



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

**Vlaams Ministerie van Onderwijs en Vorming (Agentschap voor
Onderwijscommunicatie) / Lam Yu**

**Case no. 44187:
onderwijsvlaanderen.be and ondvlaanderen.be**

1. The parties

- 1.1. Complainant: Vlaams Ministerie van Onderwijs en Vorming (Agentschap voor Onderwijscommunicatie);
with registered office at 1210, Brussels, Conscience gebouw 5 A 07 – Koning Albert II-laan 15.

Represented by:

Mr Luc Stoops, Adjunct-Director,
with office at 1210, Brussels, Conscience gebouw 5 A 07 –
Koning Albert II-laan 15.

- 1.2. Licensee: Mr Lam Yu;
residing at HONG KONG 3705 Central Hongkong, 12 Harcourt
Road.

2. Domain name

Domain names:

"onderwijsvlaanderen.be", registered on 6 July 2004, hereafter referred to as the
"Domain Name 1" and

"ondvlaanderen.be", registered on 18 July 2004, hereafter referred to as the "Domain
Name 2".

Together referred to hereafter as the "Domain Names".

3. Background to the case

On 8 December 2009, the Complainant filed a complaint in French concerning the Domain Names. The complaint was filed with CEPANI, the Belgian Center for Arbitration and Mediation, in accordance with the CEPANI rules for Domain Name Dispute Resolution and with the Dispute Policy of DNS Belgium, incorporated in the general terms and conditions of DNS Belgium.

No formal Response was submitted by the Respondent.

CEPANI informed parties that the language of the proceedings was changed into English. All the letters of CEPANI were sent out in English accordingly.

On 24 February 2010, CEPANI informed the Complainant and the Respondent that the undersigned, Mr. Renaud Dupont, with offices at 1170 Brussels, Belgium, Chaussée de La Hulpe 178, was appointed as the Third Party decider to settle the dispute involving the Domain Names.

In its letter of 24 February 2010, CEPANI informed the Third Party decider that the Respondent was willing to transfer the Domain Names, but that that parties had not come to an agreement about such a transfer.

The undersigned has filed his Statement of Independence with the Secretariat of CEPINA.

On 3 March 2010, the deliberations were closed.

4. Factual information

The Complainant is the Ministry of Education and Formation of the Flanders Community in Belgium. The Complainant is responsible for the education and formation policy in Flanders. The Complainant is holder of the domain names "onderwijs.vlaanderen.be" and "ond.vlaanderen.be". The content of the websites corresponding to these domain names concerns general information on education and formation in Flanders. The Complainant stated in its complaint that the domain name "ond.vlaanderen.be" has been used as from 1995 and "onderwijs.vlaanderen.be" has been used as from 2001.

According to the Complainant, the extension "ond.vlaanderen.be" is the email extension for the public officers working in the Ministry of Education and Formation.

The content of Domain Name 1 ("onderwijsvlaanderen.be") consists of links in relation to education and formation. These links refer to a search engine, with a list of general links to websites with information on all sorts of education and formation, with no connection to Flanders. The links are in English and mainly refer to American websites.

The website under Domain Name 2 ("ond.vlaanderen.be") contains links in relation to all kinds of topics, such as DVD's, Chopping, Computers, etc. in French. After clicking on these links, the visitor is directed to a search engine with a list of general links to websites containing information on the subject, with no specific connection to the Flanders Region. The links mainly concern American and French websites.

5. Position of the parties

5.1. Position of the Complainant

The Complainant requests the Third Party decider to order the transfer of the Domain Names since all conditions provided for in the Dispute Resolution Policy, contained in article 10 of the general terms and conditions for domain name registration under the “.be” domain operated by DNS.BE (hereinafter ‘the Policy’) are fulfilled.

Summarized, the Complainant argues the following:

1. The Domain Names are identical to other registered .be domain names

The Domain names and the domain names “onderwijs.vlaanderen.be” and “ond.vlaanderen.be” are identical, except for the “.” Between “onderwijs” and “vlaanderen” and “ond” and “vlaanderen”. The Complainant states this is a case of typosquatting.

