

DECISION OF THE THIRD-PARTY DECIDER

MBOnline ASBL / DomainProfi GmbH

Case n° 44314 : météo-belgique.be

1. The Parties

- 1.1. Complainant: MBOnline, ASBL;
With registered office at 1120 Brussels, Place Peter Benoit 9,
VAT n° BE 0895 652 567

Represented by:

Mr Frédéric Dechamps, lawyer,
Whose offices are at 1030 Brussels, rue du Palais 44 ;

- 1.2. Licensee:

DomainProfi GmbH;
(Person to be contacted: Martin Steinkamp)
With registered office at Martinistr. 3, 49080 Osnabrueck,
Germany;

2. Domain name

Domain name: "météo-belgique.be"
Registered the: June 11, 2013

Hereafter stated as "domain name".

3. Background of the case

On July 3, 2013, Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation (hereafter "CEPANI").

On July 22, 2013, the Licensee filed a response with CEPANI.

On July 26, 2013, CEPANI appointed the Third-party Decider.

On August 2, 2013, pursuant to Article 13 of CEPANI Rules for Domain Name Dispute Resolution, the deliberations were closed.

4. Factual information

4.1 Concerning MBOonline

The non-profit association ASBL MBOline was founded for the purpose of collecting meteorological data and disseminating forecasts (Appendix 1 of the evidences' file of the Complainant).

According to the Complainant, in order to achieve this objective, said ASBL created and developed the trade name "MeteoBelgique" via the Internet website "meteobelgique.be".

The Complainant provided a number of documents from 2009 to 2013, containing the name "MeteoBelgique" to identify the services of MBOonline, including:

- an example of the registration form filed by a client,
- an invoice sent to MBOonline,
- various press articles,
- various screenshots of webpages or facebook pages, and
- the first page of a contract between Belgacom and the ASBL MBOonline.

4.2 Concerning DomainProfi GmbH

According to the Licensee, the purpose of the German company called DomainProfi GmbH, is to register or buy domain names in order to sell them for profit.

According to DNS.be (<http://dns.be/>), DomainProfi GmbH registered the domain name "météobelgique.be" on June 11, 2013.

4.3 Relationship among the Parties

According to Appendix n°15 provided by the Complainant:

- On June 14, 2013, Xavier Lizing, Chief Executive Officer of MBOonline, sent an e-mail to Lukas Meyerding, employee of DomainProfi GmbH, expressing his will to buy the domain name for the price of 125 euros;
- On June 20, 2013, Lukas Meyerding sent an e-mail to Xavier Lizing telling him that 125 euros was a lot less from the "four-digit net amount" he expected.

5. Position of the Parties

5.1. Position of the Complainant

Complainant requests that the Third-party Decider order the transfer of the domain name and the reimbursement of the costs of the dispute since the conditions provided for in Article 10, (b), (1) of the Terms and Conditions of Domain Name Registrations under the “.be” Domain operated by DNS BE are met.

The Complainant argues that:

- ❖ The Licensee’s domain name is identical or confusingly similar to a trade name in which the Complainant has right since:
 - the documents the Complainant provides demonstrate a public, visible and continuing use of the trade name “MeteoBelgique”, and
 - With the exception of the accent, the trade name “MeteoBelgique” and the domain name “météobelgique.be” are identical.
- ❖ The Licensee has no rights or legitimate interests in the domain name since:
 - the Internet website to which météobelgique.be links has nothing to do with weather forecasting or with Belgium, and
 - the Licensee sells domain name and is not known by the name “météobelgique”.
- ❖ The Licensee’s domain name has been registered or is being used in bad faith since:
 - the name “DomainProfi” suggests that the company of the domain name holder has the corporate object to sale domain names,
 - the Internet website to which météobelgique.be links shows that this name may be purchased, and
 - the exchange of e-mails between the Complainant and the Licensee demonstrates that the latter is ready to transfer the domain name for a price considerably in excess of the cost directly related to the acquisition of the domain name.

5.2. Position of the Licensee

Licensee requests the Third-party Decider reject the transfer of the domain name and the reimbursement of the costs of the dispute, since the conditions provided for in Article 10, (b), (1) of the Terms and Conditions of Domain Name Registrations under the “.be” Domain operated by DNS BE are not met.

The Licensee argues that:

- ❖ The Licensee has rights and legitimate interests in the domain name since:
 - “météo” and “belgique” are two descriptive terms,

- the target group of the Licensee's website is not French nor Belgian speaking,
 - there are several other Internet websites that provide information regarding the weather in Belgium and uses the expressions "Météo" and "Belgique",
 - Licensee holds a lot of other domain names regarding the topic of weather or Belgium as well as several domains with the ".be" extension,
 - Licensee recently acquired the domain name and planned to place content that is more appropriate with it, but was stopped because of the complaint.
- ❖ The Licensee's domain name has not been registered nor is being used in bad faith since:
- it is legal in Germany to register or buy domain names in order to sell them for profit.

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 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 a 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 a trade name in which the Complainant has rights

The application of this criterion raises two questions:

- Does the Complainant own rights on the term "MeteoBelgique" as a trade name ?
- If so, is the Licensee's domain name "météobelgique.be" identical or confusingly similar to the Complainant's trade name "MeteoBelgique" ?

6.1.1. *The rights on the trade name*

The right on a trade name is acquired by its first use (art. 8, Paris Convention for the Protection of Industrial Property, conversely).

The use of the trade name should be public, visible and continuous (Van Ryn et Heenen, t. I, 2e éd., 1976, p. 173, n° 165, cited by D. Kaesmacher, Rép. notar., T. II, Livre 5, éd. 2013, Droits intellectuels, Comm n°98).

