



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

## DECISION OF THE THIRD-PARTY DECIDER

**Bridge St. Baafs BVBA / Yener Alan**

**Case no. 44194: bridge.be**

### 1. The parties

- 1.1. Complainant:** Bridge St. Baafs BVBA, with registered office at 9000 Gent (Belgium), Sint Baafsplein, 21

*Represented by*

Mr. Jeroen De Man, Attorney at Law, with office at 9000 Gent (Belgium), Ottogracht, 28.

- 1.2. Licensee:** FYAT, with registered office at 5600 AG Eindhoven (Netherlands), Postbus 257,

*Represented by*

Mr. Allen, in his capacity of managing director of FYAT, residing at 5634 AG Eindhoven (Netherlands), Honthorststraat 6.

### 2. Domain name

Domain name: "bridge.be"  
Registered on: 1 July 2002

hereafter referred to as "the domain name".

### 3. Background to the case

1. On 18 March 2010, the Complainant filed a complaint with CEPANI according to the Cepani Rules for Domain Name Dispute Resolution ("Cepani Rules") and the Dispute Resolution Policy of DNS BE, incorporated in its Terms and Conditions for

CEPANI – NON-PROFIT ASSOCIATION

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domain name registrations under the ".be" domain operated by DNS ("the Policy).

The Complainant requests that the Domain Name shall be transferred to the Complainant.

The complaint was notified to the Licensee and the latter filed a reply on 12 April 2010.

On 22 April 2010 Ms Christine De Keersmaecker sent a Declaration of independence to CEPANI and was appointed on 23 April 2010 by CEPANI as Third-Party Decider to settle the dispute involving the domain name.

CEPANI informed the Third-Party Decider that the deliberations would be closed on 30 April 2010, and that its decision was to be filed on 14 May 2010.

Both the Complainant and the Licensee were informed of the aforementioned appointment and information.

On 26 April 2010 the Complainant requested the permission to submit a retort pursuant to Article 12 of the Cepani Rules.

In her decision of 29 April 2010 the Third-Party Decider acceded to the Complainant's request to submit a retort and further stated that:

- The Complainant had to file its retort at the latest on 7 May 2010;
- The Licensee had an additional delay of 7 days for submitting a reply, which had to be limited to the facts and arguments contained in the Complainant's retort and that the Licensee therefore had to submit its reply at the latest on 14 May 2010;
- The deadline for the decision consequently was prolonged to 28 May 2010.

The Complainant filed its retort on 4 May 2010.

On 5 May 2010 the Licensee requested to extend its deadline to answer to the Complainant's retort, as Mr. Alan Yener was on holiday until 15 May 2010.

In her decision of 6 May 2010 the Third-Party Decider acceded to the Licensee request to extend its deadline to answer to the Complainant's retort to 21 May 2010 and further stated that, as a consequence, the deadline for the decision was prolonged to 4 June 2010.

The Licensee filed its answer to the Complainant's retort on 19 May 2010.

#### **4. Factual information**

2. The Complainant, Bridge St. Baafs BVBA, is a Belgian company running a tavern located in the centre of Gent.

This Tavern is locally known under the names Bridge, Brasserie Bridge or Taverne Brigde. This appears amongst other from its websites [www.taverne-bridge.be](http://www.taverne-bridge.be) and [www.brasseriebridge.be](http://www.brasseriebridge.be) and the Complainant's exhibits 6 and 7.

The Complainant states that its business has been established since 1950 (Exhibit 7 of the Complainant).

It appears from the Belgian Company register that the company Bridge St. Baafs BVBA has been created on 18 October 2007 (Exhibit C of the Licensee's answer to the Complainant's retort).

3. The Licensee, Fyat, is a Dutch company operating since 2002 in the sector of service hosting and domain name registrations, as it appears from its website [www.fyat.nl](http://www.fyat.nl).

The Licensee presents itself as an internet business company which develops websites and earns money with advertising.

The Licensee registered the domain name on 1 July 2002.

4. In 2010 the Complainant decided to host its new website under the domain "bridge.be". The Complainant however noticed that the domain name was registered under the name of the Licensee.

