

DECISION OF THE THIRD-PARTY DECIDER

Green Seed Belgium NV / Mr. Conrad Van Schendel

Case no. 444179 / ladychef.be

1. The Parties

1.1. Complainant:

Green Seed Belgium NV
Nieuwelaan 119
1853 Grimbergen
Belgium

Represented by:

Alain Gunzburg
Attorney at law – Buyle Legal
Franklin Rooseveltplaats 12/3
2060 Antwerp
Belgium

1.2. Domain Name Holder:

Mr. Conrad Van Schendel
Moleneinde 55
7981 AM Diever
The Netherlands

2. The Domain Name

Domain name: ladychef.be
Registered on: 26 December 2021

Hereafter referred to as "the Domain Name".

3. The proceedings

On 22 December 2022, the Complainant filed a complaint concerning the Domain Name (“Complaint”) with the Belgian Centre for Arbitration and Mediation (“CEPANI”), in accordance with the CEPANI rules for domain name dispute resolution (the “Rules”) and the dispute resolution policy of DNS Belgium, incorporated in article 10 of its Terms and conditions for .be domain name registrations (the “Policy”).

On 19 January 2023, CEPANI appointed the undersigned, Ms. Lisbeth Depypere, as the Third-Party Decider to settle the dispute about the Domain Name.

On 26 January 2023, the deliberations were closed.


The Domain Name Holder did not submit a response to the Complaint.

In accordance with article 6.4. of the Rules, this decision is based on the Complaint alone, including the exhibits attached to the Complaint.

4. Factual Background information

The Complainant is a marketing agency active in the food and beverage sector and has been organising, *inter alia*, the annual “Lady Chef of the Year” award since 1991.

The Complainant owns the following trademarks (“the LADY CHEF Trademarks”):

- Benelux word trademark LADY CHEF, filed on 8 April 2011 and registered under No. 900018 on 11 July 2011;
- Benelux word trademark LADY CHEF OF THE YEAR, filed on 2 June 2006 and registered under No. 815467 on 16 January 2007;
- Benelux figurative trademark , filed on 29 May 2006 and registered under No. 802313 on 7 September 2006.

The Complainant asserts that it had previously registered the Domain Name “ladychef.be” but did not renew it in autumn 2021 due to an administrative misunderstanding.

On 26 December 2021, the Domain Name “ladychef.be” was registered by the Domain Name Holder. The Domain Name redirects to the website page “<https://ikitchen.be/ladychef/>”, which appears to be aimed at commercialising kitchen equipment, but also provides information about “The Lady Chef of the Year” award as organized annually by the Complainant since 1991.

On 3 May 2022, the Complainant sent a warning letter to the Domain Name Holder, expressly demanding the transfer of the Domain Name to the Complainant. No action was taken by the Domain Name Holder.

5. Position of the parties

5.1. Position of the Complainant:

The Complainant contends that:

- the Domain Name is identical to the LADY CHEF Trademark(s);
- the Domain Name Holder has no rights or legitimate interests to the Domain Name;
- the Domain Name Holder has registered and uses the Domain Name in bad faith.

The Complainant therefore requests the transfer of the Domain Name "ladychef.be".

5.2. Position of the Domain Name Holder

The Domain Name Holder did not submit any response.

6. Discussion and findings

Pursuant to Article 16(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 for domain name dispute resolution.

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

- (i) the Domain Name Holder's Domain Name is identical or confusingly similar to a trademark, a trade name, 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 Domain Name Holder has no rights or legitimate interests in the Domain Name; and
- (iii) the Domain Name Holder's Domain Name has been registered or is being used in bad faith.

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

The Complainant has sufficiently established that it has rights in the trademark LADY CHEF.

The Domain Name Holder's Domain Name is identical to the Complainant's Benelux word trademark LADY CHEF.

The relevant part of the Domain Name is "ladychef", as the ".be" extension shall not be taken into account, pursuant to the well-established case law of CEPANI (see *inter alia* CEPANI No. 444176, "belfisu.be", No. 444175, "coyotesystem.be" and No. 444140, "meguiarsshop.be").

The Third-Party Decider therefore finds that the first condition of Article 10(b)(1) of the Policy is met.

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

The Complainant must prove that the Domain Name Holder has no rights or legitimate interests in the Domain Name.

It is settled case-law that the Complainant does not have to prove a negative fact and that it is sufficient for the Complainant to make it plausible that the Domain Name Holder has no rights or legitimate interests in the Domain Name to shift the burden of proof to the Domain Name Holder (see *inter alia* CEPANI No. 444178, “belfius-inc.be”, No. 444176, “belfisu.be”, No. 444167, “yslbeauty.be”, No. 444140, “meguiarsshop.be” and No. 444132 “accenture-insights.be”).

