



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Vanguard Trademark Holdings / Domain Solutions Corp.

Case n° 44309 : alamocar.be, alamocarrental.be, alamocarrentals.be, alamocars.be, alamoinsider.be, alamoinsiders.be, alamorental.be, alamorentalcar.be, alamorentalcars.be, alamorentals.be, alamorentcars.be, nationalcarrentals.be, nationalrentalcars.be, nationalrentcars.be

1. The Parties

1.1. Complainant: Vanguard Trademark Holdings USA, LLC
with registered offices at 600 Corporate Park Dr., 63105 St. Louis,
Missouri, United States of America

Represented by Mr. David R Haarz, PLC.,

Attorney at law

with registered office at 11730 Plaza America Dr., Suite 600, 20190
Reston, Virginia, United States of America

1.2. Licensee: Domain Solutions Corp, c/o Mr. Jian Du A
Songgong St. 26, 110025 Shenyang, China

Not represented

2. Domain Names

Domain Names: "alamocar.be, alamocarrental.be, alamocarrentals.be, alamocars.be, alamoinsider.be, alamoinsiders.be, alamorental.be, alamorentalcar.be, alamorentalcars.be, alamorentals.be, alamorentcars.be, nationalcarrentals.be, nationalrentalcars.be, nationalrentcars.be"

Registered on: February 16, 2012

Hereafter referred to as " the Domain Names".

3. History of the procedure

On June 11, 2013 the Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation (CEPANI-CEPINA, hereafter referred to as the "Center") concerning the Domain Names,

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 BE).

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

The Licensee was notified of the Complaint and was invited to submit a response. The Licensee did not submit his response to the Center.

Mr. Emmanuel Cornu was appointed on July 16, 2013 by the Center as the Third-Party Decider to settle the dispute pursuant to Article 6.2. of the CEPANI Rules for Domain Name dispute resolution.

The Center also informed the Third-Party Decider that the deliberations would be closed by July 23, 2013 and that its decision needed to be filed by August 6, 2013. Both the Complainant and the Licensee were informed of the aforementioned appointment and information.

On July 15, 2013, the Third-Party Decider sent the statement of independence to the Center.

On July 23, 2013, 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 16 July 2013 and annexed documents;
- the Rules of the Belgian Center 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

4.1. The Complainant is a company under American law named "Vanguard Trade Holdings USA, LCC". The Complainant offers car rental services and other related goods and services under the trade marks "Alamo" and "National Car Rental" worldwide including Belgium.

The Complainant is the holder of the registered word trademark "Alamo" for cars leasing and rental and other related goods and services (see annexes 2 and 3 to the complaint).

4.2. This trade mark is registered, among others, as:

- Benelux Trade Mark "Alamo" registered on 28 September 1988 and renewed through 28

September 2018 for services in classes 36 and 39 as it results from the Benelux registration nr. 0453263

- Community Trade Mark "Alamo" registered on 16 September 2002 until 19 September 2020 for cars leasing and rental related goods and services in classes 12, 16, 36 and 39 as it results from the Community registration nr. 1860592

Excerpts of the official databases proving the ownership of these trademarks were added as annexes 2 and 3 to the complaint.

Some internet researches produced by the Complainant reveal that the Complainant has more than 1200 rental locations situated in more than 42 countries worldwide such as the United States, Canada, Europe, Latin America, the Caribbean, Asia Pacific, Africa and Australia.

The Complainant also operates an on-line car rental site "alamo.be" (see annex 5 to the complaint). A research on DNS.be shows that the website "alamo.be" was registered by *Target Benelux BV*, a communication and marketing office who also look after the website "alamo.nl" of the Complainant. The website "alamo.be" has been active on the Internet for more than four years (alamo.be Domain Name was registered on May 31, 2009).

Since April 14, 1999, the Complainant is also the holder of the website Alamo.com containing a "loyalty" club for its customers that is named "Alamo Insiders" (see annex 6 to the complaint).

