



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

MONEYGRAM PAYMENT SYSTEMS/ EASY DOMAIN CONNECT

Case no. 44292: moneygram.be

1. The parties

- 1.1. Complainant: MONEYGRAM PAYMENT SYSTEMS, INC, a Delaware Corporation,
with registered office at United States of America, 55416
Minneapolis, Minnesota, 1550 Utica Avenue South, Suite 100.
Telephone : +1(214) 999-7561
Fax : +1(214) 999-7670
E-mail : trademarks@moneygram.com

Represented by:

Mr. M.F.J. HAAK and Mr. D. VAN EEK,
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- 1.2. Licensee: EASY DOMAIN CONNECT LTD;
with registered office at United Kingdom, SK7 2DH Chesire,
Stockport, Carpenter Court 1 Maple Road.
Telephone : +44 8712180196
Fax : +44 8712180197
E-mail : office@edoco.org

Represented by:

Christian Sieberer, Registrant,
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2. Domain name

Domain name: "MONEYGRAM.BE"
Registered on: 2010, November 16th

hereafter referred to as "the domain name".

3. Background to the case

On 13 December 2012, the Complainant filed a complaint with CEPANI, the Belgian center for Arbitration and Mediation, according to the CEPANI rules for domain name dispute resolution and the dispute policy of DNS, incorporated in its general Conditions, concerning the domain name, with 9 annexes.

On 11 January 2013, CEPANI communicated the Complaint to the Licensee.

The 11th of January 2013 is to be considered as the date of commencement of the proceedings.

On 15 January 2013, CEPANI informed the Licensee and the Complainant that the undersigned, Kristiaan DEHING, with offices in Antwerp, Mariä-Henriëttalei 6-8, was appointed as third-party decider.

The undersigned has filed his statement of independence with the secretariat of CEPANI.

Initially, the deliberations were set to be closed by 22 February 2013.

Following a request from the Licensee, an extension for answer was granted until the 1st of March, while the term for an eventual reply from the Complainant was extended until the 15th of March, on which date the deliberations were closed.

4. Factual information

The Complainant is a global payment services company with a major activity in global money transfer, bill payment solutions and financial paper products.

The global money transfer service allows consumers to send and receive money worldwide, primarily through a global network of third-party agents that use its money transfer systems.

MoneyGram is the second largest global player and has 293,000 local agents, of which 133 agent locations in Belgium.

The Complainant is holder of the Benelux trademark registration 'MONEYGRAM' since 08.09.1994 for services in the class 36 containing financial services, and of the Community trademark registration 'MONEYGRAM' since 16.11.2005 in class 36, including electronic transmission of funds, online funds transfer, electronic credit and debit transaction processing, processing payment to third parties, etc..

The Complainant has registered his official website under domain name 'moneygram.com'.

Licensee operates a website under the domain name 'moneygram.be': this website contains several links to various websites, some of which relate to transfer of money, among them sites of Complainant's competitors. Direct references on this website to the Complainant are however not linked in any way to the Complainant.

Prior to this procedure Complainant has sent an email and a second letter to the Licensee or his representative in order to request the voluntarily transfer of the Domain name, based on the consideration that Complainant is the rightful holder of the trademark MONEYGRAM, protected under Belgian and Community Law.

Licensee failed to give any reaction at all, to such an extent that Complainant was compelled to start the dispute procedure before CEPANI.

5. Position of the parties

5.1. Position of the Complainant

The Complainant argues that the domain name is identical to MONEYGRAM, registered as trademark and used as corporate and trade name by Complainant.

The case law concerning domain names prescribes that the - country code - top level domain '.be' is to be disregarded.

Therefore, the domain name is identical to the MONEYGRAM trademark, or at least corresponding with the protected trademark in a way that they are confusingly similar.

According to the Complainant, Licensee establishes no rights nor legitimate interests in the use of Moneygram in his domain name

Licensee has no trademark rights in the trademark MONEYGRAM, nor does he operate an enterprise or business under this name.

Licensee is not connected to Complainant, nor is he authorized to use the MONEYGRAM trademark.

Complainant argues that the domain name is not used to offer products or services in good faith, since

- (i) the website doesn't effectively offer goods or services produced by the Licensee,
- (ii) the website isn't exclusively intended to offer the marked services or goods, and on the contrary, there's no conduct of trade activity and the website is only used for 'domain parking'
- (iii) it is established that no relationship with the trademark holder MoneyGram is mentioned in the website, and
- (iv) the domain name is used to try to prohibit the trademark owner to use his trade mark in a domain name

The design of Licensee's website is aimed at diversion of internet traffic to earn money through random advertisements.

Finally Complainant argues that the domain name (i) has been registered and (ii) is being used in bad faith.

