



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

STRATEGIE S.A. / DOMAIN MANAGER LIMITED

Case no. 44327: *stratégie.be*

1. The parties

- 1.1. Complainant: STRATEGIE S.A.
with registered office at 31 rue Grand Aaz,
4680 Hermée,
Belgium

Represented by:

Jean-Luc FLAGOTHIER, Lawyer, with registered office at
4/014 Boulevard Piercot, 4000 Liège, Belgium

- 1.2. Domain Name Holder:

Domain Manager Limited,
with registered office at 95, Kent Road,
Grays, Essex, RM17 6DE,
United Kingdom

Not represented.

2. Domain name

Domain name: *stratégie.be*
Registered on: 11 June 2013

hereafter referred to as "the Domain Name".

3. Background to the case

On 5 November 2013, the Complainant filed a complaint with CEPANI according to the CEPANI rules for domain name dispute resolution and the dispute resolution policy of DNS, incorporated in the General Conditions, concerning the Domain Name. The Complainant requested that the Domain Name be transferred over to the Complainant.

CEPANI – NON-PROFIT ASSOCIATION

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CEPANI communicated the Complaint to the Domain Name Holder.

No response was submitted by the Domain Name Holder.

The undersigned was appointed by CEPANI as Third-Party Decider on 11 December 2013.

On the same day, CEPANI informed the Complainant and the Domain Name Holder that the undersigned was appointed as Third-Party Decider.

The deliberations were closed on 18 December 2013.

4. Factual information

The Complainant is a marketing and communication agency. It primarily operates in the Benelux countries and in France. It is a limited company governed by Belgian law and its main registered office is in Belgium.

It was founded on 28 June 1988, under the company name "STRATEGIE".

It provides marketing and communication services and is publicly known under the trade name "Strategie" (exhibit n°1 to 3 of the Complainant).

The Complainant is also the owner of the Community semi-figurative mark "Strategie", registered on 15 July 2011 (exhibit n°4 of the Complainant), and of the domain name "strategie.be" (exhibit n° 5 of the Complainant).

On 11 June 2013, at 9.30 am, without organizing any "sunrise" period to the benefit of trademarks and other distinctive signs holders, DNS.be started to offer the opportunity to register .be domain names containing one or more accented characters.

On 11 June 2013, at 9.36 am, the Complainant reserved four accented domain names on the Internet site of its Registrar EuroDNS, including the Domain Name stratégie.be (exhibit n° 6 of the Complainant).

EuroDNS' price for registering a domain name for 5 years is €80 (exhibit n° 6 of the Complainant).

The Complainant never received any confirmation of the reservation or any invoice concerning the domain name stratégie.be because the Domain Name had already been registered by the Domain Name Holder the very same day (exhibit n° 6 of the Complainant).

The Domain Name Holder immediately made the Domain Name resolve to a "parking page" announcing that "this domain is for sale". When clicking on the hyperlink, the visitor is invited to make a bid to purchase the domain via a "marketplace" (exhibits n° 7 and 8 of the Complainant).

On 11 June 2013 the Complainant sent to the Manager of the "marketplace" of the Domain Name Holder, Realtime.at, the following message (exhibit N° 7):

*"We are an advertising agency named "Strategie", based in Belgium (.be) > www.strategie.be
Could you tell me why you've bought the domain name "stratégie.be" this morning, whereas you're not named like that, and not based in Belgium?
Thank you for a quick answer".*

In an e-mail sent on the same day, 11 June 2013, Realtime.at invited the Complainant to make a bid to buy the Domain Name (exhibit n° 7 of the Complainant) in these terms:

*"Please use the following link: <http://www.domainname.de/marketplace/xn--strategie-f1a.be> and place a bid for the domain on our marketplace if possible.
This will reach the owner directly, questions about the domain do not".*

After having placed a bid of €1, the Complainant was informed that bids should be minimum €200 (exhibit n°10 of the Complainant).

In an e-mail from the Complainant's Legal Counsel dated 24 June 2013, the Complainant gave formal notice to the Domain Name Holder's registrar (Vupp.com Werbegesellschaft m.b.H) to transfer the Domain Name to the Complainant in the following terms (exhibit n° 9 of the Complainant):

*"On June 11 of this year, you registered the domain name www.stratégie.be.
You have no rights or legitimate interests with regard to the disputed domain name.
Moreover, the disputed domain name has been registered and is used in bad faith.
You have indeed acquired the disputed domain name primarily for the purpose of selling it for a price that exceeds the costs directly related to the acquisition of it.
Accordingly, we invite you and, where necessary, give you formal notice to transfer the domain name www.stratégie.be to our client"*

The Complainant never received any reaction to this e-mail.

