



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

## DECISION OF THE THIRD-PARTY DECIDER

**WEHKAMP BV / NAMEINVEST Ltd.**

**Case no. 44264: wehkamp.be**

### 1. The parties

#### 1.1. **Complainant: WEHKAMP BV,**

with registered office at NL-8011BZ Zwolle (The Netherlands),  
Meeuwenlaan 2, identified under the TVA number  
NL007414961B01,  
;

hereinafter referred to as "*the Complainant*"

*Represented by*

Zacco Netherlands BV, Nachtwachtlaan 20, Postbus 75683, 1070  
AR Amsterdam, The Netherlands, identified under the TVA  
number NL800839912B01,

#### 1.2. **Licensee: NAMEINVEST Limited**

with registered office at The Hallmark Building, Suite 227, BWI  
The Valley, Anguilla.

hereinafter referred to as "*the Licensee*"

### 2. Domain Name

Domain Name: **"Wehkamp.be"**  
Registered on: 8 April 2008

hereafter referred to as "the Domain name".

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

- 3.1. On 19 March 2012 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 shall be transferred to the Complainant.

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

No response was submitted by the Licensee.

- 3.2. On 27 April 2012 and pursuant to Article 6.2 of the CEPANI Rules for Domain Name Dispute Resolution, CEPANI appointed the third-party Decider to settle the dispute involving the aforementioned domain name.

CEPANI duly received the declarations of independence of the Third-Party-Decider. By e-mail and registered letter dated 27 April 2012 CEPANI informed the Complainant and the Licensee of the appointment of the Third-Party Decider.

CEPANI stated in this e-mail that the deliberations should be concluded by May 4, 2012 and that the Third-Party Decider must inform the CEPANI Secretariat of his decision by May 18, 2012 at the latest.

- 3.3. On 4 May 2012 and according to Article 12 of the CEPANI Rules for Domain Name Dispute Resolution, the deliberations were closed;

The Licensee did not submit a response on the Complainant's arguments and motifs.

- 3.4. By Registered letter dated 27 April 2012 CEPANA transferred the entire file concerning the Complaint to the Third-Party Decider, including The Request for and annexes, namely:

- Annexe 1. Copy of the Benelux Registration nr. 0384589
- Annexe 2. Copy of the Benelux Registration nr. 0150117
- Annexe . Copy of the Benelux Registration Design nr. 0852491
- Annexe 3. Copy of CTM / Madrid Registration nr. 579632

- 3.5. On basis of the file, the Third-Party Decider conclude that CEPANI has adhered to the Rules in administering this case.

### **4. Factual information**

4.1. The Complainant is a Dutch company active in the field of online sale.

The Complainant is the proprietor of amongst others of the following trademarks, registered for Chemical Products for the Industry, garden and agriculture; tobacco and smokers accessories; marketing activity; financial activity; mail order, computer, technical advice and complaint handling of classes 1, 34, 35, 36, 37, 39 and 42:

- the Benelux verbal trademark WEHKAMP, filed on 7 October 1982 and registered under No 0384589 (Exhibit 1 of the Complainant);
- the Benelux verbal trademark WEHKAMP, filed on 5 January 1987 and registered under No 0150117 (Exhibit 2 of the Complainant);
- the Benelux design trademark WEHKAMP.nl, filed on 14 October 2008 and registered under No 0852491 (Exhibit 3 of the Complainant);
- the verbal community trademark WEHKAMP, filed on 18 November 1991 and registered under No 579632 (Exhibit 4 of the Complainant).

Besides, the Complainant is holder of the company and commercial name WEHKAMP.

On its website [www.wehkamp.nl](http://www.wehkamp.nl) the Complainant amongst others offers an online megastore under the name "wehkamp".

4.2. The Licensee is a company established in Anguilla (Caribbean Islands).

It registered the domain name "WEHKAMP" on 8 April 2008.

