



THE BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Sean Van Loon/ NV A Online Advertising

Case no. 444215 / vanloon.be

1. The parties

1.1. Complainant:

Mr. Sean VAN LOON

Domiciliated at Statiestraat 9A, 2180 Ekeren

hereinafter referred to as "the Complainant"

1.2. Domain name holder:

NVA ONLINE ADVERTISING

With registered offices at Opper 14, 5406CA Uden,
The Netherlands, represented by Mr. Niek Van Alphen

*hereinafter referred to as "the Domain Name Holder
or Licensee"*

2. Domain name

Domain name: **"Vanloon.be"**

Registered on: July 17, 2023

Hereafter referred to as "the Domain Name"

3. Procedure

- 3.1. On April 4, 2024 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 Domain Name Holder and the latter was invited to reply. In accordance with article 10 of the Dispute Resolution policy of the general conditions of DNS.be and by means of the Response Form the Domain Name Holder replied to the affirmations and accusations of the Complainant which were communicated to him.

- 3.2. On April 23, 2024 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 April 16, 2024. CEPANI informed the Complainant and the Domain Name Holder of the appointment of the Third-Party Decider.

CEPANI stated in this e-mail that the deliberations should be concluded by April 30, 2024 and that the Third-Party Decider must inform the CEPANI Secretariat of his decision by May 14, 2024 at the latest.

- 3.3. On April 30, 2024 and according to Article 13 of the CEPANI Rules for Domain Name Dispute Resolution, the deliberations were closed;

No further submissions, arguments or motifs were presented. There was no need for the Compliant to request permission from the Third-Party Decider for an additional extension of the deadline in order to submit retort.

3.4. According to art. 10 of the CEPANI Rules, CEPANI transferred on April 23, 2024 the entire file concerning the Complaint to the Third-Party Decider, including the Complaint form and annexes and the Response form and annexes, namely:

- Annexes to the Complaint form

- Annexe 1. Extract from the Crossroads Bank for Enterprises of Van Loon Consulting (number 01003.297.823)
- Annexe 2. Conversations on Buy and Sell Domain Names/Dan.com

- Annexes to the Response form
Printscreen dan.com/sell_your_domain

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 citizen with the surname 'Van loon'. He is the shareholder/owner and director of a company 'Van loon Consulting'. The company is active as a computer consultancy firm. BV Van Loon Consulting is duly incorporated following notary deed before Mtre. Maxime Ruiters, notary public with study at Lier on December 11, 2023, extract of which is published in the annexes to the Official Gazette dd. December 14, 2023 under ref. 23457170. Complainant can be found on the Internet at the following link: <https://www.seanvanloon.be/>. Complainant is already holder of the domain name Seanvanloon since February 12st 2010 (last modification November 10, 2023).

4.2. The Licensee is a Dutch company offering online services: domain name services – content management – web development – search engine optimization. The Licensee is on the web at the following link : [NVA Online advertising | Domeinnamen, SEO en web development \(nva-online.nl\)](https://www.nva-online.nl/).

4.3. The Licensee registered the Domain Name on July 17th 2023. The Domain Name was offered for sale and transfer at the highest bidder; current asking price is 699 USD (excl. VAT).

The Domain Name is not being used.

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.

The Domain Name is not only identical of confusingly similar to the company name of the complainant but also very similar to his personal name. the Licensee has no rights or legitimate interest in the domain name, the Domain Name is for sale for the highest bidder and therefore is being used in bad faith.

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

5.2. Position of the Licensee

5.2.1. The Licensee did submit a Response within 21 calendar days as from the date of commencement of the proceeding (Art. 6.1 of the Rules).

Licensee confirms holding the Domain Name for resale. Domain name registration and management being its core business as a 'marketing agency', Licensee considers domain name trading as consistent with the Policy. Licensee claims that there is no prove of bad faith, nor of a breach of any right and no confusion with the Complainants website.

5.3. Arguments on the merits

5.3.1. 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.

5.3.2. 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.

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:

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- (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 and/or surname in which the Complainant has rights

6.1.1. 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 or a surname (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).

6.1.2. The Domain Name VANLOON is not identical to the company name of Complainant (Van Loon Consulting). Question is whether the Domain Name is so similar to the company name that it might create confusion. In the opinion of the Third Party Decider this is not the case.

6.1.3. The Domain name is however identical to the surname of the Complainant. Being identical to the surname of the complainant does not necessarily entitles him to an exclusive right to the Domain name. Moreover since the complainant uses the name 'Seanvanloon.be' on the web.

This being so the Complainant has a legitimate interest in the name. The personal name is 'a personality right' and therefore the Claimant has a right in the Domain Name (cfr. Case nr. 444190 *Jardon.be*; Case 444126 *Devreker.be*; Case 444115 *Lietaert.be*; Case 44491 *Cuyt.be*).

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 for reselling purposes only; the Licesees' page shows a link to a domain sales platform (Domain Names/Dan.com) where the Domain Name can be bought by the highest bidder.
- the Licensee is not commonly known by the domain name
The Licensee is not known under the name Vanloon. There seems to be no link between the Licensee and the name Vanloon.
- the Licensee is not making a legitimate and non-commercial or fair use of the domain name

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 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 or Surname of Complainant and that the use of the Domain Name harms Complainant

As shown by the Complainant, the Domain Name is for sale. The Licensee makes its business of selling Domain names. So the Licensee has registered the domain name with the sole purpose of reselling. 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. As the page shows, the Licensee is active on this platform as domain name seller. The Complainant has been advised by the Licensee to raise its offer made by Complainant. The requested 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 active as a domain name seller clearly indicated on his webpage ([NVA Online advertising | Domeinnamen, SEO en web development \(nva-online.nl\)](#)). 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 "**vanloon**" domain name is to be transferred to the complainant.

Antwerp, May 2, 2024

Francis de Clippele
The Third-party decider

