

DECISION OF THE THIRD-PARTY DECIDER

Eiffage Benelux SA/ Hugues Patrick

Case no. 44387: eiffage-benelux.be

1. The parties

- 1.1. Complainant: **EIFFAGE BENELUX SA**;
with registered office at 1060, Brussels, avenue Brugmann,
27A;
listed in the Belgian Banque-Carrefour des Entreprises under
number 0419489366.

Represented by:

Mme Isabelle Jouniaux, IT responsible,
with office at 1060, Brussels, avenue Brugmann, 27A.

- 1.2. Licensee: **Hugues Patrick**;
residing at B12NH, Birmingham, Cambridge tower, flat 10.

2. Domain name

Domain name: "**eiffage-benelux.be**"

Registered on: July 3, 2015

hereafter referred to as "the Domain name".

3. Background to the case

On August 6, 2015 the Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation (CEPANI-CEPINA, hereafter referred to as the "Centre") concerning the Domain name, pursuant to the CEPANI Rules for domain name dispute resolution and the Dispute resolution policy of DNS BE (Article 10 of the Terms and conditions for domain name registrations under the ".be" domain operated by DNS Belgium VZW, hereafter "DNS.BE").

The Complaint was filed in English pursuant to Article 11 of the CEPANI Rules for domain name dispute resolution.

On September 8, 2015, the Licensee was notified of the Complaint and was invited to submit a response by September 15, 2015. The Licensee did not submit his response to the Centre.

Mr. Emmanuel Cornu was appointed on September 8, 2015 by the Centre as the Third-Party Decider to settle the dispute pursuant to Article 6.2. of the CEPANI Rules for domain name dispute resolution.

The Centre also informed the Third-Party Decider that the deliberation would be closed by September 15, 2015 and that its decision needed to be filed by September 29, 2015. Both the Complainant and the Licensee were informed of the aforementioned appointment and information.

On September 7, 2015, the Third-Party Decider sent the statement of independence to the Centre.

On September 15, 2015, pursuant to Article 12 of the CEPANI Rules for domain name dispute resolution, the deliberations were closed.

The Third-Party Decider's decision is issued according to:

- the complaint dated 6 August 2015 and annexed documents;
- the Rules of the Belgian Centre for Arbitration and Mediation for domain name dispute resolution (hereafter "Cepani Rules");
- the "Terms and conditions of domain name registrations under the ".be" domain operated by DNS", entitled "Dispute Resolution Policy" (hereafter "the Policy").

4. Factual information

1. The Complainant is a company under Belgian law named "Eiffage Benelux".

The Complainant is active in the fields of buildings construction, renovation and restoration, carpentry, real estate, civil engineering, *etc.*

2. The Complainant uses the name "Eiffage Benelux" as corporate name and trade name.

3. The Complainant registered the Domain name "eiffagebenelux.be" in February 7, 2007 (see annex a) of the Complaint).

4. The Licensee is Hugues Patrick. He is domiciled in the United Kingdom and his email address is papeopera@gmail.com.

The Licensee registered the Domain name "eiffage-benelux.be" on July 3, 2015.

The "eiffage-benelux.be" website is currently inactive and contains indications explaining that the Domain name was just registered by a LWS client.

5. Position of the parties

5.1. Position of the Complainant

5. The Complainant requests the Third-Party Decider to order the radiation of the Domain name since all conditions provided in the Policy, contained in Article 10, b), (1), are fulfilled.

6. The Complainant claims that the Domain name is nearly identical to his corporate name, to his trade name and to his own domain name registered in 2007.

The Complainant is of the opinion that the Licensee has no rights or legitimate interests in the domain name. In this respect, the Complainant argues that the Licensee does not have any link with Eiffage Benelux SA or a company with a similar name.

The Complainant stresses that the Licensee registered and use the domain name (and a matching e-mail address: service@eiffage-benelux.be) with the sole aim of gaining the trust of third party companies that latter mistakenly assume they are contracting with the Complainant. The Complainant asserts that once the Licensee has gained the trust of the third party, he tries to enter into an agreement with them and he uses the Complainant's logo, registered address and signature. The

Complainant also alleges that he received complaints from companies contacted by the Licensee (see annex e) to j) of the Complainant).

5.2. Position of the Licensee

7. The Licensee did not file a response in the course of the proceedings before the Third-Party Decider.

6. Discussion and findings

8. Pursuant to Article 16.1 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 10, b), (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 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 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

9. According to article 10, b), (1), (i) of the Policy, the Complainant has to prove that he has rights in a social name or trade name and that the domain name is identical or confusingly similar to this social name or trade name.

