

DECISION OF THE THIRD-PARTY DECIDER

ALS Liga België vzw Ligue SLA Belgique asbl / Ocom IP B.V.

Case no. 44398 / sla.be

1. The parties

- 1.1. Complainant: ALS Liga België vzw Ligue SLA Belgique asbl, VZW / ASBL;
with registered office at 3000 Leuven, Kapucijnenvoer 33, bus 1;
listed in the Belgian trade register under number 0455.335.321.

Represented by:

Mr. Bart Lieben and Mr. Katia De Clercq, Trademark attorneys,
with office at 9000 Ghent, Kouter 1, bus 3.

- 1.2. Licensee: Ocom IP B.V. ;
with registered office at 1101EC Amsterdam, Luttenbergweg 8,
The Netherlands.

2. Domain name

Domain name: "sla.be"
Registered on: 2 January 2002

hereafter referred to as "the Domain Name".

3. Background to the case

On 15 March 2016 the Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation (hereafter referred to as the "**CEPANI**") concerning the Domain Name under Article 10 of the terms and conditions for Domain Name registrations under the ".be" domain operated by DNS BE (hereinafter referred to as "**the Policy**") and in accordance with the CEPANI Rules for Domain Name dispute resolution and the Dispute resolution policy of DNS BE (hereinafter referred to as "**the**

CEPANI Rules").

On 13 April 2016, the Licensee submitted its response to the Complaint.

On 22 April 2016, CEPANI appointed Prof. dr. Patrick Van Eecke to act as third party decider pursuant to the Rules (hereafter referred to as "**Third-Party Decider**"). The Third Party Decider accepted this instruction and provided CEPANI with the statement of independence in accordance with Article 7 of the Rules. Consequently, CEPANI provided the Third Party Decider with an electronic copy of the case file, consisting of the completed complaint form of the Complainant as well as its annexes (hereafter referred to as the "**Complaint**") and the response of the Licensee (hereafter referred to as the "**Response Form**").

By email dated 22 April 2016, CEPANI also formally informed the Complainant and the Licensee of the appointment of the Third-Party Decider. CEPANI stated in this email that the deliberations should be concluded by April 29, 2016 and that the Third-Party Decider must inform the CEPANI secretariat of his decision by May 13, 2016 at the latest.

4. Factual information

The Complainant is a non-profit organisation established by a group of patients with the disease ALS (or Amyotrophic Lateral Sclerosis) and their families, which aims to provide patients in Belgium with information, assistance and coordination for caretaking.

Although the Complainant has been established in 1995 under the name "ALS Zelfhulpgroep België", the Complaint alleges to be using the name ALS Liga België since then. At that time, the Complainant only used the domain name "alsliga.be". About two years ago, in order to better connect to the Dutch speaking public, the Complainant entered into negotiations with the former proprietor of the domain name "als.be" to purchase the transfer of the domain name. The outcome of these negotiations was positive as the Complainant was able to obtain the transfer of the domain name "als.be" in an amicable way.

Although the Complainant has been using the French name "Ligue SLA", whereby SLA is the French abbreviation of *Sclérose Latérale Amyotrophique*, since 2010, the Complainant has not been as successful in connecting as strongly with the French speaking public as it has been able to do with the Dutch speaking public.

In order to promote its connection with the French speaking public, the Complaint decided to contact the Licensee by email on 19 February 2015, whereby it offered to purchase the Domain Name from the Licensee. The Licensee however replied by email the same day that it was unwilling to sell the Domain Name.

For the same purpose of building a stronger connection with the French speaking public, the Complainant filed on 12 June 2015 a Benelux semi-figurative trademark "LIGUE SLA (& logo)" (N° 0977051) for goods and services in classes 16, 35, 36, 41, 42 and 44. This trademark, which is depicted below, was registered in the Benelux Trademark Register on 26 August 2015.



In addition, on 5 September 2015 the Complainant changed the name of the non-profit organisation "ALS Zelfhulpgroep België" to "ALS Liga België vzw/Ligue SLA Belgique asbl" to better connect to both the Dutch and the French speaking public.

The Licensee is a leading internet and datacentre provider, offering, amongst other services, hosting services, datacentre services and international data/IP services. The Licensee is based in the Netherlands and has been active since 1997. The Domain Name has been registered since 2 January 2002. The Licensee claims to be the legitimate owner of the Domain Name at least since 2013.

An internet search carried out by the Complainant, at the time that the Complaint was filed, showed that the Domain Name was not being used. No active website was connected to the Domain Name.

