



BELGIAN CENTER FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

CAMBA NV/GRANDMA-ANNS-APPLEPIE LTD

Dispute N° 44183: camba.be

1. Parties

1.1. Complainant: CAMBA NV

having its registered office at 3600 GENK (Belgium), Woudstraat 15

Represented by:

Mr. Bernard Mailleux and Mr. Stijn Tutenel, Attorneys at Law, with offices at 3600 GENK (Belgium), Henry Fordlaan 47

1.2. Domain name holder:

GRANDMA-ANNS-APPLEPIE LTD

Having its registered office at SK 7 2DH Cheshire, Stockport, United Kingdom, 1 Maple Road, Carpenter Court

Not represented

2. Domain Name

Domain Name: camba.be

Registered: August 21st, 2008

Hereafter stated as « Domain Name »

3. Background to the case

On November 9th 2009, the Complainant filed a complaint with CEPANI according to the CEPANI rules for domain name dispute resolution and the dispute resolution policy of DNS, incorporated in the General Conditions, concerning the Domain Name. The Complainant requests that the Domain Name shall be transferred to the Complainant.

On November 18th 2009, CEPANI communicated the Complaint to the Domain Name holder.

This date is to be considered as the date of commencement of the proceedings.

No Response was submitted by the Domain Name Holder.

On December 23rd 2009, CEPANI received an email of "EDOCO" stating: *"Please transfer the domain to the partie, who own the rights for free."*

CEPANI replied the same day that she did not receive a transfer agreement within the deadline which was granted to the parties and that the Complainant insisted that the case would be settled by a third party decider.

The undersigned was appointed by CEPANI as third-party decider on December 23rd 2009. The undersigned has filed his statement of independence with the Secretariat of CEPANI.

On December 23rd 2009, CEPANI informed the Complainant and the Domain Name holder that the undersigned was appointed as third-party decider.

The deliberations were closed on January 4th, 2010.

4. Factual information

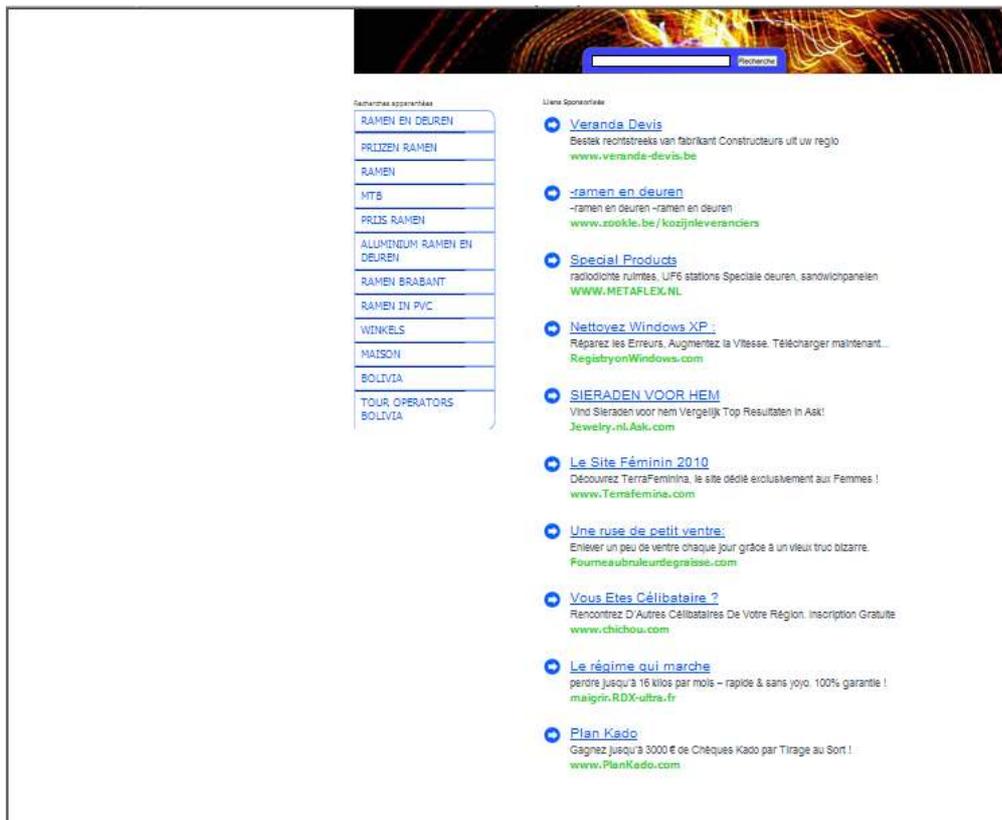
The Complainant produces and installs windows, exterior doors and gates (see www.camba-genk.be).

