



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

## DECISION OF THE THIRD-PARTY DECIDER

**DURATHERM B.V. / HMB B.V.**

**Case no. 44236: duratherm.be**

### 1. The parties

- 1.1. Complainant: DURATHERM B.V.;  
with registered office at Netherlands, 8081, HJ Elburg,  
Uiterwaardenstraat, 21;  
listed in the Eastern Netherlands trade register under number  
50111612.

*Represented by:*

Meester A. Hofman, Lawyer at Wolleswinkel Advocaten,  
with office at Netherlands, 3771 VC Barneveld, Stationsweg,  
43.

- 1.2. Licensee: HMB B.V.;  
with registered office at Netherlands, 5993, SE Maasbree,  
Voltaweg, 8;  
listed in the Limburg trade register under number 08023521.

Self-represented

### 2. Domain name

Domain name: "duratherm"  
Registered on: 18 November 2008

hereafter referred to as "the domain name".

### 3. Background to the case

On 5 May 2011, the Complainant filed his Complaint with the CEPANI Secretariat together with his documents of evidence and proof of payment of the fee required by

the CEPANI domain name rules.

On 8 July 2011 the Third Party Decider submitted her Declaration of Independence.

On 11 July 2011 CEPINA appointed the Third Party Decider.

The Licensee has not filed any observations in response to the Complaint.

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

Following the extract from the trade register of the Chambers of Commerce of the Netherlands, file number 08087266 (Appendix 2 of the Complaint Form) Complainant's business activities consist of the sale, delivery and installation of geothermal heat systems with the help of a heat pump or otherwise. It follows from the same Appendix 2 that Complainant carries the trade name "DURATHERM" since its incorporation on 19 October 2000. The Complainant uses this trade name "DURATHERM" on the websites [www.duratherm.nl](http://www.duratherm.nl) and [www.duratherm-belgie.be](http://www.duratherm-belgie.be). According to these websites, the Complainant provides its services in the Netherlands and in Belgium.

The business activities of Licensee are, following the extract from the trade register of the Chambers of Commerce of the Netherlands, file number 12061922 (Appendix 3 of the Complaint Form) the exploitation of a consultancy and research agency in the area of environmental matters, including soil, groundwater, noise, energy and asbestos, as well as the performance of earthworks, earth drillings and sampling or the benefit of environmental and geotechnical research. This also follows from the website [www.hmbgroup.nl](http://www.hmbgroup.nl). It also follows from this website that the Licensee offers these services in the Netherlands and in Belgium.

Licensee registered the domain name on 18.11.2008.

The domain name is currently not linked to a website.

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

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

The Complainant argues that the domain name is identical to his trade name DURATHERM and that the Licensee has no right or legitimate interests with regard to the domain name. The Complainant further argues that the domain name has been registered in bad faith or is used by the Licensee in bad faith.

According to the Complainant, internet users visiting the domain name are directed to the website of the Licensee ([www.hmbgroep.nl](http://www.hmbgroep.nl)), for the purpose of realising commercial advantage based on the confusion than can arise in terms of the trade and company name of the Complainant with regard to the products and / or services offered by the Licensee on its website.

If and to the extent that the aforementioned ground would not appear to be valid, the Complainant alternatively argues that the domain name was mainly registered to sell and transfer the same to the Complainant who is the holder of the corresponding trade and company name against a price that exceeds the costs associated with the

acquisition of the domain name. In this regard, the Complainant refers to the letter of the Licensee of 24 March 2011 (Appendix 4 of the Complaint Form), in which the latter stated that the domain name is apparently of significant financial importance to the Complainant.

## 5.2. Position of the Licensee

The Licensee has not filed any observations in 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. Identical or similar to

When assessing the identity or similarity of the trade name and the domain name, only the part of the domain name preceding the suffix ".be" is to be taken into account (cf. e.g. CEPINA cases nr. 44202, 44220, 44214, 44208).

Following the extract from the trade register of the Chambers of Commerce, file number 08087266 (Appendix 2 of the Complaint Form) the Complainant's trade name is DURATHERM.

The Complainant uses this trade name "DURATHERM" on the websites [www.duratherm.nl](http://www.duratherm.nl) and [www.duratherm-belgie.be](http://www.duratherm-belgie.be).

It cannot be disputed that the domain name is identical to the trade name of the Complainant.

The first condition is fulfilled.

