



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

## DECISION OF THE THIRD-PARTY DECIDER

**BANDAI CO Ltd / Didi Trade + Distribution**

**Case no. 44320 : tamagotchi.be**

### 1. The parties

#### 1.1. Complainant:

**BANDAI CO. Ltd**  
Rue du Petit Albi 21-23  
F – 95808 Cergy Pontoise  
France

*Represented by*

Mr. Laurent Becker

Nameshield  
Rue des Arènes, 27  
F - 49100 Angers  
France

E-mail: [domain@nameshield.net](mailto:domain@nameshield.net)

1.2. Licensee: Didi Trade + Distribution  
Didier Beernaert  
Molenveldstraat 18  
2630 Aatselaar

E-mail [Didier@diditech.eu](mailto:Didier@diditech.eu)

### 2. Domain name

Domain name: tamagotchi.be  
Registered on: 12 February 2004

hereafter referred to as "the Domain Name".

CEPANI – NON-PROFIT ASSOCIATION

Stuiversstraat 8, B-1000 Brussels ● Telephone: +32 2 515 08 35 ● Fax: +32 2 515 08 75  
E-mail: [cepina@vbo-feb.be](mailto:cepina@vbo-feb.be) ● Website: <http://www.cepani.be>  
FORTIS BANK: 210-0076085-89 ● KBC: 430-0169391-20 ● BBL: 310-0720414-81

A handwritten signature in blue ink, appearing to be a stylized 'A' or similar character.

### **3. Background to the case**

On 22 August 2013, Complainant filed a complaint concerning the Domain Name.

Licensee did not submit any response.

On 2 October 2013, Cepani appointed third-party decider to settle the dispute.

### **4. Factual information**

Complainant is a major Japanese company in the sector of entertainment products.

One of the most famous products of Complainant is "Tamagotchi", which is a toy simulating the education of an animal with a small miniature console, the size of a watch, provided with a software (annex 2 of complaint).

Complainant is owner of numerous trademark registrations with the term "TAMAGOTCHI" (see complaint exhibits 3).

In particular, Complainant owns

- a Community trademark "TAMAGOTCHI", registered on 17/02/1997 (classes: 25 and 30) ,
- a Community trademark "TAMAGOTCHI", registered on 10/02/1997 (classes : 9, 28 and 41)
- a Community trademark "TAMAGOTCHI", registered on 05/08/2004 (classes: 35, 39 and 42)
- a French trademark "TAMAGOTCHI", registered on 04/08/2004 (classes : 35 and 39).

Complainant holds and uses different domain names incorporating the "tamagotchi" sign: tamagotchi.fr ; tamagotchi.com ; tamagotchi.eu (complaint, annex 4).

### **5. Position of the parties**

#### **5.1. Position of the Complainant**

Domain Name is identical to Complainant's trademarks (suffix .be is not relevant).

The "Tamagotchi" sign is not a word from an existing language and has been created by Complainant to market its products.

Licensee has no relation with Complainant's business and is not authorized to use the "Tamagotchi" trademark.

Licensee did not justify at all its use of the Domain Name (did not reply to complaint) and the

web site linked to the Domain Name is an inactive page (complaint, annex 5). It proves a lack of legitimate interest in the Domain Name.

Considering the elements already mentioned and the existing Cepani and UDRP case law, in these circumstances, one has to conclude that the Domain Name was registered for the sole purpose of preventing Complainant from using a domain name identical to its famous trademarks. Bad faith registration and use of Domain Name is therefore sufficiently proven, since Licensee did not give any answer to the complaint.

## 5.2. Position of the Licensee

Licensee did not submit any response to the complaint.

## 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:

- *" 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. Domain Name is identical or similar to Complainant's trademarks and corporate name

Complainant owns several trademark rights on "Tamagotchi" sign.

In particular, Complainant owns the following trademarks, registered 7 years before Domain Name registration:

- a Community trademark "TAMAGOTCHI", registered on 17/02/1997 (classes: 25 and 30), CTM nr.469841
- a Community trademark "TAMAGOTCHI", registered on 10/02/1997 (classes : 9, 28 and 41), CTM nr.464974

Furthermore, "Tamagotchi" is a well-known trademark for games. It is so famous that it could

raise the question of the degeneration of the trademark into a generic name for the concerned specific kind of game. This question however exceeds the scope of present procedure, since third-party decider has only to do a prima facie control of the distinctive character of the invoked sign and is not competent to decide on the validity of the invoked trademark rights (CEPANI, case nr. 44178 ; B. Docquir, « Le contentieux des noms de domaine », *J.T.*, 2007, p. 63).

To compare Complainant's trademarks and Domain Name, ".be" extension is not relevant since it is the identification code of the Belgian ccTLD (CEPANI case nr. 44141 and mentioned references).

The only distinctive element of Domain Name is "Tamagotchi", which is identical to Complainant's above-mentioned trademarks.

First condition is therefore met.

## 6.2. Rights and legitimate interests

Licensee did not submit any response to the complaint.

In these circumstances, a prima facie evidence of a lack of legitimate interest may be sufficient to meet the second requirement of DNS BE terms and conditions (CEPANI, cases nr. 44094 and 44217).

Third-party decider notes that

- Domain Name is identical to very well-known trademarks of Complainant;
- Licensee seems not using Domain Name (complaint, annex 5),
- Complainant and Licensee have no business relation (distribution license, partnership...),
- There is not any demonstrable preparations to make a bona fide use of Domain Name.

Prima facie, all these elements indicate a speculative registration.

Combined with the absence of response from the Licensee, the third-party decider considers Complainant submitted sufficient evidence of a lack of legitimate interest of the Licensee in the Domain Name.

Second condition is therefore met.



### 6.3. Registration or use in bad faith

Licensee registered Domain Name corresponding to Complainant's famous trademarks without making any use of the Domain Name.

Licensee did not submit any explanation in response to the complaint.

Licensee does not use the Domain Name, despite it was registered more than 9 years ago.

Well-known character of Complainant's trademarks within the Belgian market requires a more severe assessment of bona fide use of the Domain Name (CEPANI cases nr. 44030 and 44051).

One can therefore reasonably conclude that registration of Domain Name constitutes an attempt to disrupt Complainant's business by preventing Complainant to use its trademarks within the ".be" domain.

The registration and/or use of the Domain Name are made in bad faith.

Third condition is therefore 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 registration for the "**tamagotchi.be**" domain name is to be transferred to the Complainant.

Namur, 15/10/2013.



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Alexandre Cruquenaire,  
The Third-party decider