

BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDERS

LA RUCHE QUI DIT OUI! / JEAN-FRANCOIS BOMBEECK

Case no. 44306: laruchequiditoui.be – appeal

1. The parties

1.1. **Complainant:** La Ruche qui dit Oui !

with registered office at 20/22 rue Richer, 75009 Paris, France,
with registration number 528.203.755 R.C.C. PARIS,

hereinafter referred to as "*the Complainant*"

Represented by

Guilhem CHERON, CEO of La Ruche qui dit Oui !, 20/22 Rue
Richer, 75009 Paris, France

1.2. **Licensee:** Jean-François BOMBEECK,

domiciled at rue Fauconval 38, 1367 Huppaye, Belgique

hereinafter referred to as "*the Licensee*"

2. Domain Name

Domain Name: "**laruchequiditoui.be**"

Registered on: 22 June 2012

hereafter referred to as "*the domain name*".

3. Background to the case

1. The Complainant filed a complaint with CEPANI according to the CEPANI Rules for Domain Name Dispute Resolution ("the Rules") and the Dispute Resolution Policy of DNS BE, incorporated in its Terms and Conditions for domain name registrations under the ".be" domain operated by DNS ("the Policy").

The Complainant requests that the domain name be transferred to the Complainant.

The complaint was notified to the Licensee and the latter was invited to reply.

CEPANI – NON-PROFIT ASSOCIATION

Stuiversstraat 8, B-1000 Brussels • Telephone: +32 2 515 08 35 • Fax: +32 2 515 08 75

E-mail: Cepani@vbo-feb.be • Website: <http://www.cepani.be>

FORTIS BANK: 210-0076085-89 • KBC: 430-0169391-20 • BBL: 310-0720414-81

No response was submitted by the Licensee.

In his decision of 4 July 2013 the first Third-Party Decider declared the complaint unfounded and denied the request for the registration of the Domain Name "laruchequiditoui.be" to be transferred to the Complainant.

The first Third-Party Decider's decision is mainly based on the following considerations:

"As a matter of fact, the Complainant does not claim that the second or the third conditions of article 10(b) 1 are met, neither does he provide any evidence thereof.

[...]

Based on the complaint, the Third Party Decider can only come to the conclusion that the second and third conditions are not met/proven".

2. On 22 July 2013 the Complainant lodged an appeal against the decision of 4 July 2013.

On 13 August 2013, CEPANI appointed a panel of three Third-Party Deciders forming the Appeal Committee.

CEPANI duly received the declarations of independence of the three Third-Party-Deciders.

By e-mail and registered letter dated 13 August 2013 CEPANI informed the Complainant and the Licensee of the appointment of the Appeal Committee.

By letter dated 13 August 2011 CEPANI transferred the entire file concerning the Complaint in appeal to the three Third-Party Deciders, including The Request for Appeal and 9 schedules.

CEPANI stated that the deliberations should be concluded by 20 August 2013 and that the Third-Party Deciders must inform the CEPANI secretariat of their decision by 12 September 2013, at the latest.

The Licensee did not submit a response on the Complainant's appeal within the deadline of 20 August 2013.

4. Factual information

3. The Complainant is a French company that puts directly in touch local producers of so-called "eco-aware" foods and final consumers via its website www.laruchequiditoui.fr.

The Complainant is the owner of the French verbal trademark n° 11 3 800 962 "la ruche qui dit oui" registered on 27 January 2011 (Schedule III).

The Complainant has also "LA RUCHE QUI DIT OUI" as official trade name ("*enseigne*" in French), which is mentioned in an official registration record of the Commerce and Industry Registry of Paris, with an activity that started under that trade name on October 2010 (Schedule II).

The Complainant also applied for an international trademark n°1171504 "La ruche qui dit oui !" designating the Benelux territory, on 1 July 2013.

4. The Licensee is a natural person domiciled in Belgium.

It registered the domain name "laruchequiditoui.be" on 22 June 2012.