4.3. Moreover, the Complainant is the holder of the Benelux figurative trademark "National Car Rental" registered on May 26, 2000 until May 26, 2020 for cars rental services in class 39 (see annex 4 to the complaint). The trade mark is reproduced as follows:



Finally, the Complainant operates an on-line car rental at "nationalcar.com" to which the domain names "nationalcar.be" and "nationalcarrental.be" are redirected (see annex 7 to the complaint). Some research on the Internet produced by the Complainant confirm that via this website, car rental is available in most EU member States including Belgium.

4.4. The Licensee is Domain Solutions Corp. The person of contact of this organization is Mr. Jian Du A. His address is located Songgong St. 26, 110025 Shenyang, China and his email address is admin@dosoco.com.

The Licensee registered the fourteen Domain Names : "alamocar.be, alamocarrental.be, alamocarrentals.be, alamocars.be, alamoinsider.be, alamoinsiders.be, alamorental.be, alamorentalcar.be, alamorentalcars.be, alamorentals.be, alamorentcars.be, nationalcarrentals.be, nationalrentalcars.be, nationalrentcars.be" on February 16, 2012 (see annex 1 to the complaint).

The Domain names websites exclusively contain sponsored links to competing car rental and other unrelated products and services (see annex 8 to the complaint).

4.5. The Complainant sent an email to the Licensee requesting the transfer of the domain names. This email remained unanswered (see annex 9 to the complaint, letter of September 24, 2012).

5. Position of the parties

5.1. Position of the Complainant

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

The Complainant claims that the Domain Names are confusingly similar to the trademarks in which he has rights. On the one hand, the Complainant claims that the Domain Names "alamocar.be, alamocarrental.be, alamocars.be, alamorental.be, alamoinsider.be, alamoinsiders.be, alamorentalcars.be, alamorentals.be and alamorentcars.be" are all confusingly similar to the his Benelux and Community trade marks "Alamo". On the other hand, the Complainant claims that the Domain Names "nationalcarrentals.be, nationalrentalcars.be and nationalrentcars.be" are all confusingly similar to his Benelux figurative trade mark "National Car Rental".

The Complainant is of the opinion that the Licensee has no rights or legitimate interests in the Domain Names. In this respect, the Complainant argues that the Licensee is not making a bona fide offering of goods and services in connection with any of the fourteen domain names at issue. The Complainant stresses that the Domain Names currently redirect to third party parking page. The Complainant also asserts the Domain names holder has not been commonly known by the domain names. The Complainant argues that he has never granted permission to the Licensee to use its trademarks in any manner including domain names and that the Licensee is not affiliated with the Complainant in any way. The Complainant argues that the Licensee is not making a legitimate non commercial or fair use of the domain names at issue.

Lastly, the Complainant asserts that the Licensee's Domain Names were registered and are being used in bad faith. The Complainant argues the Domain Names were registered in bad faith as the Complainant and the person of contact of the Licensee, Mr. Jian Du A, had prior dealings in 2011 regarding the registration of domain names. The Complainant asserts that the Licensee agreed in September 2011 not to register any domain names related to the Complaint's trade marks. As to the use of the Domain Names, the Complainant argues that the Licensee registered the Domain Name with the sole aim of attracting internet users and derive profit from the use of the trademarks of the Complainant.

5.2. Position of the Licensee

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

6. Discussion and findings

Pursuant to Article 15.1 of the CEPANI Rules for Domain Name dispute resolution, the Third-Party Decider shall decide in accordance with the Terms and conditions of Domain Name registrations under the “.be” domain operated by BNS BE and following the provisions of 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 of 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

According to article 10, b), (1), (i) of the Policy, the Complainant has to prove that he has rights in a trademark and that the domain names are identical or confusingly similar to such trademark.