Article 10(b)(3) of the Policy gives a non-exhaustive list of such circumstances which can demonstrate the Domain Name Holder’s rights or legitimate interests to the Domain Name:

- *“prior to any notice of the dispute, the registrant 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 registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if he has no trademark; or*
- *the registrant is making a legitimate and non-commercial or fair use of the domain name, without intent to misleadingly divert consumers, for commercial gain 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 Complainant reasonably contends that there are no reasons or circumstances that are indicative of any rights or legitimate interests in the Domain Name by the Domain Name Holder:

- The Domain Name is only used by the Domain Name Holder to redirect visitors to “https://ikitchen.be/ladychef/” for commercial gain;
- The general website under the domain name “ikitchen.be” is aimed at commercializing all kinds of kitchen equipment and has no connection with “Lady Chef” or “Lady Chef of the Year” as developed and organized by the Complainant;
- This website page “https://ikitchen.be/ladychef/” to which the Domain Name redirects internet users specifically mentions the “Lady Chef (of the Year)” award as organized annually by the Complainant since 1991 and, moreover, details the Complainant’s past achievements with the “Lady Chef” award.

In view of the above, the Third-Party Decider finds that the Complainant makes it plausible that the Domain Name Holder has no rights or legitimate interests in the Domain Name.

As the Domain Name Holder has not filed any response and has therefore not provided any explanation or evidence to establish his rights or legitimate interests in the Domain Name, the Complainant’s contentions in this respect are not contradicted.

Therefore, it must be concluded that the second condition under article 10(b)(1) of the Policy is also fulfilled.

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

Bad faith must be reasonably proven and may be proven by any means, including presumptions and circumstances that indicate with a reasonable degree of certainty the existence of bad faith.

According to article 10(b)(2) of the Policy, the evidence of such in bad faith registration or use of a Domain Name can *inter alia* be demonstrated by the following circumstances:

- *“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 trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity, 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; or*
- *the domain name was registered in order to prevent the owner of a trademark, a trade name, a registered name or a company name, a geographical designation, a name of origin, a designation of source, a personal name or a name of a geographical entity to use the domain name and that the registrant has engaged in a pattern of such conduct; or*
- *the domain name was registered primarily for the purpose of disrupting the business of a competitor; or*
- *the domain name was intentionally used to attract, for commercial gain, Internet users to the registrant's web site or other on-line location, by creating confusion with the complainant's trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the registrant's web site or location or of a product or service on his web site or location; or*
- *the registrant has registered one or more personal names without the existence of a demonstrable link between the registrant and the registered domain names.”*

The Complainant demonstrates that the circumstances of the case indicate with a reasonable degree of certainty that the Domain Name has been registered and used in bad faith.

The Third-Party Decider finds that the Domain Name is intentionally used to attract, for commercial gain, internet users to “https://ikitchen.be/” by creating confusion with the Complainant's LADY CHEF trademarks. The website page “https://ikitchen.be/ladychef/” states, *inter alia*, that: **“Ladychef: about successful women behind the cooker** On Ladychef.be, the female chef was the shining centre of attention. Ever since 1991, the Chaudfontaine Lady Chef of the Year award has been presented by the organisation Green Seed, in cooperation with Culinaire Ambiance magazine, among others. This website featured even more than just the annual winner of this important award. (...). **Acquisition of the website** In 2022 IKitchen became the owner of the domain name of ladychef.be. Below you can read more about what could be found on the Ladychef website in the past. On Ikitchen's own website, you can find information on such things as: Freezers Dishwashers Cheese boards Blenders Kettle Food processors Airfryers Refrigerators Microwaves Cooker hoods Cookers. So all the best equipment a Ladychef needs in her kitchen (...)” (English translation).

The Domain Name Holder is therefore clearly aware of the Complainant and of the fact that the Domain Name was previously held and used by the Complainant. The Complainant reasonably contends that the Domain Name Holder deliberately appropriated the Domain Name in bad faith during the period in which the Complainant had not renewed it. The Complainant further asserts that the Domain Name Holder knew very well that by appropriating the Domain Name, the Complainant's business would be disrupted.

Finally, the Domain Name Holder's lack of response to the Complainant's warning letter and to the Complaint also indicates bad faith (see also CEPINA No. 444121, "spiriva.be").

Consequently, the third condition stated in Article 10(b)(1) of the Policy is also 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 name registration for the "**ladychef.be**" domain name is to be transferred to the Complainant.

Brussels, 9 February 2023.

Lisbeth DEPYPERE
The Third-Party Decider