On 6 February the Complainant consequently sent an e-mail to the Licensee showing its interests in the domain name as follows (Exhibit 4 A of the Licensee):

*"Hello,  
I am interested in the domain name: bridge.be  
What are your conditions ?"*

The same day the Licensee answered the Complainant by telephone, informing the latter that it was willing to sale the domain name at the price of 6.000 EUR.

The Complainant subsequently sent the following e-mail on 6 February 2010 to the Licensee (Exhibit 4 B of the Licensee):

*"Thanks for your fast reply !  
Regardless what I told you on the phone, I am still interested in bridge.be. Your price is too high...is this your best price? Could you send your price by e-mail ?  
I will talk to my accountant."*

In its e-mail of 24 February 2010 to the Licensee, the Complainant again showed its interest in buying the domain name (Exhibit 4 C of the Licensee):

*"Hereby I would like to buy the domain name bridge.be.  
Please send me your price as soon as possible."*

On 25 February 2010 the Licensee received the following telephone message from the complainant (Exhibit 4 D of the Licensee):

*"Mr would like to buy the domain name. Please respond via e-mail or phone."*

The Licensee responded the same day by telephone, informing the Complainant of the domain name's price and requesting the latter's invoice details. It is however unclear if, during this telephone call, the Licensee if the Licensee maintained the initial price of 6.000 EUR.

The Complainant subsequently provided the Licensee with its invoice details by e-mail of 25 February 2006 (Exhibit 4 E of the Licensee).

By e-mail of 27 February 2010 the Licensee issued the invoice of 6.000 EUR to the Complainant, for the purchase of the domain name (Exhibit 4 F of the Licensee).

5. On 8 March 2010 the Licensee received a letter of the Complainant's counsel in contestation of the invoice of 6.000 EUR, stating amongst other that:

- The Complainant had never agreed to buy the domain name at the price of 6.000 EUR;
- The Complainant's tavern is known for more than 50 years under the name Brigde;
- The Licensee's acts were infringing Article 10.b of the Policy.

In the same letter the Complainant's counsel summoned the Licensee to transfer the domain name free of charge to the Complainant.

In his letter of 11 March 2010, the Licensee's counsel contested the Complainant's allegations, stating amongst other that:

- The domain name had been registered in order to develop a website for bridge players and amateurs (the card game "Bridge"), and to earn money amongst others by advertising on this website;
- At the time of the domain name registration, the Licensee was unaware of the existence of the Complainant;
- It is the Complainant who first contacted the Licensee to buy the domain name;
- The name "brigde" is commonly used and has different meanings;
- Hence, the Complainant cannot claim any – intellectual or commercial – property right on this name.

In his letter the Licensee's counsel summoned the Complainant to pay the amount of 6.000 EUR to the Licensee.

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

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

6. In the complaint form, the Complainant argues that:

- Having noticed that the domain name was registered under the name of the Licensee, the Complainant summoned the Licensee to transfer the domain name, after which the Licensee sent the invoice of 6.000 EUR;
- The Complainant did not agree to pay any price for the transfer of the domain name and certainly not the price of 6.000 EUR;
- The licensee refused to transfer the domain name and insisted on the payment of 6.000 EUR;
- The domain name has never been used;

- The domain name is partly identical to the Complainant's company name, and identical to the Complainant's trade name;
- The Complainant's trade name is well known by the public as the Complainant's catering business;
- The Licensee has no legitimate interests in the domain name since:
  - The Licensee has never shown any right or interest in the domain name,
  - The domain name has never been used,
  - The domain name is not linked to a website,
  - There is no link between the Licensee and the domain name,
  - The Licensee holds the domain name to prevent the Complainant from using it for its business purposes and to wait for a selling offer,
- The Licensee has registered the domain name in bad faith since:
  - The fact that the Licensee was willing to sell the domain name for 6.000 EUR to the Complainant indicates that the domain name was registered or acquired preliminary for the purpose of selling, renting, or otherwise transferring the domain name to the Complainant.