No other information is provided about the Domain Name Holder.

5. Position of the parties

5.1. Position of the Complainant

The Complainant deems that the Domain Name is confusingly similar to its abovementioned trademark as well as to its trade name & company name "Strategie", given that the only difference between the Domain Name and the aforementioned distinctive signs is an accent on the first "e".

The Complainant states that the Domain Name Holder has no right or legitimate interest in respect of the Domain Name since

- it does not offer any product or service with a trade name identical or similar to the domain name stratégie.be,

- it cannot validly claim to be commonly known as a company by the disputed domain name,
- it is not making a legitimate non-commercial or fair use of the Domain Name, and
- it has no connection with Belgium to justify the acquisition of a ".be" domain name.

Complainant submits that the Domain Name Holder has registered, used and continues to use the disputed domain names in bad faith, given that it has registered and uses the disputed domain name for the sole purpose of selling it to the Complainant or to one of its competitors, for a price that exceeds the costs directly related to the acquisition of the domain name.

5.2. Position of the Domain Name Holder

The position of the Domain Name Holder remains unknown as he did not reply to the Complainant's contentions.

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:

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- 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. The 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

The Complainant, whose corporation name is "STRATEGIE", has provided enough evidences in support of the abovementioned semi-figurative trademark registration "Strategie". It has also provided evidences proving the facts that lead to the conclusion of the protection of its trade name "Strategie" conforming to art. 8 of the Paris Convention. According to the article 8 of the Paris Convention for the Protection of Industrial Property, "*a trade name shall be protected in all the countries of the*

Union without the obligation of filing or registration, whether or not it forms part of a trademark". Under Belgian law, a protection is afforded to trade names, without condition of registration or filing, simply out of the usage thereof.

The suffix ".be" is generally accepted as being irrelevant for determining the similarity between the disputed domain name and the name on which the Complainant claims a right (CEPANI cases n°44021 "napster.be", 44025 "allienz.be", 44030 "chopard.be", 44034 "monsanto.be").

The Domain Name "stratégie.be" without its suffix ".be" is identical

- to the Complainant's trade name "Strategie", except for the accent on the first "e";
- to the Complainant's corporate name "STRATEGIE", except for the accent on the first "e"; and
- to the verbal element of its registered semi-figurative trademark "Strategie", except for the accent on the first "e".

The undersigned agrees with the Complainant that an accent does not constitute a difference that would be relevant enough to dispel the risk of confusion in the minds of third parties.

Furthermore, it has already been decided that adding a letter, a sign or a symbol is *per se* not enough to escape from any risk of confusion (CEPANI case n° 44078 "porthault.be");

The risk that the public might believe that the Domain Name is linked to the trademark, the trade name and/or the corporate name of the Complainant or to the Complainant itself, and may therefore mislead, is real.

The Third-Party Decider therefore holds that the disputed Domain Name is confusingly similar to the Complainant's registered trademark, trade name and/or corporate name, and that the condition stated in Article 10, b), 1, I) of the Terms and conditions of domain name registrations under the ".be" domain is fulfilled.

6.2. The Domain Name Holder has no rights or legitimate interests in the domain name

It is generally accepted that the Complainant cannot be imposed the burden of proof of a negative fact, namely the absence of right or legitimate interest (CEPANI cases n°44020 "politiciens francophones", n°44067 "rembostyling.be", n°44167 "present.be").

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 (CEPANI case n° 44301 "belfius.be"). Such statements are sufficient to argue that the Domain Name Holder has no rights or interests in the Domain Name (CEPANI case n° 44067 "rembostyling.be").

Pursuant to article 10, b), 3 of the Terms and conditions of domain name registrations under the ".be" domain, the domain name holder can demonstrate his rights or legitimate interests to the domain name by the following circumstances:

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- *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. “*

The Complainant states that none of these circumstances are applicable to the Domain Name Holder and argues as follows:

- As, on the very same day that the Domain Name was acquired (11 May 2013), the Domain Name Holder made it resolve to a "parking page" announcing that the Domain Name was for sale and linking to an auction page, the Domain Name Holder cannot validly claim that it 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 preparations for such use.
- Given the circumstances of the case, the Domain Name Holder can certainly not validly claim to be commonly known as a company by the disputed domain name.
- Given that the sole reaction of the Domain Name Holders' Registrar to the Complainant's notice was to invite the Complainant to place a bid, one cannot speak of a legitimate and non-commercial or fair use of the domain name either.