A commercial offer (Appendix 2 of the evidences' file of the Complainant), an invoice (Appendix 3 of the evidences' file of the Complainant) and a contract (Appendix 9 of the evidences' file of the Complainant) establish that, on behalf of its clients and to identify its services, the Complainant refers to itself as "MeteoBelgique".

From December 15, 2009 to May 20, 2013, press articles and Internet webpages, therefore public and visible documents, contained the term "MeteoBelgique", "Meteo Belgique" or "Météo Belgique" to identify MBOnline and its Chief Executive Officer, Mr Xavier Lizin, in their activities:

- On December 15, 2009: online press article (Appendix 4, page 6 of the evidences' file of the Complainant),
- On November 2, 2011: online press article (Appendix 4, page 5 of the evidences' file of the Complainant),
- On July 6, 2012: online press article (Appendix 4, page 1 to 4 of the evidences' file of the Complainant),
- On or around May 20, 2013: Internet webpages (Appendix 10 of the evidences' file of the Complainant).

As the use of "MeteoBelgique", "Meteo Belgique" or "Météo Belgique" as trade names is therefore public, visible and continuous, the Third-party Decider concludes that the Complainant owns the trade name "MeteoBelgique".

6.1.2. *The identity or similarity between the trade name and the domain name*

The only differences between the trade name "MeteoBelgique" and the domain name "météobelgique.be" are the accents on "météo" and the capital letters on "Meteo" and "Belgique".

That being said, the Third-party Decider is of the opinion that typographical differences as accents or capital letters are not relevant nor sufficient to modify the perception and intelligibility of a term (CEPANI, case n° 44067 – rembosty-ling.be : concerning spaces ; WIPO, case n° D2005-0472 – B&S : concerning an "n" instead of a "&" ; CEPANI, case n°44048 – direct-immo.be : concerning the addition of "-" ; B. Docquir, "Le contentieux des noms de domaine", J.T., 2007, p. 65) .

Furthermore, as noted above, online press articles referring to Complainants activities also use the term "MétéoBelgique".

The Third-party Decider therefore concludes that the Licensee's domain name is at least confusingly similar to a trade name in which the Complainant has rights.

Finally, for the information of the parties, the Third-party Decider adds that he does not have the power in the present procedure to appraise the scope of protection of such trade name, based on the argument of the Licensee that the trade name of the Complainant is generic. The fact that a domain name is generic may however in certain circumstances, not present in this case, determine or influence the appraisal of the "rights and legitimate interest" and "bad faith" of the Licensee.

6.2. Rights and legitimate interests

Pursuant to Article 10 b) 3 of the Policy, the Licensee can demonstrate his rights or legitimate interests to the Domain Name. The same article of the Policy gives a non-exhaustive list of such circumstances:

- *prior to any notice of the dispute, the registrant 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 registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if he has no trademark; or*
- *the registrant 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.*

The Complainant cannot be imposed the burden of proof of a negative fact in occurrence of the absence of rights or legitimate interests. The Complainant has however to make acceptable that the Licensee has no rights or legitimate interests in the Domain Name (F. petillion en B. Lieben, "Overzicht van de .be beslissingen in de ADR procedure van Cepina (2001-2006)", *Computerrecht*, 2008, p. 74-87, n° 7.1. to 7.5. and cases quoted; B. Docquir, "Le contentieux des noms de domaine", *J.T.*, 2007, p. 61-71, n°18 and cases quoted). If this is the case, the Licensee has to prove the contrary.

The Licensee does not invoke or prove that he is commonly known under the Domain Name.

There is no evidence 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 made demonstrable preparations for such use.

When entering the Domain Name, the internet user is directed to a website operated by the Licensee. This website offers nothing but hyperlinks to third parties websites or advertising from third parties. The website also clearly indicates the activity of the Licensee as trader of domain names (Appendix 14 of the evidences' file of the Complainant). Such website cannot be considered as a proof of the *bona fide* offering of goods and services (case n°44167 – present.be; B. Docquir, "Le contentieux des noms de domaine", *J.T.*, 2007, p. 61-71, n°21).

It is not disputed that the Licensee is using the Domain Name for commercial use. The Licensee does not establish however that he makes a fair use of the Domain Name, in the sense that it is "necessary" under said circumstances to use the Domain Name (case n°44167 – present.be). In other words, the Licensee does not establish that there was a necessity to use the words "météo" and "Belgique" in consideration of the circumstances.

The Third-party Decider therefore concludes that the Licensee has no right or legitimate interest in the Domain Name.

6.3. Registration or use in bad faith

Article 10 b) 2 of the Policy gives a non-exhaustive list that can demonstrate the registration or use in bad faith of the Domain Name. Bad faith must be reasonably proven and deducted from assumption (B. Docquir, "le contentieux des noms de domaine", *J.T.*, 2007, p. 61-71, n°27)

The Licensee's website clearly indicates the activity of the Licensee as reseller of domain names (Appendix 14 of the evidences' file of the Complainant). An exchange of emails between the Complainant and the Licensee demonstrates that the latter is ready to transfer the domain name for a minimum price of "*four-digit net amount*" (Appendix 15 of the evidences' file of the Complainant).

In consequence, the circumstances indicate 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 trade name or to a competitor of the Complainant, for a price that exceeds the costs directly related to the acquisition of the domain name.

The Third-party Decider therefore concludes that the Licensee has registered and used the Domain Name in bad faith.

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 "météobelgique.be" domain name is to be transferred to the Complainant.

Brussels, August 16, 2013

The Third-party Decider
Paul Van den Bulck