(a) As to the existence of prior rights

10. The Complainant provides evidence that he is the owner of the corporate name "Eiffage Benelux" (see annex b) and c) of the Complaint) and that he uses the name "Eiffage Benelux" as a trade name too (see annex d) of the Complainant).

11. In Belgium, the corporate name is protected by the Article 65 of the Companies Code which states that *"each company is designated by a corporate*

name which must be different from the social name of every other company” (free translation). In this respect, the Complainant’s rights on its social name do not seem to be questionable in the present case, and the Third-Party Decider therefore regards them as valid.

12. Regarding the trade name, it is acquired in Belgium through public, visible and constant use¹. Therefore, the protection of a trade name is granted to the person using it for the first time in a public way.

Once acquired, the protection of the trade name is to be found in the Belgian Code of Economic Law, more precisely in its Article VI.104 prohibiting “*every act contrary to the honest market practice by which a company violates or can violate the professional interests of one or several other companies*” (free translation). In this respect, the Complainant’s rights on its trade name do not seem to be questionable in the present case, and the Third-Party Decider therefore regards them as valid.

(b) As to the identity and the risk of confusion

13. According to established case law, the risk of confusion is established on the basis of a comparison *in abstracto* of the signs in presence (see for example Cepani, case nr. 44106; Cepani, case nr. 44334).

14. The Third-Party Decider finds the domain name “eiffage-benelux” to be confusingly similar to the corporate name and trade name “Eiffage Benelux”. The only differences between the domain name and the social name and trade name are the suffix “.be” and the hyphen.

Firstly, according to the well established case law of Cepani, the suffix “.be” does not exclude the identity since the suffix refers only to the geographical extension and origin of the website (see for example Cepani, cases nr. 44042 and 44309).

Secondly, the Cepani case law recognized that the addition of a hyphen between two words did not refute the confusing similarity (Cepani, case nr. 44054). In this respect, the case law of the Cepani has already stated that: “*it cannot be contested that the domain name registered by the Licensee is confusingly similar to the trade name of the complainant, despite the addition of a hyphen between the words 'direct' and 'immo'*” (free translation) (Cepani, case nr. 44048).

The same conclusion arises in the present case : the Domain name “eiffage-benelux.be” registered by the Licensee is confusingly similar to the corporate name and trade name “Eiffage Benelux”, despite the addition of a hyphen between the words “eiffage” and “benelux”.

The Licensee does not dispute this confusing similarity.

¹ Van Ryn and Heenen, « Principes de droit commercial », t. I, 2nd ed., p. 173 ; D. Dessard, « Nom commercial et enseigne belge » in « Les droits intellectuels », excerpt of the notarial directory, 2nd ed., Larcier, 2013, p. 224 ; P. Maeyaert, « De bescherming van de handelsnaam en de vennootschapsnaam in België », Larcier, 2006, n° 53.

15. As a result of the above, the Domain name can be considered as confusingly similar to the social name and trade name of the Complainant.

The Third-Party Decider therefore concludes that the first condition of the Article 10, b), of the Policy is met.

6.2. Rights and legitimate interests

16. According to article 10, b), (1), (ii), of the Policy, the Complainant has to prove that the Licensee has no rights or legitimate interests in the disputed Domain name.

It is settled case-law that the Complainant must not be imposed the burden of proving a negative assumption (i.e. the absence of rights and of legitimate interest). 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 for example Capani, cases nr. 4038, 4064, 4030, 4013 and 44334). Furthermore, a licensee is expected to cooperate and produce evidence of the existence of a right or a legitimate interest.

The Licensee does not collaborate to the administration of evidence in the case at hand, since he did not reply to the complaint.

17. The Third party Decider has not been informed of any evidence proving that, prior to any notice of the dispute, the Licensee used the Domain name or a name corresponding to the Domain name in connection with a *bona fide* offering of goods or services, or that the Licensee made demonstrable preparations for such use.

The Licensee has not produced evidence that he has been commonly known by the Domain name. Furthermore, there appears to be no connection between the Licensee's name and the Domain name.

18. The Domain name was registered with the Registrar on July 3, 2015. At this time, the Complainant already registered its social name "Eiffage Benelux" and already used its trade name "Eiffage Benelux".