The Complainant already holds the following domain names: camba-genk.be, cambaramen.be and cambadag.be.

According to his website (www.grandma-anns-applepie.com) the Domain Name Holder sells different kinds of applepies.

The Domain Name was registered on August 21st, 2008.

The website www.camba.be automatically redirects towards a website www.ndparking.com/camba.be which contains a number of sponsored links to websites of third parties. At some of those websites, products or services similar to those of the Complainant are offered:



5. Position of the parties

5.1. Position of the Complainant

5.1.1.

The Complainant argues that the Domain Name is identical or confusingly similar to his trade name and corporation name.

He points out that “Camba” has been the corporation name and trade name since 1978 and this name has become a well-known concept in Belgium in the sector of windows, exterior doors and gates.

He refers to the fact that the domain name is non-generic and that the “.be” suffix is irrelevant when considering the possible identity or confusing similarity between a domain name and an insignia.

5.1.2.

The Complainant argues that it is clear that the Domain Name Holder has no rights of legitimate interests in the domain name.

According to him, the Domain Name Holder has no product or service called “CAMBA” and the Domain Name Holder registers well-known trade names or corporation names as domain names and derives revenue from “click-through” business.

The Complainant also argues that it is sufficient that the states that he is not aware of circumstances from which a right or legitimate interest may appear.

5.1.3.

The Complainant argues that the Domain Name Holder only uses the domain name to obtain commercial gain by attracting internet users to other websites by taking advantage of the confusion which arises from his trade name and corporation name and that the domain name is abused in order to profit from his notoriety.

He points out that internet users when entering the URL www.camba.be are redirected to the website www.ndparking.com/camba.be while they were expecting the website of the Complainant.

The Complainant furthermore refers to the fact that:

- The whois information provided by DNS.be reveals as email address of the Domain Name Holder office@edoco.org;
- EDOCO LTD has its registered office at the same place as the Domain Name Holder;
- EDOCO LTD was "*convicted for similar activities*" (case 44154).

5.2. Position of the Domain Name holder

The Domain Name holder did not submit any response.

According to article 5.4. Rules of Procedure, the dispute shall be decided on the basis of the Complaint.

6. Discussion and conclusions

According to article 15.1 of Cepani Rules for domain name dispute resolution, the Third-Party Decider shall decide on the Complaint in accordance with the DNS.BE Policy and these Rules.

According to article 10,b,1 of the terms and conditions of Domain name Registration under the « .BE » for domain operated by DNS.BE., the Complainant has to prove

- the 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
- the Domain Name holder has no rights or legitimate interests in the Domain Name; and
- the Domain Name has been registered or is being used in bad faith.

6.1. *Is identical or confusingly similar to*

The productions submitted by the Complainant show that the Complainant was established in 1978 under the corporation name "Camba NV" and "Camba" is used as a trade name.

The elements submitted by the Complainant are not contested by the Domain Name holder.

The Domain Name is identical to the corporation name and trade name of the Complainant.

According to the CEPANI case-law, the suffix ".be" has no relevance in order to establish the identity or similarity between a domain name and a trademark.

Therefore, the first condition is met.