In its retort, the Complainant additionally argues that:

- The domain name is identical to its trade name and similar to its company name since:
  - The complainant's Exhibit 6 is an agreement of transfer of goodwill which states in Article 1 that the trade name of the goodwill is "BRIDGE",
  - Newspaper articles evidences that the Complainant's trade name is Bridge (Exhibit 7 of the Complainant);
- The fact that other companies are entitled to use the name Bridge is *in casu* irrelevant;
- The Licensee has no rights or legitimate interests in the domain name since:
  - The Licensee does not prove to have a right or a legitimate interest as mentioned in Article 10.b.3 of the Policy,
  - In its response, the Complainant admits to have registered the domain name in order to sell it to another company,
  - The fact that the Licensee would have registered the domain name to develop a website for bridge players in 2005 (Exhibit 2 A of the Licensee) cannot be correct. The Licensee, who registered the domain name in 2002, could not predict receiving a business proposal of a bridge club in 2005;
- The Licensee's domain name is registered or is being used in bad faith since:
  - The Licensee sells the domain name for the stunning price of 6.000 EUR,
  - The Complainant immediately contested the Licensee's invoice,
  - The Licensee does not provide evidence demonstrating an agreement between the parties on the acquisition of the domain name, nor on the price.

## 5.2. Position of the Licensee

7. In its response form of 12 April 2010 the Licensee argues that:

- The company name is not identical to the domain name and, hence, the use of the domain name is not entitled to the Complainant, since:
  - The word "bridge" is a commonly used word and is known by the public as a card game (Exhibit 1 A-F of the Licensee),
  - The Complainant is not known under the sole name "Bridge", but under the trade name Bridge Taverne or under the company name Bridge St. Baafs (see [www.taverne-bridge.be](http://www.taverne-bridge.be)),
  - The name Bridge is registered by many companies as a trade mark (Exhibit 1 G of the Licensee),
  - The company Bridge St. Baafs is only locally known in the city of Gent, and certainly not in Belgium,
  - Therefore the association of the name Bridge with a card game is bigger than a supposed association the Complainant's business.
- The Licensee has legitimate interests to use the common domain name since it:
  - is an internet business company which develops websites and earns money with advertising,
  - made a business case in developing a website for bridge players and received a business proposal in 2005 (Exhibit 2 A of the Licensee),
  - put the development of [www.bridge.be](http://www.bridge.be) on hold since 2005, as it was developing other more commercial websites.
- The domain name was not registered in bad faith since:
  - The Licensee never tried to sell the domain name by any means, but waited for the right opportunity to develop a website;
  - The Complainant made many attempts to make a deal in buying the domain name (Exhibit 4 A-F of the Licensee),
  - Hence, the Complainant never summoned the Licensee but initiated the negotiations and tried to buy the domain name,
  - The negotiations resulted on the agreement to purchase the domain name for 6.000 EUR (Exhibit 3 A-B of the Licensee).

In its response form filed on 19 May 2010 the Licensee additionally argues that:

- The Complainant cannot be entitled to use the domain name based on the fact that in the Complainant's agreement of transfer of goodwill the trade name is mentioned to be bridge;
- Making money with .be domain names is a legitimate business (see [www.domeinwinkel.be](http://www.domeinwinkel.be));
- Between 2001 and 2002 the Licensee registered over 100 common domain names in order to further develop websites;
- Unlike [www.domeinwinkel.be](http://www.domeinwinkel.be), the Licensee never put its .be domain names on sale;
- The Licensee's core business is to develop these domain names for own use with a website and earn money with advertisements, but not to sell .be domain names;

- The Complainant does not prove that the domain name was registered to be sold;
- Since the Complainant has been created on 18 October 2007, the Licensee could never have heard of the Complainant's name in 2002;
- The Complainant does not prove that a company with the trade name Bridge or the company name Bridge St. Baafs is known for 50 years;
- The Complainant has registered the domain name "taverne-bridge.be" on 7 February 2002 (Exhibit D of the Licensee), whereas the domain name bridge was only registered on 1 July 2002;
- From both the Complainant's commercial attributes and its website [www.brasseriebridge.be](http://www.brasseriebridge.be), it appears that its trade name is not solely Bridge;
- In 2005 the Licensee contacted a web design studio for a business proposal. The Complainant wrongly states that the Licensee waited for a business proposal of a bridge club.

## 6. Discussion and findings

8. Pursuant to Article 15.1 of the Cepani 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.

Pursuant to Article 10.b.1 of the Policy, the Complainant must prove that the following conditions are met:

- (i) *"the licensee'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*
- (ii) *the licensee has no rights or legitimate interests in the domain name; and*
- (iii) *the licensee's domain name has been registered or is being used in bad faith."*

### 6.1. *Is identical or confusingly similar to*

9. The Third-Party Decider considers that the provided evidence sufficiently demonstrates the Complainant to be the owner of (i) the trade name Bridge and (ii) the company name Bridge St. Baafs BVBA.