At the time of registration of the Domain name in 2010, the brand awareness of MONEYGRAM was spread worldwide, en specifically in Belgium, since the Benelux trademark has been registered as from 1994.

Licensee should reasonably have had full knowledge of MoneyGram and its exclusive trademark rights.

Complainant further argues that the domain name was apparently registered with the intent to sell it, or to otherwise make money out of the similarity between trademark and domain name.

Finally the fact that the current use is in bad faith is corroborative for the registration in bad faith.

Also the use in bad faith is established, since it's obvious that the domain name has been registered with the intention to sell it against the highest possible price, illustrated by the offer published on Licensee's website.

Additionally, the current use tends to generate revenue due to the similarity between trademark and domain name, through the luring of visitors interested in the services of MoneyGram and typing the website www.moneygram.be towards the Licensee's website and linked websites.

The domain name 'Moneygram.be' is thus used to generate traffic to the websites of other companies. Licensee receives payment for each click on an ad.

MoneyGram has never consented to such use of its trademark.

5.2. Position of the Licensee

The Licensee didn't submit any response in spite of the extension of his term to reply, granted after his explicit demand.

Consequently, the dispute shall be decided on the basis of the Complaint (art. 5.4 Rules of Procedure)

6. Discussion and findings

Pursuant to Article 15.1 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 for 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 similar to

The disputed domain name is identical to the various trademarks owned by the Complainant.

To evaluate the similarity between the trademark and the domain name, the top level domain '.be' has to be ignored.

Consequently, the first condition set forth in the Dispute resolution is met.

6.2. Rights and legitimate interests

Pursuant to paragraph 10 b. 3 of the Terms and conditions for domain name registrations under the ".be" domain operated by DNS BE provide a list of non-exhaustive circumstances any of which is sufficient that the Licensee has rights or legitimate interests in the disputed domain names.

There is no evidence that the Complainant has authorised, licensed, or permitted the Licensee to register or use the disputed domain name or to use the trademarks.

These trademarks have been acquired through use and registration which predate the time of registration of the disputed domain name.

Complainant has prior rights in the trademarks which precede the Licensee's registration of the domain name by many years.

Therefore there is a prima facie case that the Licensee has no rights or legitimate interests in the disputed domain name, and the burden is on the Licensee to produce evidence to rebut this presumption.

In absence of any defence, the Licensee fails to establish that he has acquired any trademark rights in respect of the disputed domain name.

Furthermore, the disputed domain name never has been used in connection with a bona fide offering of services.

To the contrary, the disputed domain name has been used in respect of the website, - without being authorised by the Complainant -, which provides links to third party websites, including those of the Complainant's direct competitors.

There has been no evidence adduced to show that the Licensee is commonly known by the domain name, and the Complainant has not authorised or licensed the Licensee to use the Complainant's trade name or trademark.

Consequently the second condition set forth in the Dispute Resolution Policy is met.

6.3. Registration in bad faith

In the absence of evidence from the Licensee, and despite a term extension granted to him on explicit demand, the third-party decider accepts the Complainant's arguments with respect to bad faith, adequately proved by the pieces of evidence.

By using the disputed domain name, the Licensee has intentionally attempted to attract, for commercial gain, internet users to the Licensee's website or other on-line location, by creating a clear confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Licensee's website or location or of a service on the Licensee's website.

Pursuant to paragraph 10 b. 2 of the terms and conditions, the following conduct amounts to registration and use in bad faith on the part of the Licensee.

Circumstances indicating that the Licensee has registered or acquired the disputed domain name primarily for the purpose of selling the disputed domain name registration to the Complainant who is the owner of the trademark or to a competitor of the Complainant, for valuable consideration in excess of cost directly related to the disputed domain name.

The price for which the domain name is offered (950.00 €) largely exceeds the normal registration costs.

The website is used for domain parking, which enables Licensee to create benefits through advertisements placed in his website.

It is established that Licensee has engaged in this practice of domain parking to several websites as well.

Licensee registered the domain name copying the trademark of Complainant, preventing him from registering the same domain name, and using the domain name to intentionally attract for straight commercial gain internet users to Licensee's website by creating a confusion with the Licensee's website.

Finally, Licensee's bad faith is manifested in its repeated omissions to respond to Licensee's cease and desist letters and not to present any arguing nor defence despite of the term extension granted on his demand.

For the foregoing reasons, the third-party decider finds that the Licensee has registered and is using the disputed domain name in bad faith.

7. Decision

The Complainant requests 'to decide that the Complainant shall become the registrant of the domain name www.moneygram.be instead of Respondent'.

This request implies inevitably the transfer of the domain name to Complainant.

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 "MONEYGRAM.BE" domain name is to be transferred to the Complainant.

Antwerp, 26.03.2013

Kristiaan DEHING
The Third-party decider