According to the Complainant, the Licensee would be offering the domain name for rent on a website www.lws.fr (schedule IX). However, the evidence only demonstrates that the domain name is not available anymore, without mentioning the possibility to rent it, and especially without evidencing that the Licensee would be offering the domain name for sale or for rent.

The Appeal Committee does not have any other information on the Licensee, as the latter did not react neither to the initial claim nor to the request for appeal .

5. Position of the parties

5.1. Position of the Complainant

5. The Complainant argues in its request for appeal that the conditions of Art. 10.b.1 of the Policy are met since:

- the domain name is identical to its trademark and to its company name;
- the Licensee has no rights or legitimate interests in the domain name;
- the Licensee's domain name has been registered or is being used in bad faith.

5.2. Position of the Licensee

6. The Licensee did not submit a Response within 14 calendar days as from the reception of the notification of the Complainant's request for appeal (Art. 18.5 of the Rules).

As a consequence, the appeal shall only be decided on the basis of the request for appeal (Art. 18.7. and 15 of the Rules and art. 6.4 by analogy).

6. Discussion and findings

7. The record contains no information regarding the respective dates of the notification of the Third party decider's decision, neither of the filing of the request for appeal nor of the notification thereof to the Licensee. However, based on the available file, the Appeal Committee concludes that CEPANI has adhered to the Rules in administering this case, and holds that the request for appeal is admissible.

8. Pursuant to Art. 18 and 16.1 of the Rules, the Appeal Committee shall rule on domain name disputes with due regard for the Policy and the Rules.

Pursuant to Article 10.b.1 of the Policy, the Complainant must prove that the following conditions are met:

- (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."*

(i) Is identical or confusingly similar to

9. The Complainant establishes to be the owner of a French trademark registration "la ruche qui dit oui", filed on January 27, 2011. In addition, in July 2013, the Complainant filed a request for an international registration with designation of the Benelux, according to the Madrid Protocol. The record shows however no evidence of the registration of any Benelux trademark by the Complainant. Nevertheless, the Complainant also establishes to be the owner of a trade name ("enseigne", under French law), as set out above, under section (4). 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 Appeal Committee notices that the Complainant started its activities in 2011, through an internet website whose aim is to put in touch local producers and consumers of food products and to build local networks. Given the ubiquitous nature of the internet, the nature of the Complainant's activities and the geographical and cultural proximity, the Appeal Committee holds that the Complainant may rely on the protection of its trade name "la ruche qui dit oui" under Belgian law.

The Complaint can therefore be assessed on the basis of the Complainant's prior rights in that trade name.

10. According to the Cepani case-law, the suffix ".be" is not relevant for establishing the identity or the similarity between a domain name and a trademark (see amongst other cases nr. 4068, 4067, 4061, 4060, 4059, 4056, 4054, 4053, 4051, 4042, 4039, 44038, nr. 4035, 44034, 4031, 44030, 4025).

The Appeal Committee is of the opinion that the domain name "laruchequiditoui.be" is at least confusingly similar to the abovementioned trade name.

The Appeal Committee therefore concludes that the first condition is met.

(ii) Rights and legitimate interests

11. According to Article 10.b.1 of the Policy the Complainant has to prove that the Licensee has no rights or legitimate interests to the domain name.

Considering the difficulty of proving such a negative fact ("*negativa non sunt probanda*"), 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 amongst other cases nr. 4064, 4030 and 4013).

Art. 10.b.3 of the Policy however provides that the Licensee can prove that he has a right or a legitimate interest to the domain name due to the following circumstances:

- *"prior to any notice of the dispute, he used the domain or a name corresponding to the domain name in connection with a bona fide offering of goods or service or made demonstrable preparations for such use;*
- *he has been commonly known by the domain name, even if he has acquired no trademark;*
- *he 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."*

12. In the case at hand, the Complainant indicates why it believes that the Licensee has no rights or legitimate interests to the domain name, *i.e.* considering the following facts:

- the domain name is not used at all,
- the Licensee has not produced any answers in the dispute,
- the Licensee has not produced any evidence that he would be commonly known by the Domain name.