(a) As to the existence of prior rights

The Complainant provides evidence that he is the owner of the trade mark “Alamo” as a Benelux word mark and as Community word trade mark (see annexes 2 and 3 to the complaint). The Complainant also provides evidence that he is the owner of the trade mark “National Car Rental” as a Benelux figurative trade mark (see annex 4 to the complaint). The Complainant’s rights on his trade marks do not seem questionable *prima facie*, and the Third-Party Decider therefore regards them as valid.

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

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 example, Cepani, case 44106). The Third-Party Decider finds the Domain Name “alamocar.be, alamocars.be, alamocarrentals.be, alamorental.be, alamorentals.be, alamocarrental.be, alamorentalcar.be, alamorentalcars.be, alamorentcars.be, alamoinsider.be, alamoinsiders.be” to be confusingly similar to the Benelux and Community trademarks “Alamo” of the Complainant. The only differences between the Domain Name and the trademarks are : (1) the adjunction of the diverse terms such as “car” or “cars”, “rental” or “rentals”, “car rental” or “rental car”, “rental cars”, “rent cars”, “insider” or “insiders” ; (2) the suffix “.be”.

As to the first difference, the invoked word trademarks registered by the Complainant consist in the word element « Alamo » which is also found the Domain Names.

Besides, the adjunction of descriptive terms such as "car", "rental", "rent" or "insider" does not distinguish the Domain Names from the trade marks. The level of identity is strengthened by the fact that the added descriptive words "car", "rental", "rent" or "insider" elements do not diminish the dominant and distinctive nature of the "Alamo" element (see CEPANI, 44099, oracleconsulting.be).

As to the second difference, according to the well established case law of Cepina, the suffix " be" does not exclude the identity and/or the similarity since the suffix refers only to the geographical extension and origin of the website.

As a result of the above, the Domain Names can be considered as confusingly similar to the trademarks of the Complainant.

The Licensee does not dispute this similarity.

The Third-Party Decider also finds the Domain Names "nationalcarrentals.be, nationalrentalcars.be and nationalrentcars.be" to be confusingly similar to the Benelux figurative trade mark "National Car Rental". The only differences between the Domain Names and the trade mark are : (1) the plural version of the trade mark in the domain name "nationalcarrentals.be", the reversed position of the words "car" and "rental" and the plural version of the word "car" in the domain name "nationalrentalcars.be" and the replacement of the word "rental" by the verb "rent" in the domain name "nationalrentcars.be" ; (2) the suffix ".be".

As to the first differences, the invoked figurative trademark registered by the Complainant consist in the word element « National Car Rental » which is also found in the Domain Names "nationalcarrentals.be", "nationalrentalcars.be" and to a lesser extent in the Domain Name "nationalrentcars.be".

The differences consisting in the plural version of the word "car", the reversed position of the words "car" and "rental" or the replacement of the word "rental" by the verb "rent" do not distinguish the Domain Names from the trade mark.

As to the second difference, as stated above, according to the well established case law of Cepani, the suffix " be" does not exclude the identity and/or the similarity since the suffix refers only to the geographical extension and origin of the website.

As a result of the above, the Domain Names can be considered as confusingly similar to the trade mark of the Complainant.

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

6.2. Rights and legitimate interests

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 Names.

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 (examples, Cepani, cases nr. 4038, 4064, 4030, 4013). 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 Complainant's emails nor to the complaint. 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 Names or a name corresponding to the Domain Names 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 Names, and there appears at first sight to be no connection between the Licensee's name and the Domain Names.

The Domain Names were registered with the Registrar on February 16, 2012. At this time, the Complainant had already registered his trademarks.

The Complainant states that the Licensee had no license or permission from the Complainant to use the trademarks or to apply for use any Domain Names incorporating that trade marks.

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

However, the content of the "alamocar.be, alamocarrental.be, alamocarrentals.be, alamocars.be, alamoinsider.be, alamoinsiders.be, alamorental.be, alamorentalcar.be, alamorentalcars.be, alamorentals.be, alamorentcars.be, nationalcarrentals.be, nationalrentalcars.be, nationalrentcars.be" websites cannot convince the Third-Party Decider of the existence of any of Licensee's legitimate interests in the Domain Name.