Even though the Domain Name Holder has been or should have been (supposing that its registrar forwarded him the Complainant's messages, as one could have reasonably expected) confronted several times with the claims and arguments of the Complainant, the Domain Name Holder has never deemed necessary to challenge any of the Complainant's contentions. However, a Domain Name Holder is expected to cooperate and to produce evidence of the existence of a right or a legitimate interest (CEPANI cases n°44056 "idealstandard.be", n°44067 "rembostyling.be").

Furthermore, it has already been decided that the registration of a domain name for the sole purpose of offering it for sale is not to be considered as a genuine use as required by the Policy (CEPANI case n°44279 "transfer.be").

The Third-Party Decider therefore holds that the Domain Name Holder has no right or legitimate interest in the Domain Name, and that the condition stated in Article 10, b), 1, II) of the Terms and conditions of domain name registrations under the ".be" domain is fulfilled.

6.3. The Domain Name has been registered **or** is being used in bad faith

Pursuant to article 10, b), 2 of the Terms and conditions of domain name registrations under the ".be" domain, the evidence of 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, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity, or to a competitor of that Complainant, for valuable consideration in excess of the costs directly related to the domain name; or*
- *the domain name was registered in order to prevent the owner of 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 a name of a geographical entity from reflecting this name in a corresponding domain name, provided that the domain name holder 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 domain name holder's web site or other on-line location, by creating a likelihood of confusion with the Complainant's trademark, trade name, social name or corporation 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 domain name holder's web site or location or of a product or service on his web site or location.*
- *the domain name holder registers one or more personal names without the existence of a demonstrable link between the domain name holder and the registered domain names.*

Bad faith must be reasonably proven, and may be proved by any means, including presumptions and circumstances that indicate with a reasonable degree of certainty the existence of bad faith.

From the circumstances of the case and from the information at the disposal of the undersigned, it appears that the Domain Name Holder has registered the disputed domain name for the sole purpose of selling it to *anyone* for a price that exceeds the costs directly related to its acquisition. The undersigned notices indeed that the minimum bid (€200) is substantially higher than the price of €80 offered by the Complainant's Registrar for a 5 years registration.

It has already been decided

- that when article 10, b) 2, as example of registration or use with bad faith, mentions the registration with an eye to the sale "to the Complainant", it is actually understood the registration for the purpose of selling the domain name to every possible complainant,
- and, therefore, that the fact of using a domain name for the sale of it for a price that excels the cost of acquisition is sufficient to demonstrate the utilization with bad faith in the meaning of article 10 b) 3 of the Policy

(CEPANI case n°44279 "transfer.be" and n° 44246 "uns.be").

One should furthermore underline the specific circumstances of the case. When the manager of the Domain Name Holder's "marketplace" was questioned by the Complainant on the Domain Name Holder's registration, the manager invited the Complainant to place a bid for the domain on the marketplace, explaining that "*This will reach the owner directly; [whereas] questions about the domain do not*". In answer to its €1 bid, the Complainant was informed that bids should be minimum €200 (exhibit n°10 of the Complainant).

It can be inferred that, as from the placing of the bid, or at least as from the Complainant's Legal Counsel's formal notice of 24 June 2013, or at the very least, upon receipt of a copy of the formal complaint lodged by the Complainant, the Domain Name Holder knew that the Complainant held the aforementioned pre-existing trade name, corporation name and semi-figurative trademark "STRATEGIE".

From the fact that the Domain Name Holder never answered to the formal notice or to the official claim, it can be further inferred that the Domain Name Holder decided to hold to its position, which consisted of trying to sell the Domain Name *to the Complainant* for valuable consideration in excess of the costs directly related to the domain name, knowing that the Complainant held different pre-existing "STRATEGIE" distinctive signs. It can be held that, at least from that moment, the Domain Name Holder was accordingly using the domain name in bad faith.

The Third-Party Decider therefore holds that the Domain Name Holder has used the Domain Name in bad faith, and that the condition stated in Article 10, b), 1, III) of the Terms and conditions of domain name registrations under the ".be" domain 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 "**stratégie.be**" Domain Name is to be transferred to the Complainant.

Brussels, December 26th, 2013.

Philippe LAURENT
The Third-Party Decider
(signature)