19. The Complainant states that the Licensee has no rights or legitimate interests in the Domain name. In this respect, the Complainant argues that the Licensee has no link with Eiffage Benelux or any company with a similar name. The Complainant also stresses that the Licensee registered the Domain name with the sole aim of gaining the trust of third party companies that latter mistakenly assume they are contracting with the Complainant.

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

However, the content of the "eiffage-benelux.be" website cannot convince the Third-Party Decider of the existence of any of Licensee's legitimate interests in the Domain name.

Nevertheless, the use of a website must be effective. Such a use is not effective when a website has not been used for a long period or only contains rudimentary information, moreover when the website only indicates that the Domain name was just registered (see similar case: Cepani, cases nr. 44085 and 44334).

In the present case, the Licensee is not using the Domain name "eiffage-benelux.be". Apart from the fact that the Domain name is registered, there is no information concerning the commercial or non-commercial use of the website. One could thus question the purpose and use of the information on this webpage. It is therefore obviously deduced from this content that the Licensee does not use the Domain name in connection with *bona fide* offering of goods or services, nor does he make a legitimate and non-commercial use of the Domain name.

20. The Third-Party Decider therefore considers that the Licensee has no rights or legitimate interests in the Domain name.

The second condition of the Article 10, b), of the Policy is therefore met.

6.3. Registration in bad faith

21. Bad faith may never be presumed but must be reasonably proven. This principle was settled by Cepani case law (see Cepani, cases nr. 4049, 4067, 44150 and 44309).

Case law also reiterated the principle that one may not deduce bad faith from the mere fact that a Licensee does not file a response (see Cepani, cases nr. 4045, 4053 and 44309). However, although not being in itself a sufficient evidence for bad faith, the absence of a response, in combination with other elements, may nevertheless serve as a circumstantial evidence for establishing a licensee's bad faith.

Bad faith can be proven by any means, including presumptions and circumstances that indicate, with a reasonable degree of certainty, that the Licensee knew, or ought to know, the Complainant's corporate name and trade name and nevertheless registered the Domain name.

It must also be stressed that under DNS.be terms and conditions, bad faith may be established at the registration or during the use of the domain name.

22. As to the registration, the corporate name/trade name of the Complainant was registered/used before the date of registration of the Domain name. The Domain name "eiffage-benelux.be" is confusingly similar to the corporate name and trade name of the Complainant "Eiffage Benelux".

It is extremely unlikely that a third party would choose the words "eiffage" and "benelux" to compose a domain name. The Licensee must have been aware of the corporate name and trade name of the Complainant when he registered the Domain name. It can therefore reasonably be assumed that Licensee intentionally chose the domain name in order to misleadingly divert Internet users (see Cepani, case nr. 4014).

23. Beside the above-mentioned bad faith at the time of the registration of the domain name, the Third-Party Decider is of the opinion that the domain name is currently being used in bad faith.

According to the Complainant, the Licensee contacted several third party companies with an e-mail address matching to the Domain name (service@eiffage-benelux.be), gaining their trust by using the Complainant's logo, registered address and signature to enter into an agreement with them, *a priori* with no intention to honor the contract obligations. The Complainant also asserts that the Licensee used the Complainant's address as an invoicing address.

To support his allegations, the Complainant furnished three purchase orders apparently signed or approved by the Licensee and containing the name and registered address of the Complainant (see annex e), g) and i) of the Complainant). Two of them also contain the Complainant's logo (see annex g) and i) of the Complainant).

The Complainant also furnished five e-mails exchanges starting with an e-mail sent by an e-mail address matching to the domain name (service@eiffage-benelux.be) (see annex e) to j) of the Complainant). These e-mails exchanges were transferred to the Complainant by confused third party companies.

These companies were all contacted by Patrick Hugues presenting himself as the purchasing manager or the IT manager of the Complainant and trying to contract with the third party companies by using the name and registered address of the Complainant.

These e-mails exchanges are not contested by the Licensee and their truthfulness does not seem to be questionable. The Third-Party Decider therefore regards them as valid and considers that they reveal a circumstance that tends to prove the bad faith of the Licensee.

The absence of response of the Licensee to the complaint is also a circumstance that brings into question the Licensee's good faith.

24. Therefore, the Third-Party Decider finds that these circumstances show that the Licensee has registered and used the Domain name in bad faith.

The third condition of the Article 10, b), of the Policy 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 " **eiffage-benelux.be**" domain name is to be cancelled.

Brussels, September 22, 2015.



Emmanuel Cornu
The Third-party decider