2. The Respondent has no rights or legitimate interest in the Domain names.

According to the Complainant, the data on dns.be with regard to the Respondent prove that the Respondent has no link with the Flanders Region. The Respondent is registered in Hong Kong. The languages on the websites of the Domain names are Dutch and English, merely containing links to other websites that have no connection with education and formation in Flanders, nor with the Ministry of Education and Formation in Flanders.

3. The Respondent's Domain name has been registered or is being used in bad faith.

According to the Complainant, it is likely that the Domain names were registered or acquired primarily for commercial purposes to confuse the internet surfers. The links contained in the websites under the Domain names are merely sponsored links to pages without any connection to the education in Flanders. The Respondent would merely use the Domain name 1 to catch internet traffic, according to the third party Sedo (Exhibit 3 of the Complainant), generating revenue like that.

5.2. Position of the Respondent

The Respondent did not file a Response.

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.

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."*

If the Respondent does not submit a Response, the proceedings shall continue and the Third Party decider shall decide the dispute on the basis of the complaint and such pursuant to article 5.4 of the Rules.

6.1. Identical or similar to

The Domain Names are phonetically identical to the signs used by the Complainant "onderwijs.vlaanderen.be" and "ond.vlaanderen.be", except for the "." between "onderwijs" and "vlaanderen" and "ond" and "vlaanderen".

It appears from the evidence submitted by the Complainant, that the latter has rights in the domain names "ond.vlaanderen.be" and "onderwijs.vlaanderen.be". The Complainant pretends that it uses sites under those domain names respectively since 1995 and 2001.

The domain names "ond.vlaanderen.be" and "onderwijs.vlaanderen.be" refer to the Flanders region ("Vlaanderen" meaning "Flanders" in English and the Dutch word "onderwijs" meaning "education"; the Dutch word "ond" is the abbreviation of "onderwijs").

Even though there could be a discussion about whether the names "onderwijs.vlaanderen" / "ond.vlaanderen" can be regarded as the "name of a geographical entity in which the Complainant has rights" as meant in article 10 (b) 1.1 of the General Terms and Conditions of DNS.BE (cf. CEPINA Case nr. 4017, Export Vlaanderen t. Dupon N.V., 7 August 2002), the Third Party decider notes that this is not disputed by the Respondent.

Therefore the Third Party decider finds that the Domain Names are identical or at least confusingly similar to the name of a geographical entity in which the Complainant has rights.

Implicitly, the Respondent agrees with this view, because he has indicated in the course of the proceedings that, as a matter of principle, he is willing to transfer the Domain Names to the Complainant, even though no final agreement was reached.

6.2. Rights and legitimate interests

Pursuant to article 10 b) 3 of the Policy, the domain name holder's rights or legitimate interest to the Domain name can be shown by certain circumstances. Article 10 b) 3 of the Policy gives a non-exhaustive list of such circumstances:

- prior to any notice of the dispute, the domain name holder used the Domain name or a name corresponding to the Domain name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use, or
- the domain name holder (as an individual, business or other organization) has been commonly known by the Domain name, even if he has acquired no trademark, or
- the domain name holder 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.

The Respondent has not filed any Response. He has therefore a fortiori not provided any explanation or evidence, which may establish his rights and/or legitimate interests in the Domain Names, so that Complainant's contentions are not contradicted.

In any event, the Respondent does not seem to have any link whatsoever with the Flanders region, nor with its education and formation program.

The Third Party decider therefore concludes that the Respondent has no right or legitimate interest in the Domain Names.

Consequently, the condition stated in article 10 b) 1 ii of the Policy is also fulfilled.

6.3. Registration in bad faith

In the absence of evidence of the contrary from the Respondent, the Third Party decider accepts the arguments of the Complainant with respect to the bad faith condition.

It appears indeed that the Domain name was registered in order to confuse the internet users and to lead them to the sponsored links mentioned on the websites operated under the Domain Names and this for commercial reasons. The websites under the Domain Names do not have any link with the Flanders region, nor with its education and formation program.

The Third Party decider finds that the above constitutes sufficient evidence of bad faith. As a consequence, also the condition stated in Article 10 b) 1 iii of the Policy is fulfilled.

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 Names "onderwijsvlaanderen.be" and "ondvlaanderen" must be transferred to the Complainant.

Brussels, 16 March 2010.



Renaud Dupont
The Third-party decider
(signature)