

DECISION OF THE THIRD-PARTY DECIDER

IMPLIX Sp. Z.o.o. / Mr. Wang Liqun

Case no. 44329: getresponse.be

1. The parties

- 1.1. Complainant: IMPLIX Sp. Z.o.o.,
with registered office at Arkonska 6/A, 80-387 Gdansk, Poland.

Represented by:

Mr. Krzysztof Milkowski,
Vice-President of the Board
with office at Arkonska 6/A, 80-387 Gdansk, Poland.

- 1.2. Licensee: Mr. WANG LIQUN,
residing at Chendan Zhen Wuxian Cun 174, 338000 Xinyu, Jiangxi, China.

Not represented.

2. Domain name

Domain name: Getresponse.be
Registered on: 13 March 2013

hereafter referred to as "the Domain Name".

3. Background to the case

The Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation ("CEPANI"), concerning the Domain Name. The complaint was filed under the CEPANI Rules for Domain Name dispute resolution and the Dispute resolution policy of DNS, incorporated in its General Conditions.

Cepani informed the Licensee of the Complaint, but the Licensee did not submit a response.

On 8 January 2014, the third-party decider sent the Declaration of Independence to Cepani.

On 10 January 2014, Cepani informed the Complainant and the Licensee that the undersigned had been appointed as the third-party decider to settle the dispute. Cepani informed the parties that, pursuant to Article 13 of the Cepani Rules for the Domain Name Dispute Resolution, the deliberations would be closed by 17 January 2014 at the latest.

The deliberations were effectively closed on 17 January 2014.

4. Factual information

The Complainant is a Polish limited liability company, with offices in various countries including Poland, the U.S. and Canada, which offers a range of online services including email marketing, website building, video conferencing and streaming of media. Under the name "GetResponse", the Complainant offers email-marketing services to its clients.

The Complainant has trademark rights on the name "GetResponse". These include the word community trademark "GetResponse" (number 009031329; filing date: 15 April 2010; registration date: 1 November 2010; Nice classification: 9, 38 and 42) and the figurative community trademark "GetResponse" (number 011073251; filing date: 26 July 2012; registration date: 23 January 2013; Nice classification: 9, 38 and 42).

The Licensee is based in China and registered the domain name "Getresponse.be" on 13 March 2013 (the registrar is called "1API GmbH"). Apart from an address, email address and telephone number, no other information is available with regard to the Licensee.

The website currently available under the domain name "Getresponse.be" contains a list of "Sponsored Listings" (i.e., advertisements), a list of "Related Links" and a message stating "*BUY THIS DOMAIN The domain getresponse.be may be for sale by its owner!*"

5. Position of the parties

5.1. Position of the Complainant

The Complainant states that he is the owner of the name and registered trademark(s) "GetResponse". The Complainant refers to the above-mentioned community trademarks with numbers 009031329 and 011073251. The Complainant also refers to two US trademarks with registration numbers 4334348 and 2548618.

The Complainant also states that he is the owner of the domain name "Getresponse.com", which he uses to offer email marketing services to his clients.

The Complainant states that the disputed domain name "Getresponse.be" is identical to the trademark(s) owned by the Complainant.

The Complainant states that the Licensee has no rights or legitimate interest in the domain name "Getresponse.be".

The Complainant furthermore states that the domain name "Getresponse.be" has been registered and is being used in bad faith, with a deliberate intention to sell it to the Complainant. The Complainant refers in this regard to an email sent on 26 August 2013 to the Complainant (at the email address domains@implix.com) by a person called "Cindy", using the email address corporatedomains@163.com. In this email, the person called "Cindy" mentioned that the domain name "Getresponse.be" was for sale for the price of 8.000 USD (eight thousand US Dollars). After some negotiations, the price asked by the person called "Cindy" dropped to 7.500 USD (seven thousand five hundred US Dollars). The Complainant argues that this email proves that the Licensee tried to transfer the domain name to the Complainant for a price significantly exceeding the costs directly related to the acquisition of the Domain Name. The Complainant also refers to the fact that the website available under the Domain Name contains only commercials (no real content, apart from advertisements), and the fact that the Domain Name is not used for offering any goods or services. Finally, the Complainant states that the Licensee is not commonly known by the Domain Name and is not making a legitimate and non-commercial or fair use of the Domain Name.

As a conclusion, the Complainant believes that his complaint meets all the requirements of Section 10 of the Terms and Conditions of domain name registrations under the ".be" domain operated by DNS BE. The Complainant therefore requires the transfer of the domain name "Getresponse.be" to the Complainant.

5.2. Position of the Licensee

The Licensee did not submit a Response to Cepani in the course of these proceedings. Therefore, the third-party decider does not know the position of the Licensee with regard to the Complaint.

6. Discussion and findings

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 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 confusingly similar

The Complainant provided evidence that he is the owner of the community word trademark "GetResponse" (number 009031329; filing date: 15 April 2010; registration date: 1 November 2010; Nice classification: 9, 38 and 42) and of the community figurative trademark "GetResponse" (number 011073251; filing date: 26 July 2012; registration date: 23 January 2013; Nice classification: 9, 38 and 42).

The Complainant also states that he owns certain trademarks registered with the US Patent and Trademark Office. However, the Complainant did not submit evidence of such US trademarks. The Third-Party Decider therefore finds that the US trademarks allegedly owned by the Complainant cannot be taken into account when assessing this case.

The rights of the Complainant on the community trademarks listed above do not seem questionable *prima facie*. The Third-Party Decider regards the Complainant's rights to these trademarks uncontested and valid.