### 6.2. Rights and legitimate interests

The Complainant argues that the Licensee cannot enforce any right or legitimate interests with regard to the domain name.

According to article 10. b) 3. of the "Terms and conditions for domain name registrations under the ".be" domain operated by DNS.be", the Licensee can demonstrate his rights or legitimate interests to the domain name by the following 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 organization) has been commonly known by the domain name, even if he has 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 Licensee did not submit a response and therefore did not demonstrate his rights or legitimate interests to the domain name by any of the circumstances above.

The Third-Party Decider visited the domain name and Licensee's website [www.hmbgroep.nl](http://www.hmbgroep.nl). However, the Third-Party Decider did not find any evidence of the fact that the Licensee:

- used the domain name in connection with a bona fide offering of goods or services; or
- has been commonly known by the domain name; or
- makes a legitimate and non-commercial or fair use of the domain name, without intent to misleadingly divert consumers for commercial gain or tarnish the trade name.

The second condition is fulfilled.

### 6.3. Registration in bad faith

The Complainant states that the domain name has been registered in bad faith or is used by the Licensee in bad faith.

According to article 10. b) 2. of the "Terms and conditions for domain name registrations under the ".be" domain operated by DNS.be", 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*
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*entity, or to a competitor of the complainant, for a price that exceeds the costs 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; or*
- *the domain name was registered primarily for the purpose of disrupting the business of a competitor; or*
- *the domain name was intentionally used to attract, for commercial gain, Internet users to the registrant's web site or other on-line location, by creating confusion with the complainant's trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the registrant's web site or location or of a product or service on his web site or location.*
- *the registrant has registered one or more personal names without the existence of a demonstrable link between the registrant and the registered domain names.*

The above list of circumstances is non-exhaustive (CEPINA cases nr. 44202, 44220), and bad faith can be evidenced by any means including presumptions and other evidence showing, with a reasonable degree of certainty, the existence thereof (CEPINA cases nr. 44202 and 44019).

As stated by the Complainant in the Complaint Form and as it appears from the letter of 24.03.2011 from Licensee to the Complainant (Appendix 4 of the Complaint Form), Licensee offers the domain name for sale at the Complainant. A price is not mentioned; however the Licensee states that the domain name [www.duratherm.be](http://www.duratherm.be) is of significant financial importance. This statement, combined with the fact that the domain name is not used, supports the idea that the Licensee puts the domain name at sale at a price that exceeds the costs directly related to the acquisition of the domain name. In any case this is not invalidated by the Licensee.

The Complainant states that the domain name directs / draws users to the website of the Licensee ([www.hmbgroep.nl](http://www.hmbgroep.nl)). As things stand today, this is not the case. The domain name does not redirect the internet user to another website. However, this statement of the Complainant is not invalidated by the Licensee. Even more, the Licensee did not invalidate this in its letter of 24.03.2011 (Appendix 4 of the Complaint Form) in which the Licensee refers to the fact that the domain name is linked to [www.hmbgroep.nl](http://www.hmbgroep.nl). The Third-party Decider is of the opinion that if this would not have been the case, the Licensee would have invalidated this in the said letter.

It appears from the visit to the domain name by the Third-party Decider, that the domain name is not used by the Licensee for its own activities and does not seem to have made demonstrable preparations to use the domain name in relation to its activities. This clearly suggests that the domain name was primarily registered by the Licensee to disrupt the Complainant's business (Cf. CEPINA nr. 44218).

It has already several times been judged that the Licensee at the moment of registration of the domain name (18.11.2008 in the present case) knew or should have known that a third party owned certain rights in a certain sign (CEPINA cases nr. 44195, 44030 and 44168). Taken into account the Licensee's presence in the same sector and in the same countries as the Complainant (following the website [www.hmbgroep.nl](http://www.hmbgroep.nl)), it appears to the Third-party Decider that the Licensee was aware or should have been aware of the existence and the use of the trade name DURATHERM by the Complainant. Taking into account the fact that the products and services provided by both parties are similar, the registration of the domain name by the Licensee is to be seen as an attempt to disrupt the business of the Complainant, its competitor.

Taking into account the above and the fact that the Licensee did not submit any observations in response to the Complainant's complaint, the third condition is 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 "**duratherm.be**" domain name is to be transferred to the Complainant.

Brussels, 28.07.2011.



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Christine, De Keersmaecker  
The Third-party decider  
(signature)