According to the Cepina case-law, the suffix "be" is not relevant for establishing the identity or the similarity between a domain name and a trademark (see amongst other cases nr. 4068, 4067, 4061, 4060, 4059, 4056, 4054, 4053, 4051, 4042, 4039, 44038, nr. 4035, 44034, 4031, 44030, 4025).

Although the Third-Party Decider agrees that the trade name Bridge is only locally known in Gent and its surrounding cities, this circumstance has no incidence on the fact that the domain name and the Complainant's trade name are identical.

Hence, the Third-Party Decider will not further assess whether the domain name is confusingly similar to the Complainant's company name.

The Third-Party Decider therefore concludes that the first condition is met.

## 6.2. *Rights and legitimate interests*

10. According to Article 10.b.1 of the Policy the Complainant has to prove that the Licensee has no rights or legitimate interests to the domain name.

Considering the difficulty of proving such a negative fact ("*negativa non sunt probanda*"), this burden of proof is considered to be satisfied when, taking into account all the facts of the case, the complainant could credibly state that he is unaware of any reason or circumstance which could be indicative of such a right or legitimate interest (see amongst other cases nr. 4064, 4030 and 4013).

Art. 10.b.3 of the Policy however provides that the licensee can prove that he has a right or a legitimate interest to the domain name due to the following circumstances:

- *"prior to any notice of the dispute, he used the domain or a name corresponding to the domain name in connection with a bona fide offering of goods or service or made demonstrable preparations for such use;*
- *he has been commonly known by the domain name, even if he has acquired no trademark;*
- *he 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."*

11. In the case at hand, the Complainant amply indicated why it believes that the Licensee has no rights or legitimate interests to the domain name (see above paragraph 6).

The Licensee's attempted to demonstrate the contrary (see paragraph 7 above). The Third-Party Decider is nonetheless of the opinion that the Licensee fails to prove its rights or legitimate interests to the domain name.

Indeed, the Licensee has registered the domain name on 1 July 2002. However, to date the Licensee did not use the domain or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services.

Although the Licensee states to have made preparations for such use, *i.e.* to develop a website for bridge players, these said preparations are limited to a mere business proposal of 12 September 2005 from a web design studio. The Licensee does therefore not demonstrate to have concretely undertaken any preparations to develop said website. On the contrary, the Licensee admits to have put its development projects "on hold" since 2005 (in this sense, see case nr. 44161).

The Third-Party Decider shares the Complainant's opinion that the fact that many third companies have registered the name or are entitled to use the name Bridge, for instance as a trade mark, is *in casu* irrelevant. This fact does in any case not confer the Licensee rights or legitimate interests to the domain name.



The Licensee is not at all known by the domain name. Neither does the Licensee allege to be known as such.

Finally, the Licensee has not demonstrated that, prior to any notice of the present dispute, it was making a legitimate and non-commercial or fair use of the domain name.

The fact that the Licensee is an internet business company which buys commonly used domain names to develop corresponding websites to earn money with advertising, does not confer the Licensee the right or a legitimate interest to register domain names which can possibly conflict with third parties' rights.

According to the Third-Party Decider, therefore, the second condition is also met.

### **6.3. Registered or used in bad faith**

12. The evidence of a registration or use in bad faith of a domain name can be provided by the circumstances mentioned in the non-exhaustive list under art. 10.b.2 of the Policy, *i.e.*:

- *"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 compliant;*
- *the domain name was registered in order to prevent the owner of the trademark from reflecting this name in a corresponding domain name;*
- *the domain name was registered primarily for the purpose of disrupting the business of a competitor;*
- *the domain name was intentionally used to attract, for commercial gain, internet-users to the licensee's website ore other on-line location, by creating a likelihood of confusion with the complainant 's trademark;*
- *the licensee register one or more personal names without the existence of a demonstrable link between the licensee and the registered domain names".*

Bad faith can also be presumed when other elements of facts or circumstances exclude any reasonable doubt in this respect.

13. In the case at hand, the Third-Party Decider is of the opinion that the Complainant does not provide any evidence that the registration of the domain name was made in bad faith. The circumstances listed under article 10.b.2 of the Policy, in any case, do not seem to be fulfilled.