It is established case law of the Third-Party Deciders of Cepina that the suffix ".be" is irrelevant when examining the identicalness of or similarity between the distinctive sign (such as a trademark) and a domain name.

The only difference between the Domain Name and the trademark(s) owned by the Complainant is the addition of the suffix ".be" (such suffix not to be taken into account). The Third-Party Decider therefore finds that the Domain Name "Getresponse.be" is identical to the community trademark(s) "GetResponse" in which the Complainant has demonstrated rights.

Furthermore, the Third-Party Decider notes that the Licensee did not dispute or contest that the Domain Name is identical to the trademark(s) owned by the Complainant.

The Third-Party Decider finds that the domain name "GetResponse.be" is identical to the community trademark(s) in which the Complainant has rights. As a consequence, the Third-Party Decider concludes that the first condition of Article 10b(1) is met.

6.2. Rights and legitimate interests

Under the second condition of Article 10b(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, the Complainant must prove that the Licensee has no rights or legitimate interests in the disputed domain name.

Under established case law of Cepina, the Complainant should make it plausible that the Licensee has no rights or legitimate interests (but hard proof of a negative fact is not necessary).

In this case, the Complainant argued that the Domain Name is linked to a page that contains no content apart from advertisements; that the Domain Name is not being used for offering any goods or services; that the Licensee is not making a legitimate and non-commercial or fair use of the Domain Name; and that the Licensee has not been commonly known by the Domain Name.

The Third-Party Decider agrees that these elements can be factors proving that the Licensee has no rights or legitimate interests in the Domain Name (see for instance also Cepani case 44233). These factors furthermore correspond to the factors listed in Article 10b(3) as circumstances by which the domain name holder can demonstrate his or her rights or legitimate interests in the domain name. Demonstration that none of the circumstances of Article 10b(3) are present may serve as evidence that the Licensee has no rights or legitimate interests (see for instance also Cepani case 44299).

In the case at hand, the Third-Party Decider finds that none of the circumstances listed in Article 10b(3) appear to be present.

The Third-Party Decider finds that there are no indications proving or suggesting that, prior to 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 preparation for such use).

The Third-Party Decider finds that there are no indications proving or suggesting that the domain name holder (as an individual, business, or other organization) has been commonly known by the domain name, even if he has no trademark.

The Third-Party Decider finds that there are no indications proving or suggesting that the domain name holder 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. On the contrary, the Third-Party Decider notes that the Licensee uses the Domain Name mainly for offering advertisement links for email-marketing services (such services being offered in competition with the services offered by the Complainant). The Third-Party Decider finds that this cannot be considered as a legitimate and non-commercial or fair use of the Domain Name, without intent to misleadingly divert consumers for commercial gain.

Also, the Third-Party Decider notes that the Licensee did not reply to the Complainant's complaint and did not collaborate to the administration of evidence. The Licensee fails to demonstrate that he has rights or legitimate interests in the Domain Name.

The Third-Party Decider finds that the Complainant has sufficiently proved that the Domain Name is linked to a page that contains no content apart from advertisements; that the Domain Name is not being used for offering any goods or services; and that the Licensee is not making a legitimate and non-commercial or fair use of the Domain Name.

As a conclusion, the Third-Party Decider finds that the second condition of Article 10b(1) is met.

6.3. Registration in bad faith

Under the third condition of Article 10b(1), the Complainant must assert and prove that the domain name holder's domain name has been registered or is being used in bad faith.

Article 10b(2) lists a couple of circumstances that can demonstrate bad faith registration or use of a domain name. Among these circumstances is listed the example of *“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 entity, or to a competitor of the complainant, for a price that exceeds the costs directly related to the acquisition of the domain name”*.

The Complainant asserts that the Licensee registered and used the Domain Name with a deliberate intention to sell it to the Complainant. The Complainant asserts that the Licensee wanted to transfer the Domain Name to the Complainant for a price that significantly exceeds the costs directly related to the acquisition of the Domain Name.

The Complainant produced evidence in the form of email correspondence between the Complainant (at the email address domains@implix.com) and a person called “Cindy” (using the email address corporatedomains@163.com). This email correspondence proves that the Domain Name was offered for sale for the price of 8.000 US Dollars (subsequently lowered to 7.500 US Dollars). More details of this email correspondence are mentioned above under “Position of the Complainant”.

The Licensee did not reply to the complaint, and did not deny or contradict the assertions of the Complainant. The Licensee did not state or provide evidence that he registered and/or used the domain name in good faith.

The Third-Party Decider finds the assertions and evidence produced by the Complainant convincing enough to conclude to the existence of bad faith at the registration and further use of the Domain Name by the Licensee.

The Third-Party Decider finds that the circumstance that the Domain Name was offered for sale for the price of 8.000 US Dollars; together with the circumstance that the Domain Name is linked to a website offering no content other than advertisements for services offered by competitors of the Complainant; and combined with the circumstance that the Domain Name is identical to the Complainant’s trademark(s); and with the circumstance that the Licensee did not file a response, serves as sufficient proof of the Licensee’s bad faith in the registration and use of the Domain Name. The Third-Party Decider finds that these circumstances demonstrate that the Licensee had the intention to sell off the disputed Domain Name by offering it for sale at a price not proportionate to the costs related to its registration and maintenance (see also Cepina cases 44233, 44244, 44246, 44222, 44226, and 44236).

Therefore, the Third-Party Decider finds that the third condition of Article 10b(1) is also 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 “Getresponse.be” domain name is to be transferred to the complainant.

Brussels, 27 January 2014.

A handwritten signature in black ink, appearing to read 'Van Besien', with a long horizontal stroke underneath.

Bart Van Besien
The Third-party decider
(signature)