The Complainant contends that since finding out that the Domain Name was already registered (but not used) by the Licensee, it has contacted the Licensee several times to negotiate the transfer of the Domain Name with him. However, all requests submitted by the Complainant and its legal representative to obtain the transfer of the Domain Name have been put aside by the Licensee.

On 15 March 2016 the Complainant filed a complaint with CEPANI in which it requests the transfer of the Domain Name.

5. Position of the parties

5.1. Position of the Complainant

The Complainant requests the transfer of the Domain Name as according to the Complainant the conditions provided under Article 10 b) 1. of the Policy are met.

(a) Identical or confusingly similar to

Firstly, the Complainant invokes the name of the non-profit organization, "ALS Liga België — Ligue SLA Belgique". In this regard, the Complainant mentions that the name of a non-profit organization is a social name, or equivalent to a company name and to a trade name, in as far as it is publicly used. Hence, the name of a non-profit organization should be granted the same rights, and the Complainant should be granted the same rights as the owner of a company name and trade name.

Secondly, the Complainant mentions that it owns the semi-figurative Benelux trademark registration "LIGUE SLA (& logo)"(N° 0977051) registered for goods and services in classes 16, 35, 36, 41, 42 and 44 and applied for on 12 June 2015.

According to the Complainant, it cannot be denied that the Domain Name on the one hand and the essential element of the French name of the Complainant's organisation or the dominant verbal element of the Complainant's semi-figurative Benelux trademark (i.e. SLA) on the other hand are entirely identical from a visual, aural and conceptual point of view.

Therefore, according to the Complainant, it is obvious that the Domain Name is (i) identical to the essential part of the French name of the organization and the dominant verbal element of the semi-figurative Benelux trademark, or (ii) at least very similar to the French name of the organization in its entirety "Ligue SLA Belgique" and to the verbal element of the semi-figurative Benelux trademark.

(b) Rights and legitimate interests

The Complainant is of the opinion that the Licensee has no rights or legitimate interests in the Domain Name given that none of the circumstances mentioned under Article 10 b) 3. of the Policy apply to the Licensee.

It appears from the research carried out by the Complainant, that the Licensee does not use the Domain Name or a name corresponding to the top level domain in connection to an offering of goods and/or services. According to the Complainant, there is no active use of the Domain Name, which in its opinion is quite remarkable since the Domain Name has been registered more than fourteen years ago.

Also, in the view of the Complainant, the Licensee cannot conceivably assert that he is commonly known under the name "SLA". The Licensee is an internet service provider known under the trade name "OCOM". The Complainant argues that the Licensee's website www.ocom.com does not contain any indication that the Licensee is alternatively known under the name "SLA" or that it has any legitimate rights on the term "SLA" or any confusingly similar sign. The research carried out by the Complainant also did not reveal any legitimate ground (such as the existence of a trademark), which could justify the registration of this Domain Name by the Licensee.

Since the Domain Name has never been actively used, the Complainant argues that it follows from the present circumstances that the Licensee cannot invoke a right or legitimate interest in the Domain Name.

The Complainant also takes the liberty to emphasize the legitimate interest which it has in the Domain Name. In this sense, the Complainant stresses that it is a non-profit association that aims at providing patients with ALS in Belgium with information, assistance and coordination in taking care of patients. To achieve this purpose, the Complainant has, among other things, organized a variety of events, media campaigns, fund raising activities, has distributed folders, brochures, annual reports, and has cooperated with several third parties such as hospitals. The Complainant thus commits itself on a daily basis in attaining the ultimate goal of helping and assisting ALS patients in the entire Belgian territory and not only in the Dutch speaking regions. In this regard the Complainant claims that it has a real, actual and urgent legitimate interest in obtaining the Domain Name.

(c) Registered or used in bad faith

The Complainant submits evidence that neither an active website, nor one or more active e-mail addresses are connected to the Domain Name. In fact, the Domain Name

directs the web user to a web page that displays no website, but only a message that the page cannot be displayed.

The Complainant argues that the Licensee is passively holding the Domain Name, which – if other circumstances exist – has been held by other panels to be evidence of bad faith use of the domain name.

Further, the Complainant is of the opinion that the fact that the Domain name has not been activated more than fourteen years from the registration of the Domain Name gives proof of use in bad faith. For the Complainant this is confirmed by the fact that all the requests submitted by the Complainant and its legal representative to obtain the Domain Name were put aside. Therefore, the fact that the Licensee, without any legitimate reason or right, refuses to transfer the Domain Name, blocks the Complainant, who has a legitimate interest in the Domain Name, from using it in order to better attain its goal.