First of all, there are no circumstances indicating that the domain name was registered primarily for the purpose of selling or otherwise transferring the domain name to the Complainant.

The Third-Party Decider shares the Licensee's opinion that the Complainant does not prove that the domain name was registered for the purpose of selling it to the Complainant.

On the contrary, the Licensee Exhibits (amongst other 4 A-E) clearly show that:

- the Complainant made many attempts towards the Licensee to make a deal in buying the domain name,

- the Complainant initiated the negotiations and tried to buy the domain name,
- the Licensee's core business is to register domain names for own use to develop websites and earn money with advertisements.

The fact that, in 2005, the Licensee requested a web design studio provide a business proposal in view of developing a website for bridge players also indicates that the Licensee did not primarily register the domain name for the purpose of selling it afterwards (in this sense, see case nr. 44161).

The fact that the Complainant immediately contested the Licensee's invoice also does not prove the Licensee's bad faith.

From the business proposal of 12 September 2005, it appears that said web design studio made an offer of 5.000 EUR, excl. 19% VAT, *i.e.* 5.950 EUR (Exhibit 2 A of the Licensee).

This circumstance can reasonably explain why the Licensee was only willing to sell the domain name to the Complainant for a slightly higher price of 6.000 EUR, 0% VAT.

Besides and contrary to the Complainant's allegation, the latter never summoned the Licensee prior to receiving the invoice of 1 March 2010.

Secondly, there are no circumstances indicating that the domain name was registered:

- in order to prevent the owner of the trademark from reflecting this name in a corresponding domain name, or
- primarily for the purpose of disrupting the business of a competitor.

Beside the fact that the Complainant is not the owner of a trademark bridge or a similar trademark, the Licensee can certainly not be considered as a Complainant's competitor.

In addition, the Complainant has always run - and is still running - its business on the internet via the domain names "taverne-bridge.be" and "brasseriebridge.be". No circumstances indicate that the Licensee regularly has disrupted third parties' registration strategy. The Third-Party Decider is not aware of any ADR disputes in which the Licensee is or has been involved.

The Third-Party Decider moreover believes that the Licensee was not - or could reasonably not have been - aware of the Complainant's existence, *i.e.* taking account of the following circumstances:

- the Complainant's company name "Bridge St. Baafs" has been established on 18 October 2007 and was subsequently been published in the Belgian Gazette, *i.e.* more than five years after the domain name's registration,
- the Complainant is only known under the trade name "Brigde" in Gent and its near neighbouring cities, but most probably not in the Netherlands;
- the Complainant admits to have acquired the rights on the trade name "Bridge" on 2 September 2008, *i.e.* more than six years after the domain name's registration.

Furthermore, the Complainant registered the domain name "taverne-bridge.be" on 7 February 2002 (Exhibit D of the Licensee), whereas the domain name bridge.be was only registered on 1 July 2002. Hence, the Complainant, who alleges that the trade name "Bridge" has been used for more than 50 years, almost certainly knew or should have known that the domain name "bridge.be" was available at the moment of the registration of the domain name "taverne-bridge.be". However, it waited for more than

eight years to request the transfer of the domain name, alleging that the Licensee registered it in bad faith.

Thirdly, the Third-Party Decider is confident that the Licensee did not intentionally use the domain name to attract, for commercial gain, internet-users to its website or other on-line location, by creating a likelihood of confusion with the Complainant trade name or company name. Beside the fact that the Complainant does not affirm this, the latter indeed confirms that the domain name is not active. Hence, this domain name technically cannot attract or link internet-users to a website.

Finally - although one can reasonably believe that the Licensee always planned to develop a website for bridge players -, the Third-Party Decider deplores the fact that the Licensee is still waiting for the right opportunity to develop said website, *i.e.* taking account of the fact that bridge is a generic and commonly used word, also on the internet. However, waiting for the right opportunity to develop a business, is insufficient to presume bad faith (in this sense, see case nr. 44161).

As a result, the Third-Party Decider concludes that the third condition is not met.

## 7. Decision

14. Consequently, the Third-Party Decider hereby rules that the complaint is not founded.

Brussels, 4 June 2010.



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Christine De Keersmaecker  
The Third-party decider  
(signature)