



BELGIAN CENTER FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Paneltim NV / Easy Domain Connect Ltd

Dispute N° 44166 : paneltim.be

1. Parties

- 1.1. Complainant: Paneltim NV
Having its registered offices at 8920 Langemark-Poelkapelle,
Klerkenstraat 170b (Belgium);

Represented by:

Mr. André D'Halluin and Mr. Francis Van Remoortel, lawyers,
having their offices at 8500 Kortrijk, Schippersstraat 1/43
(Belgium)

Hereinafter referred to as 'the Complainant'

- 1.2. Domain name holder:

Easy Domain Connect Ltd
Having its offices at SK7 2DH, Chesire, Stockport, Carpenter Court
1, Maple Road (United Kingdom);

Not represented

Hereinafter referred to as 'the Respondent'

2. Domain name

Domain name: "paneltim.be", registered on 21 April 2009

Hereafter stated as the « Domain name »

3. History of the procedure

On 8 May 2009, the Complainant filed a complaint concerning the Domain name with CEPANI, the Belgian Center for Arbitration and Mediation in accordance with the CEPINA-CEPANI rules for Domain Name Dispute Resolution and the Dispute Policy of DNS, incorporated in its general conditions.

On 15 May 2009, CEPANI communicated the Complaint to the Respondent.

On the same date, CEPANI received an e-mail from Office@edoco.org stating: "*Hi, sorry but we have already canceled the Domain name on the 4th May already... GR W*".

Since the whois database of DNS.be still referred to the Respondent as the domain name holder, the Complainant requested by letter dated 18 May 2009 to continue the procedure.

No formal Response was submitted by the Respondent.

On 12 June 2009, CEPANI informed the Complainant and the Respondent that the undersigned, Mrs Veerle Raus, with offices at Terhulpesteenweg 178, 1170 Brussels, Belgium, was appointed as a Third Party decider to settle the dispute involving the Domain name.

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

On 19 June 2009, the deliberations were closed.

4. Facts

The Complainant is a company that processes thermoplastics, synthetic materials for the production of sandwich plastic panels and slats, especially for clients active in the agriculture sector.

The company was founded in 1988. PANELTIM is the Complainant's trade name, social name and corporation name.

It appears that prior to the registration by the Respondent, the Domain name was registered by another party, Mrs Vanheerswynghels . After negotiations between Mrs Vanheerswynghels and the Complainant, Mrs Vanheerswynghels liberated the Domain name and made it available for registration by the Complainant. However, before the Complainant could do so, the Domain name was already registered by the Respondent.

The Complainant sent a cease and desist letter to the Respondent on 28 April 2009 requesting the immediate transfer of the Domain name to the Complainant. Given the fact that the Complainant received no reaction to this letter, it filed the complaint on 8 May 2009.

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 name since all conditions provided for in the Dispute Resolution Policy, contained in article 10 of the general terms and conditions for Domain names registration under the ".be" domain operated by DNS.BE (hereinafter 'the Policy') are fulfilled.

Summarized, the Complainant argues the following:

1. The Respondent's Domain name is identical to a trade name, social name and corporation name in which the Complainant has rights.

The Complainant submits proof that its company is established since 1988 and uses Paneltim as a trade name, social name and corporation name. The identity between the Domain name and the trade name, social name and corporation name Paneltim, owned by the Complainant, is absolute, except for the suffix ".be" which however is in this regard irrelevant.

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

According to the Complainant, the Respondent is not known as Paneltim, nor has it registered any rights to the name, especially not before 1988. The Complainant also points out that the Respondent did not respond to a written summons to assign the Domain name to the Complainant. According to the Complainant, this negligence to such a request also demonstrates that the Respondent has no rights or legitimate interests in the Domain name.

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 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 Complainant from reflecting its trade name, social name and corporation name in a corresponding Domain name and that the Domain name holder has clearly engaged in a pattern of such conduct.

Reference is made to other dispute settlement cases in which the Respondent was a party as a defendant, i.e. Domain name holder. Moreover, the Domain name is not currently used, which adds proof to the previous. Finally it appears from the www.whois.domainnametools.com that the Respondent owns 20.132 other Domain names.

5.2. Position of the Domain name holder

The Respondent did not file a formal Response.

CEPANI only received an e-mail from office@edoco.org stating: "Hi, sorry but we have already canceled the Domain name on the 4th May already... GR W".

This e-mail was sent on 15 May 2009 after being informed of the complaint. This answer cannot be qualified as a formal Response. Moreover, it appeared that at that date, the whois database of DNS.BE still referred to the Respondent as the Domain name holder, so that the procedure was continued.

6. Discussion and conclusions

According to article 15.1 of Capani 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 that:

- 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 that
- the Domain name holder has no rights or legitimate interests in the Domain name; and that

- the Domain name holder'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. Is identical or confusingly similar to

It appears clearly from the evidence submitted by the Complaint, that the Complainant has prior rights in the name Paneltim, which it uses since 1988 as its trade name, social name and corporation name.

Except for the suffix .be which is generally excepted as being irrelevant for determining the similarity between the disputed Domain name and the name on which the Complainant claims a prior right, the Domain name and the trade name/social name, incorporation name 'Paneltim' are identical (cfr CEPINA case of 13 April 2001, n° 4004, Pernod Ricard SA v. Mr Christophe Roelandt; CEPINA case of 2 January 2003, n° 44025, Allianz Aktiengesellschaft v. Constantin European IOnetnet; CEPINA case 30 September 2003, n° 4403, Classics Gallery NV v. Cornelius Morees; Cepany case of 23 February 2005, n° 44056, Ideal-Standard GmbH & Co OHG v. Mrs Aline Bouvy.

The Third Party Decider therefore concludes that the Complainant has rights in the name PANELTIM, which is identical to the Domain name, so that this condition stated in article 10 b) 1, i of the Policy is fulfilled.

6.2. Right and legitimate interest

Pursuant to article 10 b) 3 of the Policy, the domain name holder's rights or legitimate interest to the Domain name can be proved 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.

Although the Complainant does not refer explicitly to Article 10 b) 3 of the Policy, it is clear that it challenges that the circumstances mentioned here above or any other legitimate reason may apply to the Respondent.

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

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

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

6.3. Registered 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.

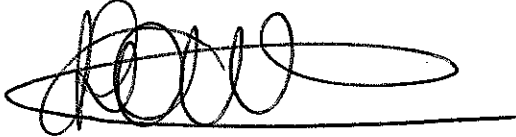
It appears indeed that the Domain name was registered in order to prevent the owner of the trade name, social name, and corporation name from reflecting his name in a corresponding Domain name. It appears from the proof submitted by the Complainant that the Respondent has indeed engaged in a pattern of such conduct. The latter can also be concluded from the fact that the Respondent has registered more than 20.000 Domain names. The non-use of the Domain name by the Respondent furthermore supports the evidence of the bad faith.

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

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 "paneltim.be".

Brussels, 3 July 2009

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a dashed line.

The third-party decider
Veerle Raus