Finally, the Complainant refers to the WIPO Arbitration and Mediation Center which interprets broadly the term "sale" in one of its decisions by stating that there is a sale – or at least an attempt to sell – when there is an attempt to leverage the trademark rights of the Complainant to generate revenues for the Licensee in excess of the latter's actual costs relating to the domain name. The WIPO Arbitration and Mediation Center considers that such behaviour contravenes the spirit of the Policy. Hence, the Complainant argues that the Licensee's behaviour strongly creates an impression that it tries to obtain financial benefit by selling, renting or otherwise transferring the Domain Name. In the light of the foregoing, the Complainant opinions that the Domain name holder is not diligent in his behaviour towards the Complainant.

5.2. Position of the Licensee

In the Response Form, the Licensee concisely states the following:

- Within its understanding, the acronym SLA means Service Level Agreement, a term which is very common for the industry in which Licensee is active, and has no other meaning.
- The Licensee is a legitimate owner of the Domain Name at least since 2013;
- The Licensee, as the owner of the Domain Name, has no intention to transfer the right for this particular domain to any other natural or legal person.

Consequently, the Licensee insists on reserving the ownership rights on the Domain Name.

6. Discussion and findings

Pursuant to Article 16.1 of the CEPANI Rules, the Third-Party Decider shall rule on domain name disputes with due regard for the Policy and the CEPANI Rules.

Pursuant to Article 10 b)1. of the Policy, 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."*

6.1. Identical or confusingly similar to

In the present case, the Complainant refers to both (i) the semi-figurative Benelux trademark registration "LIGUE SLA (& logo)" and (ii) the name of the non-profit organisation "ALS Liga België vzw/Ligue SLA Belgique asbl" to fulfil the first condition of Article 10, b)1.(i) of the Policy.

Based on the evidence submitted by the Complainant, it is clear that the Complainant is the owner of and has rights in the semi-figurative Benelux trademark registration No 783035 "LIGUE SLA (& logo)" which was registered on 26 August 2015.

The Complainant rightfully argues that this trademark registration can be invoked in respect of Article 10 b)1.(i) of the Policy, as this article does not require that the invoked rights predate the registration of the Domain Name (CEPANI Case of 15 February 2012, n°44253, *Vlaamse Media Maatschappij NV / De Heer Jan De Wael*; CEPANI Case of 12 November 2002, n°44021, *NAPSTER Inc. / TheInternetOne C. V.*; CEPANI Case of 12 March 2012, n°44260, *Sputnik TV BVBA / Alexander White*).

Article 10 b)1.(i) of the Policy amongst others also allows complainants to invoke social names and company names in which they have rights. In this regard the Complainant invokes the social name of its non-profit association – "ALS Liga België vzw/Ligue SLA Belgique asbl" – as registered in the Belgian Official Gazette, in which it demonstrates to have rights.

In order to assess the identity or similarity between the invoked rights of the Complainant ("LIGUE SLA (& logo)" and "Ligue SLA Belgique") and the Domain Name, the invoked rights and Domain Name need to be taken into account in their entirety (CEPANI Case of 10 August 2006, n°44088, *SAS CARTE BLEUE / Madame Claudine PIERRARD*).

To the extent that the invoked trademark is a semi-figurative trademark, the Domain Name should be compared to the verbal elements "LIGUE SLA" of said trademark (CEPANI Case of 22 September 2006, n° 44092, *La Poste / D*). As the verbal element "LIGUE SLA" is not included entirely in the Domain Name, there is no identity between the trademark and the Domain Name. Consequently the Domain Name needs to be confusingly similar to the invoked rights in order to meet the first condition.

To assess the risk of confusion the overall impression needs to be taken into account, whereby more attention is paid to distinctive and dominant elements. In this regard the Complainant argues that the term "LIGUE" is descriptive for an association, as a result of which less attention must be given to this element. The Licensee in its response does not respond to this claim and as such does not contest that the Domain Name would be similar to the invoked rights of the Complainant.

When making an *in abstracto* comparison of the Domain Name and the trademark, it must be observed that the essential element "SLA" of the trademark is reproduced in the Domain Name, and consequently concluded that there is at least a certain degree

of similarity between them, whereby a risk of confusion cannot be excluded. This is not disputed by the Licensee.

The same reasoning can be applied to the comparison of the Domain Name and the social name "LIGUE SLA BELGIQUE".

Based on the foregoing, the Third-Party Decider decides that the condition set forth in Article 10 b) 1 (i) of the Policy is met.

