its trademark in a corresponding Domain Name and that the Domain Name holder has clearly engaged in a pattern of such conduct.

Registering a famous trademark such as Albert Heijn as a Domain Name and consequently not using the Domain Name and not corresponding to the Complainant's communication is according to the Complainant a clear example of bad faith.

Therefore, the Complainant requests the immediate transfer of the relevant Domain Name.

## **5.2. Position of the Respondent**

The Respondent did not file a formal response.

## **6. Discussion and findings**

According to Article 15.1 of the CEPANI rules for Domain Name Dispute Resolution, the Third Party Decider shall decide on the Complaint in accordance with the DNS.BE policy and these rules.

Pursuant to Article 10b(1) of the Terms and Conditions of domain name registrations under the ".be" 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."*

If the Respondent does not submit a response, the proceedings shall continue and the Third Party Decider shall decide the dispute on the basis of the Complaint and such pursuant to article 5.4 of the rules.

### **6.1. Identical or similar to**

It appears clearly from the evidence submitted by the Complainant, that the Complainant has prior rights in the name Albert Heijn, which it uses as its trade name, social name and corporation name. Moreover, the complainant has prior Benelux trademark rights on "Albert Heijn" dating back to 1971.

Except for the suffix .be which is generally excepted as being irrelevant for determining the similarity between the disputed Domain Name and the name on which the Complainant claims a prior right, the Domain Name and the trademarks

"Albert Heijn" are almost identical. Indeed, the relevant Domain Name "www.albertheyn.be" is nearly identical to the prior trademark registrations "Albert Heijn". Orally, the signs are completely similar and visually, the minor difference is almost undetectable.

The Third Party Decider therefore concludes that the Complainant has prior rights in the name "Albert Heijn", which is almost identical to the Domain Name, so that this condition stated in article 10 b) 1, i of the Policy is fulfilled.

## **6.2. Rights and legitimate interests**

Pursuant 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 domain name holder 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 domain name holder (as an individual, business or other organization) has been commonly known by the Domain Name, even if he has acquired no trademark, or
- the domain name holder is making a legitimate and non-commercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers 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.

Although the Complainant does not refer explicitly to Article 10 b) 3 of the Policy, it is clear that it challenges that the circumstances mentioned here above or any other legitimate reason may apply to the Respondent.

The Respondent has not filed any Response. It 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 are not contradicted.

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

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

## **6.3. Registration or use in bad faith**

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

It appears that the Respondent has engaged in a pattern of such conduct.

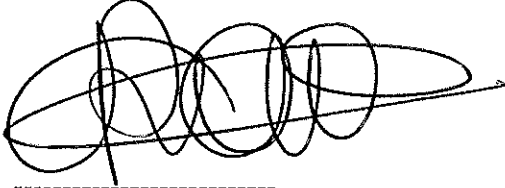
The non-use of the Domain name by the Respondent furthermore supports the evidence of the bad faith.

The Third Party decider finds that the above constitutes 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 "**albertheyn**" domain name is to be transferred to the complainant.

Brussels, 4 March 2011.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. Below the signature is a dashed horizontal line.

Veerle Raus  
The Third Party Decider