The content of these websites is, indeed, exclusively made of sponsored links to direct competitors of the Complainant or other unrelated products or services (see Annex 8 to the complaint). In the Third-Party Decider's view, it is difficult to consider hosting of sponsored links to Complainant's competitors and other unrelated companies as an element justifying a legitimate interest in the Domain Names (see example Cepani, case nr. 44067). Therefore, in the case at stake, the Licensee appears to make a commercial use of the Domain Names with an intent for commercial gain to misleadingly divert Internet users.

The Third-Party Decider therefore considers that the Licensee did not show any legitimate interest in the Domain Names.

The second requirement of article 10, b), of the Policy is therefore met.

6.3. Registration or use in bad faith

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).

Case law also reiterated the principle that one may not deduct bad faith from the mere fact that a Licensee does not file a response (see Cepani, cases nr. 4045 and 4053). 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 trademarks and nevertheless registered the Domain Names.

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.

As to the registration, the Complainant argues that the Domain Names were registered in bad faith as the Complainant and the person of contact of the Licensee, Mr. Jian Du A, had prior dealings in 2011 regarding the registration of domain names. The Complainant asserts that the Licensee agreed in September 2011 not to register any domain names related to the Complainant's trademarks. Though, as the Complainant did not provide any exhibit to prove this fact, this argumentation cannot be followed.

However, it is important to note that the trademarks of the Complainant were registered before the date of registration of the Domain Names. The Complainant's Trademarks "Alamo" and "National Car Rental" are relatively well-known trademarks. They have some reputation and are known throughout the world including in Belgium for a long time in relation with car rental services (see annexes 5 and 6 to the complaint). It is excluded or extremely unlikely that a third party would choose these words as Domain Names. The use of the words "Alamo", "National Car Rental" singular or plural is very similar to the trademarks "Alamo" and "National Car Rental" of the Complainant. The Licensee must have been aware of the trademark rights when it registered the Domain Name so that it can reasonably be assumed that Licensee intentionally chose for the Domain Name in order to misleadingly divert Internet users.

Furthermore, the trade marks of the Complainant are registered for car rental related goods and services. The Complainant also created a loyalty club called "Alamo Insiders" available on his website "alamo.com". Therefore, the adding of the words "car", "rental", "rent" and "insiders" in the litigious domain names of the Licensee reinforces in these circumstances the existence of bad faith (CEPANI, 44105, arganta.be, argena.be, arenta.be).

Besides the above-mentioned bad faith registration of the domain names, the Third-Party Decider is of the opinion that the Domain Names are currently being used in bad faith. The content of websites is indeed exclusively made of sponsored links. The sponsored links system implies that links hosts receives money each time a user click thereon (see case nr. 44209 socco.be). Furthermore, the website displayed under the Domain Name provides commercial links to competitors of the Complainant or other unrelated companies (see case nr. 44228 scapa.be). It is therefore obvious that

the Licensee use of Domain Names is made to attract for commercial gain, Internet users to Licensee website by creating a likelihood of confusion with the Complainant's trade mark.

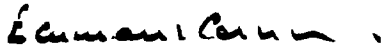
Therefore, without any response from the Licensee, the Third-Party Decider finds that the Licensee has registered and used the Domain Name in bad faith.

As a result, the Third Party Decider considers that 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 registrations for the "alamocar.be, alamocarrental.be, alamocarrentals.be, alamocars.be, alamoinsider.be, alamoinsiders.be, alamorental.be, alamorentalcar.be, alamorentalcars.be, alamorentals.be, alamorentcars.be, nationalcarrentals.be, nationalrentalcars.be, nationalrentcars.be" Domain Name are to be transferred to the complainant.

Brussels, August 6, 2013



Emmanuel Cornu
The Third-Party Decider