6.2. Rights and legitimate interests

The Complainant has to prove that the Licensee has no rights or legitimate interests in the Domain Name. It must, however, be noted that it is nearly impossible to prove a negative fact. This means that it suffices that the Complainant proves that, taking the circumstances of the case into account, there are serious grounds to consider that the Licensee does not have rights or legitimate interests in the Domain Name (see CEPANI Case of 23 May 2006, n°44083, *Touring Assurance S.A. / M. Jason Harrington*; B. DOCQUIR "L'enregistrement abusive des noms de domaine: aperçu de la jurisprudence des Tiers-décideurs du CEPANI", *Les noms de domaine .be. 10 ans d'existence du règlement pour la résolution des litiges en la matière*, Bruylant, December 2012, p. 48).

In this respect, Article 10 b) 3. of the Policy enumerates a non-exhaustive list of circumstances, by which the Complainant can demonstrate that the Licensee has no rights or legitimate interests. The Complainant alleges that none of these circumstances appear to be present.

(a) Prior to any notice of the dispute, the Licensee 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

The Licensee does not prove that it used the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. A search on the internet carried out by the Complainant, at the time of the Complaint was filed, has demonstrated that the Domain Name has not been actively used. According to the Complainant, the Domain Name has not been activated for more than fourteen years from the moment that the Domain Name was registered. Moreover, neither in the email correspondence with the Complainant nor in its response did the Licensee contest this contention. Without providing any evidence, the Licensee only claims to own the domain at least since 2013.

The mere registration of a domain name does not of itself establish a right or legitimate interest in it. Conversely, failure to use over a long period of time can be interpreted as an indication of a lack of a right or legitimate interest (see CEPANI Case of 31 July 2006, n°44085, *ALS Li / Marta Eguirón*; B. DOCQUIR "L'enregistrement abusive des noms de domaine: aperçu de la jurisprudence des Tiers-décideurs du CEPANI", *Les noms de domaine .be. 10 ans d'existence du règlement pour la résolution des litiges en la matière*, Bruylant, December 2012, p. 50).

Based on the foregoing, the Third-Party Decider decides that the conditions of this first circumstance are not met.

(b) The Licensee (as an individual, business, or other organization) has been commonly known by the Domain Name, even if she has acquired no trademark

The Third-Party Decider notes that the Licensee neither invokes this second circumstance nor responds to and thus does not contest the Complainant's argument that the Licensee is not commonly known by the Domain Name.

(c) The Licensee 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.

There are no indications that the Licensee is making a use, including a legitimate and non-commercial or fair use, of the Domain Name. As illustrated by the Complainant, the domain Name directs web users to an error page. In this respect, the Third-Party Decider has also observed that it appears as if the Licensee has, after the submission of the Complaint, redirected the Domain Name to the domain name "leaseweb.com". In view of the above circumstances, the Third-Party Decider decides that merely recent redirecting of the Domain Name cannot be considered to be a "*legitimate and non-commercial or fair use of the domain name*" in accordance with Article 10 b) 3 of the Policy.

The Third Party Decider therefore concludes that Licensee has no rights or legitimate interests in the Domain Name and that the second condition of Article 10 b)1.(ii) of the Policy is fulfilled.

6.3. Registered or used in bad faith

The Complainant has to prove that the Domain Name has been registered or is being used in bad faith by the Licensee. In accordance with Article 10 b) 1. (iii) of the Policy, it is not required that both the registration and the use occurred in bad faith. It suffices that the Complainant proves either a bad faith registration or a bad faith use (CEPANI Case of 31 June 2006, n°44085, *Media office NV / Maria Eguirón*).

Article 10, b) 2 of the Policy sets out, without limitation, certain circumstances which, if found are deemed to be evidence of the registration or use in bad faith of the domain name. There are many other circumstances which may evidence bad faith (see CEPANI Case of 12 November 2002, n°4021, *NAPSTER Inc. / The InternetOne C.V.*).

The determination of whether or not a domain name is being used in bad faith must take into account the entire circumstances under which it has been registered and used. As the determination of bad faith is a delicate exercise, in many cases, the decision results from an interaction of a number of circumstances (see CEPANI Case of 31 June 2006, n° 44085, *Media office NV / Maria Eguirón*).