6.2. *Right and legitimate interest*

The Domain Name holder has not submitted any circumstance demonstrating his rights or legitimate interest to the Domain Name.

The file does not contain any evidence that the Domain Name holder has been commonly known by the Domain Name and/or that he owns trademark or other rights with respect to the Domain Name.

There is no proof of any authorisation by the Complainant, regarding the use of the Domain Name.

Moreover, according to the productions submitted by the Complainant the Domain Name is used to attract internet users towards a website which contains sponsored links to websites of third parties offering products/services similar to those of the Complainant (production and installing of windows, doors, ...). Most likely, the Domain Name holder derives income from such "pay-per-click" business.

It appears therefore that the Domain Name is not used in connection with a bona fide offering of goods or services and that the Domain Name holder is not making a legitimate and fair use of the Domain Name.

The elements submitted by the Complainant are not contested by the Domain Name holder.

The third-party decider rules that the Domain Name holder has no rights and legitimate interests in the Domain Name.

Therefore, the second condition is met.

6.3. *Registered or being used in bad faith*

The arguments submitted by the Complainant were not contested by the Domain Name holder.

These arguments indicate with a reasonable degree of certainty the existence of bad faith.

The website www.camba.be automatically redirects towards a website www.ndparking.com/camba.be which contains a number of sponsored links to websites of third parties. At some of those websites, products or services similar to those of the Complainant are offered.

It is clear that the Domain Name is intentionally used to attract, for commercial gain, Internet users to the Domain Name holder's website and further to websites offering products/services similar to those of the Complainant, by creating likelihood of confusion with the Complainant's trade name and corporation name.

The Domain Name holder abuses the notoriety of the name «camba » and takes advantage of the fame and reputation of the Complainant's trade name and corporation name for his profit and that of advertisers.

Moreover, it seems that there exists a relation between the Domain Name Holder and EDOCO Ltd., both having their offices at the same address.

The WHOIS information from DNS shows «office@edoco.org » as the email address of the Domain Name Holder. EDOCO had sent an email towards CEPANI stating: "*Please transfer the domain to the partie, who own the rights for free.*"

In case n° 44154, the third-party decider ruled that EDOCO Ltd. intentionally used the domain name « galenco.be » to attract, for mere commercial gain, internet users to his website by creating a likelihood of confusion with the registered trade marks and products of the complainant.

Apparently, the way of using domain names as described above is conducted on a regular basis.

The third-party decider rules that the Domain Name is being used in bad faith.

The Complainant does not prove that the Domain Name originally was registered in bad faith.

Therefore, the third condition is met.

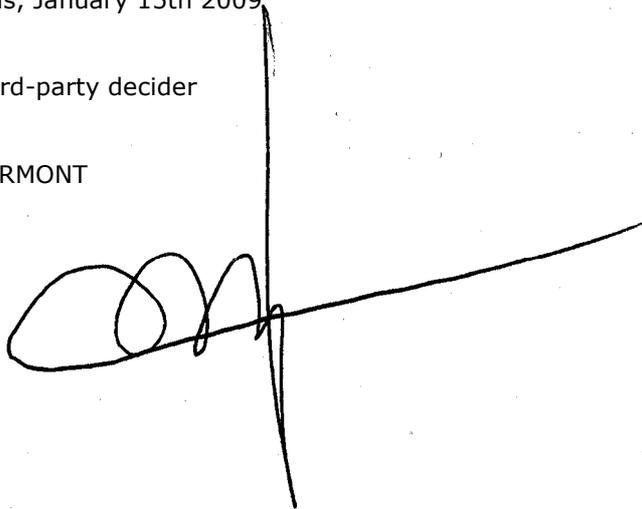
7. Decision

The third-party decider decides, according to article 10, e of the terms and conditions of domain name registration under the « .BE » for domain operated by DNS.BE, to transfer to the Complainant the registration of the domain name "camba.be".

Brussels, January 15th 2009

The third-party decider

Jan SURMONT

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, crossing a vertical line that descends from the date above.