The Complainant further stresses that a Licensee is expected to cooperate and produce evidence of the existence of a right or a legitimate interest (case nr. 4056).

The Complainant also argues in its request for appeal that the domain name corresponds to a particularly uncommon and original combination of French words.

It is true that the domain name consists of a combination of the definite article "la", the word "ruche" and a subordinate clause "qui dit oui", which is furthermore very original and which can be described as a poetic licence, as beehives are not endowed with the faculty of speech. Such characteristic reduces the probability of any coincidence and the likelihood of any *bona fide* co-existence of rights. In other words, in the App el Committee's opinion, one can hardly conceive of any reason (not to mention of any right) for which the Licensee would have chosen that name, but to copy the Complainant's domain name <laruchequiditoui.fr>.

In absence of any defence from the licensee, the Complainant's arguments can therefore be followed.

The Appeal Committee therefore concludes that the second condition is also met.

(iii) Registered or used in bad faith

13. The evidence of a registration or use in bad faith of a domain name can be provided by the circumstances mentioned in the non-exhaustive list under art. 10.b.2 of the Policy, *i.e.*:

- *"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;*
- *the domain name was registered in order to prevent the owner of the trademark from reflecting this name in a corresponding domain name;*
- *the domain name was registered primarily for the purpose of disrupting the business of a competitor;*
- *the domain name was intentionally used to attract, for commercial gain, internet-users to the licensee's website or other on-line location, by creating a likelihood of confusion with the complainant's trademark;*
- *the licensee register one or more personal names without the existence of a demonstrable link between the licensee and the registered domain names".*

Bad faith can also be presumed when other elements of facts or circumstances exclude any reasonable doubt in this respect. Indeed, Article 10.b.2 of the Policy sets out, without limitation, certain circumstances which, if found, are deemed to be evidence of use and registration in bad Faith. The circumstances enlisted are not exclusive but merely intended to assist the parties in establishing the strengths or weaknesses of their position (WIPO Case nr. D2000-1228; CEPANI Case nr. 4010; CEPANI Case nr. 4002). Bad Faith is a factual element which may therefore be evidenced by all means, including presumptions and circumstances that indicate with reasonable degree of certainty, the existence of bad faith.

14. The presence of one of the circumstances cited under Art. 10.b.2 of the Policy is sufficient to demonstrate that the domain name is registered or used in bad faith.

In the case at hand, the Appeal Committee is of the opinion that,

- given the original and poetic nature of the trademark, trade name and company name of the Complainant and the complexity of this distinctive sign, and
- given the lack of any explanation from the Licensee,

the objective of the latter was most probably to prevent the Complainant from reflecting its trademark or trade name in a corresponding ".be" domain name, to disrupt the Complainant's business or with the expectation of raising benefits from a lucrative domain name transfer.

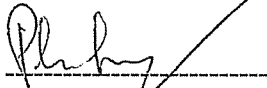
As a result, the Appeal Committee concludes that the third condition is also met.

7. Decision

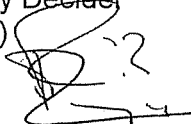
15. Consequently, the Appeal Committee hereby:

- rules that the request for appeal is founded;
- annuls the decision of 4 July 2013;
- orders the domain name "laruchequiditoui.be" to be transferred from the Licensee to the Complainant pursuant to Art. 10.e of the Policy.

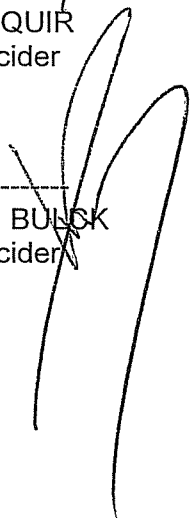
Brussels, 4 September 2013.



Philippe LAURENT
Third-Party Decider
(signature)



Benjamin DOCQUIR
Third-Party Decider
(signature)



Paul VAN DEN BUNSK
Third-Party Decider
(signature)