The Licensee argues that the Domain Name is an acronym of "Service Level Agreement", which is a common term for the industry the Licensee is active in. The Third-Party Decider acknowledge that "SLA" is indeed a commonly used abbreviation in the IT-sector, and notes that when the Domain Name is indeed a generic, descriptive or common dictionary term, this fact generally constitutes an indication against finding bad faith. Many panellists consider that the defence that the domain name has been registered in the light of the generic or descriptive character of the term and not to disrupt is an understandable and acceptable motive. However, such defence can be of no effect if the overall circumstances show that this is only a pretext

and an artificial construct (CEPANI Case of 31 June 2006, n°44085, *Media office NV / Maria Eguirón*).

The Complainant argues that the Domain Name is being used in bad faith. More in particular, the Complainant invokes passive holding of the Domain Name as a circumstance indicating bad faith.

Based on the following circumstances, the Third-Party Decider considers that the Licensee's conduct with respect to the Domain name may indeed be qualified as passive holding (see CEPANI Case of 31 June 2006, n° 44085, *Media office NV / Maria Eguirón*):

- Since the date of the registration of the Domain Name (2 January 2002) the Licensee has not genuinely used the Domain name.
- The Licensee has not taken any active steps to contact the Complainant. It was, conversely, the Complainant who first contacted the Licensee.
- There are no indications that the Licensee has taken any active steps to sell the Domain Name to any person, including the Complainant. On a request of the Complainant to buy the Domain Name, the Licensee responded that the Domain Name was not for sale.

However, it should be observed that the mere passive holding of the Domain Name by the Licensee is not sufficient to fulfil the condition of Article 10 b) 1 (iii) of the Policy. In accordance with previous decisions, it must be acknowledged that passive holding can qualify as a bad faith use of a Domain Name, if other circumstances exist ("*passive holding of a domain name has been held to evidence bad faith use of the name where other factors exist*") (WIPO case of 25 September 2006, n° D2006-1003, *Peppedine University / BDC Partners, Inc*).

Such other factors which in previous decisions have been taken into account are the following: the Complainant's trademark is very well-known (CEPANI Case of 24 July 2015, n°4438, *Instagram LLC. / Zhou Murong*; CEPANI Case of 10 August 2006, n°44088, *SAS CARTE BLEUE / Madame Claudine PIERRARD*); financial gain is created for the licensee by unduly profiting from the Complainant's goodwill and reputation (CEPANI Case of 24 July 2015, n°4438, *Instagram LLC / Zhou Murong*); the offering for sale of the domain name at an extremely high price (WIPO Case of 25 September 2006, n° D2006-1003, *Peppedine University / BDC Partners, Inc.*; CEPANI Case of 31 June 2006, n°44085, *Media office NV / Maria Eguirón*); the licensee created a pattern of registering numerous domain names (CEPANI Case of 24 July 2015 n°4438, *Instagram LLC / Zhou Murong*); the licensee has actively provided, and failed to correct, false contact details, in breach of its registration agreement or the licensee has taken active steps to conceal its true identity, by operating under a name that is not a registered business name (WIPO Case of 18 February 2000, n° D2000-003, *Telstra Corporation Limited v. Nuclear Marshmallows*);

It results from the Complaint that the Complainant does not establish the presence of any such additional aforementioned factors, nor does the Third-Party Decider identify from the present circumstances any such factors which could prove bad faith of the Licensee in the use of the disputed Domain Name:

- It has not been established that the Complainant's invoked rights are well-known and that the Domain Name has been used to attract for commercial gain users to the Licensee's website by creating confusion with the Complainant's invoked rights.

- As the Domain Name referred to a blank page, no financial gain is created for the Licensee by unduly profiting from the Complainant's goodwill and reputation. In addition there are no indications that the Licensee tries to obtain financial benefit by selling, renting or otherwise transferring the domain name.
- The Licensee has not offered the Domain Name for sale at an extremely high price. On the contrary, the Licensee informed the Complainant that it is not interested in selling the Domain Name. In this regard it should be noted that the fact alone that the Licensee does not wish to sell the Domain Name does not constitute bad faith.
- It has not been clearly established that the Licensee created a pattern of registering numerous domain names.
- The Licensee did not try to hide its identity.

In addition it must be observed that there are no indications that the Licensee has registered the Domain Name or refuses to transfer the Domain Name with the aim to block the Complainant in its activities.

In regard of the foregoing, the Third-Party Decider therefore concludes that the third condition of Article 10 b) 1. (iii) of the Policy is not fulfilled.

7. Decision

Consequently, pursuant to Article 10(e) of the Policy, the Third-Party Decider hereby denies the request that the Domain Name is transferred to the Complainant.

Brussels, 13 May 2016.



Prof. dr. Patrick van Eecke
The Third-Party decider