It appears from the Complainant's exhibits and the nomination of the Licensee (Nameinvest Ltd.) that the Licensee specialises in registering several domain names corresponding to third parties' trademarks and that Licensee's practises and a prima facie view on the Internet confirms the Domain name "WEHKAMP.BE" is being used as a so called 'Parking-Page'.

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

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

5.1.1. The Complainant's argumentation in its request is based mainly on the infringement of the Trademarks and the absence of a legitimate interest in the Domain name for the Licensee

Complainant requests the Third-Party Decider to order the transfer of the domain name considering the conflict and alleged misuse of the company and trading name of the Complainant. The Complainant therefore applies to Article 10 of the Policy.

5.1.2. Complainant requests to order The Licensee to pay the fees relevant to the domain name dispute resolution.

(i) *Arguments on the merits*

5.1.3. On the merits, the Complainant argues in its request that the conditions of Art. 10.b.1 of the Policy are met since:

- the Domain name is identical and/or confusingly similar to the trademarks registered in the name of the Complainant 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.

(ii) *The costs of the proceedings*

## **5.2. Position of the Licensee**

5.2.1. 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. 17.5 of the Rules).

As a consequence, the dispute shall only be decided on the basis of the request (Art. 5.4 of the Rules).

## **6. Discussion and findings**

6.1. Pursuant to Art. 15.1 of the Rules, the Third-party Decider 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**

6.2. According to the Cepina 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).

In the present case the Third-Party Decider considers that the evidence provided by the Complainant sufficiently demonstrates the Complainant to be the owner of (i) the trademarks WEHKAMP and (ii) the company name WEHKAMP.

The Third-Party Decider is of the opinion that the domain name "WEHKAMP" is confusingly similar to (i) the Complainant's prior trademarks WEHKAMP and (ii) the company name WEHKAMP.

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

**(ii) Rights and legitimate interests**

6.3 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."*

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

- the Licensee does not have any trademarks "Wehkamp" covering the Benelux and, hence, does not appear to be commonly known by the domain name "Wehkamp.be";
- prior to any notice of the dispute, Licensee did not use the domain name "Wehkamp" or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- the Licensee's company 'Nameinvest Ltd' suggests and indicates that the Licensee is making an illegitimate and/or commercial and/or unfair use of domain names, with the intent for commercial gain to misleadingly divert consumers.

According to the Third-Party Decider, therefore, the second condition is also met.

**(iii) Registered or used in bad faith**

6.5. 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 an element in fact and may therefore be evidenced by all means, including presumptions and circumstances that indicate with reasonable degree of certainty, the existence of bad faith. The assertion of bad faith is not disputed by the Licensee. The Licensee did not submit any Response.

6.6. In the case at hand, the Third-Party Decider is of the opinion that the Complainant does provide sufficient evidence demonstrating that the registration of the domain name was made in bad faith.

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.

When visiting the website [www.wehkamp.be](http://www.wehkamp.be) it appears that said website is a "parking page", proposing commercial links;

This fact clearly establishes that the Licensee registered and/or uses the domain name "Wehkamp.be" intentionally to attract, for commercial gain, internet-users to the Licensee's website [www.wehkamp.be](http://www.wehkamp.be) or other on-line locations, by creating a likelihood of confusion with the complainant 's trademark (see forth circumstance cited under Art. 10.b.2 of the Policy).

As a result, the Third-Party Decider concludes that the third condition is also met.

6.7. Pursuant to Article 20.1. of the Rules the Complainant is to pay the costs of the Proceedings, the claim for payment can therefore not be granted :

*“ The costs for the proceedings are determined in accordance with the scale for domain name dispute resolution costs (annex I) which is fully part of these rules. The costs are entirely paid by the Complainant. They include the fees and costs of the Third-Party Decider as well as CEPANI's administrative expenses..”*

## 7. Decision

2. Consequently, the Third-Party Decider hereby:

- rules that the complaint is receivable and founded;
- orders the domain name "wehkamp.be" to be transferred from the Licensee to the Complainant pursuant to Art. 10.e of the Policy.

Brussels, 10 May 2012.

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Francis de Clippele  
Third-Party Decider  
(signature)