

DECISION OF THE THIRD-PARTY DECIDER

Ardi Automobile SPRL / Ms. Janice Liburd

Case no. 44443 / ardiautomobile.be

1. The parties

1.1. Complainant: *Ardi Automobile SPRL*

With registered offices at 4000 Liège (Belgium), rue Sainte-Walburge 319, identified under the VAT-number BE897.985.022

hereinafter referred to as "the Complainant"

Represented by:

Mr. Houbart Arthur (IT-manager, Houbart-Informatic SPRL, with registered offices at 4040 Herstal (Belgium), rue Verte 330)

1.2. Domain name holder: *Ms. Janice Liburd (Porchester Partners Inc.)*

With registered offices at WTC n/a 0832-0886 Panama City (Panama), Mossfon Building, 54th street, PO Box 0832-0886

hereinafter referred to as "the Licensee"

2. Domain name

Domain name: **"ardiautomobile.be"**
Registered on: May 17th 2016

Hereafter referred to as "the Domain Name"

3. Procedure

- 3.1. On February 28th 2018 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 Belgium, incorporated in its Terms and conditions for .be domain name registrations ("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 March 29th 2018 and pursuant to Article 7.2 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 declaration of independence of the Third-Party Decider. By e-mail dated March 29th 2018 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 April 5th 2018 and that the Third-Party Decider must inform the CEPANI Secretariat of his decision by April 19th 2018 at the latest.

- 3.3. On April 5th 2018 and according to Article 13 of the CEPANI Rules for Domain Name Dispute Resolution, the deliberations were closed;

As the Licensee did not submit a response on the Complainant's arguments and motifs, there was no need for the Complainant to request permission from the Third-Party Decider for an additional extension of the deadline in order to submit a retort.

- 3.4. According to art. 10 of the CEPANI Rules, CEPANI transferred on March 29th 2018 the entire file concerning the Complaint to the Third-Party Decider, including the complaint form and annexes, namely:

- Annexe 1. Extract from the Crossroads Bank for Enterprises of Ardi Automobile (number 0897.985.022)
- Annexe 2. Extract from DNS Belgium with regard to the domain name ardiautomobiles.be
- Annexe 3. Extract from DNS Belgium with regard to the domain name ardiautomobile.be

- Annexe 4. Print of website ardiautomobile.be
- Annexe 5. Print of website ardiautomobile.be is for sale
- Annexe 6. E-mail of Complainant to the Licensee dated 31/01/2018
- Annexe 7. E-mail of Complainant to SEDO dated 15/02/2018

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

4. Factual Background information

4.1. The Complainant is a Belgian company active in the field of car trade

The Complainant is since May 15th 2008 active in wholesale and retail trade of cars and other light motor vehicles. The name Automobile refers to the activity of Complainant and Ardi refers to the names of the managers Ardian Laiq and Armend Laiq.

4.2. The Licensee is a Panamanian company with unknown activities

The Licensee registered the Domain Name on May 17th 2016.

The Domain Name is being used as a so called "parking-page" with car-related links.

5. Position of the parties

5.1. Position of the Complainant

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

Complainant is already holder of the domain name ardiautomobiles.be since January 21st 2009. The Domain Name is therefore not only identical with the name of the company but also very similar to another domain name registered by Complainant. The Domain Name is used to redirect visitors via links to websites with a similar activity as Complainant. The Domain Name is for sale for the highest bidder.

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

5.1.2. Arguments on the merits

The Complainant argues in its request that the conditions of Art. 10 (b)1 of the Policy are met since:

- (i) the Domain Name is identical and/or confusingly similar to the company name of the Complainant;
- (ii) the Licensee has no rights or legitimate interests in the Domain name;
- (iii) the Licensee's Domain Name has been registered or is being used in bad faith.

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

The Complainant did not offer the possibility to the Licensee to voluntarily proceed with the execution of the relief sought within 7 calendar days. Therefore art. 3.2.8. of the Rules which states that *"if the Third-Party Decider decides that the domain name(s) must be transferred or cancelled, the Domain name holder will be required to pay the costs of the proceedings, referring to the exact amount, to DNS.be, according to the dispute resolution policy of DNS.be"* is not applicable.

However, according to article 10 (l) of the Policy *"The dispute resolution fee is payable by the complainant. However, if the Third-party Decider concludes that the domain name registration needs to be cancelled or transferred, DNS Belgium shall repay the total of these costs to the complainant and reclaim the thus repaid costs from the registrant."*

Therefore the Licensee will be required to pay the costs of the proceedings to DNS Belgium in case the Third-Party Decider will decide that the Domain Name has to be transferred. In this case DNS Belgium shall repay the total of the costs paid by Complainant in order to start the dispute resolution to Complainant and reclaim the thus repaid costs from the Licensee.

5.2. Position of the Licensee

The Licensee did not submit a Response within 21 calendar days as from the date of commencement of the proceeding (Art. 6.1 of the Rules).

As a consequence, the Third-Party Decider shall decide the dispute on the basis of the Complaint (Art. 6.4 of the Rules).

6. Discussion and findings

Pursuant to Article 11.1 of the CEPANI Rules the Third-Party Decider shall rule on domain name disputes with due regard for the Policy and the CEPANI Rules for domain name dispute resolution.

