



BELGIAN CENTER FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

OMEGA PHARMA N.V. / EDOCO LTD

Dispute N° 44154: GALENCO.BE

1. Parties

- 1.1. Complainant: OMEGA PHARMA Naamloze Vennootschap established in Belgium at 9810 NAZARETH (BELGIUM), Venecoweg 26,

Represented by:

Shieldmark.Zacco, trademark attorney Freek van Wensen having his office at 1062 XD AMSTERDAM, Netherlands, Overschiestraat 61,

- 1.2. Domain name holder:

EDECO Limited,
established at Carpenter Court; 1 Maple Road;
SK7 2DH CHESHIRE
STOCKPORT
UNITED KINGDOM

Not represented

2. Domain Name

Domain Name: GALENCO.BE
Registered the 29th July 2008

3. History of the procedure

On 31 December 2008, the Complainant filed a complaint with CEPINA – CEPANI, the Belgian centre for Arbitration and Mediation, according to the CEPINA – CEPANI rules for domain name dispute resolution and the dispute policy of DNS, incorporated in its General Conditions, concerning the domain name, with annexes.

On 6 January 2009, CEPANI communicated the Complaint to the Licensee.

The 6th of January 2009 is to be considered as the date of commencement of the proceedings.

No Response was submitted by the Licensee.

On the 3th of February 2009, CEPANI informed the Licensee and the Complainant that the undersigned Kristiaan DEHING, with offices at ANTWERP, Maria-Henriëttalei 6-8, was appointed as third-party decider.

The undersigned has filed his statement of Independence with the Secretariat of CEPINA

On the 9th of February 2008, the deliberations were closed.

4. Facts

The Complainant is holder of two Benelux word trademark registrations for 'GALENCO', as well as the Benelux word device mark 'GALENCO', registration numbers: 729277 with application date 16th April 2003, 731974 with application date 17th April 2003 and 0150099 with application date 30th June 1971 classified for cosmetic products (cl. 03) and sanitary, dermatological products (cl. 05)

The mark GALENCO is well known in Belgium for skin care products.

Licensee operates a website under the domain name 'galenco.be', containing a number of links to various websites, competitive with and related to the products of Complainant.

An extract of the website home page, shows a sample of related links referring to 'Galenco Bébé', 'Galenco Baby Care', 'Galenco', 'Omega Pharma'.

The Domain Name was registered on 29th July 2008.

5. Position of the parties

5.1. Position of the Complainant

The Complainant argues that the Domain name is identical to 'GALENCO', registered as a trade mark and used by Complainant.

The mark GALENCO especially being known for skin care products, will confuse the consumer who expects to find the website of Complainant when visiting www.galenco.be

Moreover the visitor will become confused when he experiences that this website does not show up information of Complainant, nor other, even competitive, suppliers.

According to the Complainant, Licensee cannot have any right or legitimate interest in the domain name, at least his negligence to reply to any request for information, or to any request for assignment, illustrates that any right or interest is absent.

Taking in account the reputation of the mark GALENCO in Belgium, Complainant argues that the Licensee has registered and uses the domain name in bad faith.

Furthermore, the current holder prevents Complainant to register the domain himself and the Licensee seems to be in the business of registering domain names professionally.

Licensee disturbs the business activities of Complainant by holding on to the domain name 'galenco.be' despite being summoned to assign this domain name.

According to the Complainant it is clear that Licensee uses the domain name only in order to obtain commercial gain by attracting Internet visitors to other websites by taking advantage of the confusion which arises from the mark GALENCO, its reputation and this in combination with the nature of the related and competitive links on the website www.galenco.be

5.2. Position of the Domain name holder

The Licensee did not submit any response.

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

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

6.1. *Is identical or confusingly similar to*

The disputed Domain name is identical to the various trademarks for the word 'GALENCO', legitimately owned by the Complainant.

It is generally settled jurisdiction that the country code top level domain name suffix '.be' has not to be taken in account for the determination of the similarity.

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

6.2. *Right and legitimate interest*

In light of the complete failure to provide any evidence or arguments at all, it is difficult to conceive of a legitimate right or interest on the part of the Licensee in connection with the Domain name.

There is no evidence that the Licensee is commonly known by the Domain name.

The Complainant has not authorized the Licensee to use the Complainant's trade marks.

The Complainant has made a prima facie showing of Licensee's lack of rights or legitimate interest in the disputed Domain name.

The domain name is indeed being used as a means of diverting internet customers with an interest in sanitary and related products. In those circumstances it is difficult to see how Licensee's conduct could be characterized as legitimate. The business model of registering well-known trade marks and names as domain names and deriving revenue from 'click-through' business is well-known.

This seems to be what Licensee is doing and in absence of any explanation or denial it is found that Licensee has no rights or legitimate interests in the domain name.

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

6.3. *Registered in bad faith*

In the absence of evidence of the contrary from the Licensee, the third-party decider accepts following Complainant's arguments with respect to bad faith.

The use to which the visitor is invited as described by the Complainant, suggests that the domain name is intentionally used to attract, for mere commercial gain, Internet users to Licensee's website by creating a likelihood of confusion with Complainant's registered trade marks and products.

Furthermore, the domain name is clearly abused in order to profit from Complainant's notoriety without bearing any cost related to the creation of that notoriety, and this for the benefit of the Licensee and the advertisers making use of the website hosted under the Domain name, with a risk of detracting from the solid reputation of Complainant.

For the rest, Licensee has not denied that the domain name was registered in order to prevent Complainant to register the domain name himself, what can be explained as an indication that the domain name holder has engaged in a pattern of such conduct.

Subordinately, it is however not established that the domain name was primarily registered by Licensee for the purpose of disturbing Complainant's business: no sign of disruption has been presented by Complainant, who bears the burden of proof.

The third-party decider therefore concludes that the Complainant has satisfied the third condition.

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 « galenco.be ».

Antwerp, 17th February 2009

The third-party decider
Kristiaan DEHING

(Signature)