Pursuant to Article 10b (1) of the Terms and conditions of .be domain name registrations operated by DNS Belgium, the Complainant must provide evidence of the following:

“

- (i) the licensee's domain name is identical or confusingly similar to a trademark, a tradename, a registered name or a company 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. ”*

6.1. The Domain Name is identical or confusingly similar to the company name in which the Complainant has rights

According to the Cepina case-law, the suffix “be” is not relevant for establishing the identity or the similarity between a domain name and – in this case – a company name (see amongst other cases nr. 44003 *Pernod Ricard / Worldsites Internet Networks*, April 11th 2001 and nr. 44059 *Province du Brabant wallon / Marie-Claire Suigne*, April 28th 2005).

Therefore the Domain Name is identical to the company name of Compliant.

The company with the name "Ardi Automobile" has been established by Complainant on May 15th 2008, while the Domain Name has only been registered on May 17th 2016. The company name refers to and reflects the activities of Complainant. The Complainant is also the domain name holder of "ardiautomobiles.be" since January 21st 2009.

The Third-Party Decider therefore considers that the Complainant has sufficiently proven to have rights on the company name Ardi Automobile.

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

6.2. The Licensee has no right or legitimate interests in the Domain Name

6.2.1 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. 44039 *Consitex S.A. / Piero Gerolanda*, November 21st 2003; nr. 44030 *S.A. Le Petit-Fils de L.U. Chopard & Cie / Joël GLECKER (OROLOGIO NV)*, February 17th 2003 and nr. 44013 *Guinness UDV North America Inc. / Olivier Noël*, February 7th 2002).

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 services 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."*

6.2.2. In the case at hand the Third-Party Decider considers that the Complainant has sufficiently proven that the Licensee has no rights or legitimate interests to the Domain name.

From the argumentation and evidence provided by Complainant follow that the circumstances of the (non-exhaustive) list above are not applicable:

- the Domain Name is not being used in connection with a bona fide offering of goods or services nor did the Licensee made demonstrable preparations for such use

The Domain Name is being used as a parking-page with links related to automobile activities. The Domain Name has been registered on May 17th 2016 but there is no indication that the website will be used for other purposes.

- the Licensee is not commonly known by the domain name

The Licensee is not known under the name Ardi Automobile. There seems to be no link between the Licensee and the name Ardi Automobile nor to any activity related to cars.

- the Licensee is not making a legitimate and non-commercial or fair use of the domain name

Besides the fact that the website linked to the Domain Name is a parking page, it also shows a link to a domain sales platform (administrated by Sedo GmbH) where the Domain Name can be bought by the highest bidder.

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

6.3. The Licensee's Domain Name has been registered or is being used in bad faith

6.3.1. 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 who is the owner of the company name or to a competitor of the complainant, for a price that*

exceeds the costs that the registrant can show are directly related to the acquisition of the domain name;

- the domain name was registered in order to prevent the owner of a company name to use the domain name and that the licensee has engaged in a pattern of such conduct;*
- 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 company name;*
- the licensee registered 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 *Clerical Medical Investment Group Limited / Clericalmedical.com (Clerical & Medical Services Agency)*, November 28th 2000; CEPANI case nr. 44010 *Red Bull GmbH / Kees Rasenberg*, October 25th 2001, CEPANI Case nr. 44002 *Vlaamse Radio en Televisieomroep / Securax BVBA*, March 5th 2001). 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 since he did not submit any Response.

6.3.2. In the case at hand the Complainant arguments that following circumstances demonstrate that the Domain Name has been registered or used in bad faith:

- the website linked to the Domain Name redirects to a page with links to websites with an similar activity of Complainant
- the website linked to the Domain Name has a link to a domain name sales platform where the Domain Name is for sell for the highest bidder
- as Complainant already contacted the Licensee with the request of transferring the Domain Name, the Licensee is aware of the fact that the Domain Name is identical to the company name of Complainant and that the use of the Domain Name harms Complainant

As shown by the Complainant, the website www.ardiautomobile.be is a "parking page", proposing commercial links with car-related activities. So the Licensee has registered and/or uses the Domain Name intentionally to attract, for commercial gain, internet-users to the Licensee's website or to other online locations, by creating a likelihood of confusion with the complainant's company name (see circumstance 4th bullet cited under Art. 10 (b) 2 of the Policy).

Though the selling price of the Domain Name has not been set by the Licensee, it is clear that the Licensee has parked the Domain Name on a domain name sales platform where offers can be made to buy a particular domain name from the domain name holder with a minimum offer of 200 USD. As the page shows, the Licensee is active on this platform as domain name seller since 2009. The platform has advised to raise the offer since there was no reaction of the Licensee on the offer made by Complainant. The minimum offer and the advice prove that the price of the Domain Name exceeds the costs directly related to the acquisition of the Domain name. According to the Cepina case-law this demonstrates the in bad faith registration or use of a domain name (amongst others, case nr. 44246 *Uns CVBA / Parknet BV*, November 22nd 2011; case nr. 44285 *Crohn en Colitis Ulcerosa Vereniging vzw / Roger Overdevest*, December 19th 2012; nr. 44279 *Transfer BVBA / Marcus Jank*, October 10th 2012). The fact that the Licensee is also active as a domain name seller since 2009 indicates that the Licensee is making an illegitimate and/or commercial and/or unfair use of domain names, with the intent for commercial gain.

The Third-Party Decider is therefore of the opinion that the Complainant has provided sufficient evidence demonstrating that the registration of the domain name was made in bad faith.

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

7. Decision

Consequently, pursuant to Article 10(e) of the *Terms and conditions of domain name registrations under the ".be" domain operated by DNS Belgium*, the Third-Party Decider hereby rules that the domain name registration for the "**ardiautomobile.be**" domain name is to be transferred to the complainant.

Antwerp, April 9th 2018

Francis de Clippelle
The Third-party decider

