

DECISION OF THE THIRD-PARTY DECIDER

Belfius Bank NV / Ali Pakov

Case No. 444178 CEPANI: belfius-inc.be

1. Parties

1.1. Complainant: BELFIUS BANK NV
Karel Rogierplein 11
1210 SINT-JOOST-TEN-NODE
BELGIUM

Represented by:

Ms. Marieke ROSEEUW
Ms. Céline JANSSENSWILLEN
Company Lawyers
Karel Rogierplein 11
1210 SINT-JOOST-TEN-NODE
BELGIUM

1.2. Domain name holder: Ali PAKOV
Rue De La Tonnellerie 4
38470 VINAY
FRANCE

2. Domain name

Domain name: **"belfius-inc.be"**
Registered on: 16 July 2022

Hereafter the "Domain Name".

PRELIMINARY NOTE: The Third-Party Decider observes that there is a confusion regarding the spelling of the Domain Name. The Complaint mentions the domain name "belfius-inc.be" with the letter following the hyphen being a capital "i". However, the Complainant's request for information to DNS Belgium as well as the response email from DNS Belgium relates to the Domain Name "belfius-inc.be", which has the lowercase letter "l" following the hyphen.

As domain names are not case-sensitive and the domain name “belfius-inc.be” is not registered, the Third-Party Decider will render a decision on the Domain Name “belfius-inc.be”.

3. Procedural history

On 9 November 2022, Complainant filed a Complaint with CEPANI requesting that the Domain Name be transferred.

On 12 December 2022, CEPANI appointed Diégo Noesen as Third-Party Decider. On 19 December 2022, the deliberations have been closed. No response was received.

In the absence of a Response, the Third-Party Decider renders his decision based on the Complaint, Article 10 of the "Terms and conditions for .be domain name registrations" of DNS Belgium, entitled "Dispute resolution policy" (the "Policy"), and the Rules for Domain Name Dispute Resolution of CEPANI (the “Rules”).

4. Elements of fact

The Complainant, Belfius Bank NV, is a Belgian bank and financial services provider. The Complainant has more than 5.000 employees and over 650 agencies as well as a 100% shareholding by the Belgian state.

The Complainant holds various BELFIUS trademarks, including the following:

- EU trademark BELFIUS No. 010581205, registered on 24 May 2012 in classes 9, 16, 35, 36, 41 and 45;
- Benelux trademark BELFIUS No. 914650, registered on 10 May 2012 in classes 9, 16, 35, 36, 41 and 45.

The Domain Name has been registered on 16 July 2022 and currently appears to be inactive.

The Complainant provides evidence of cease & desist letters it sent to the Respondent and the registrar on 26 August 2022 and 1 September 2022.

5. Parties contentions

5.1. Complainant

In summary, the Complainant requests that the Domain Name be transferred. The Complainant argues that the Domain Name is confusingly similar to its BELFIUS

trademarks, trade name and company name. The Complainant further claims that the Respondent has no rights or legitimate interests in the Domain Name. According to the Complainant, the Respondent is in no way associated with the Complainant and is not making legitimate noncommercial or fair use of the Domain Name. Finally, the Complainant argues that the Respondent registered or used the Domain Name in bad faith. According to the Complainant, the Respondent knew or should have known of the Complainant's trademark when it registered the Domain Name. The Complainant claims that bad faith can be found given the absence of legitimate interest to use the Complainant's trademark and the absence of any valid argument that might justify the use of the Complainant's mark. According to the Complainant, the passive holding or non-use of a domain name is in the present case supporting the finding of bad faith, since the Domain Name mainly consists of the Complainant's trademark and given the impossibility to conceive any plausible actual or contemplated active use of the Domain Name by the Respondent that would be in good faith.

5.2. Respondent

The Respondent did not reply.

6. Discussion and findings

Article 16.1 of the Rules instructs the Third-Party Decider as to the principles the Third-Party Decider must use in determining the dispute: "*The Third-Party Decider shall rule on the Complaint with due regard for the views of the Parties and in accordance with the Policy of DNS Belgium, the Registration Agreement and these Rules.*"

By virtue of Article 10, b, 1 of the Policy, the Complainant must prove each of the following:

- the Respondent'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
- the Respondent has no rights or legitimate interests in the Domain Name; and
- the Respondent's Domain Name has been registered or is being used in bad faith.

6.1. Identity or confusing similarity

It is undisputed that the Complainant has rights in the trademark, trade name and company name BELFIUS.

The Domain Name incorporates the Complainant's BELFIUS trademark in its entirety, simply adding a hyphen and the term "Inc". According to the Third-Party Decider, the Complainant's trademark is easily recognizable within the Domain Name and the added elements do not prevent a finding of confusing similarity.

Additionally, it is well established that the domain name extension ".be" can be disregarded in determining identity or confusing similarity.

Therefore, the Third-Party Decider finds that the Domain Name is confusingly similar to the Complainant's BELFIUS trademarks, trade name and company name.

It follows that the first element of the Policy has been met.

6.2. Rights or legitimate interests

Pursuant to Article 10, b, 1, ii of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Name. It is established case law that it is sufficient for the Complainant to make it plausible that the Respondent has no rights or legitimate interests in the Domain Name to shift the burden of proof to the Respondent.

There is no evidence available showing that the Respondent would have been commonly known by the Domain Name and the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by DNS Belgium, the Respondent is "Ali Pakov". The Respondent's use and registration of the Domain Name was not authorized by the Complainant.

Where a domain name consists of a trademark plus an additional term, the Third-Party Decider finds that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. In this case, the Domain Name incorporates the Complainant's BELFIUS trademark and simply adds a hyphen and the lowercase letters "l", "n" and "c". In the Third-Party Decider's view, this term is visually similar to the term "Inc" with a capital "i", which is a common suffix indicating a corporation. Therefore, the Third-Party Decider finds that the Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use, as it may be considered to refer to a company linked to the Complainant.

In view of the above, the Third-Party Decider finds that the Complainant makes it plausible that the Respondent has no rights or legitimate interests in the Domain Name. The burden of proof on this element thus shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name.

As the Respondent did not file any response to the Complaint, the Complainant's assertions remain undisputed and the Third-Party Decider considers that the

Respondent did not demonstrate any rights or legitimate interests in the Domain Name.

Moreover, the Third-Party Decider observes that the Domain Name appears to be inactive, and neither the Respondent nor the facts of the case indicate any demonstrable preparations to a good faith use of the Domain Name. The passive holding or non-use of domain names is, in appropriate circumstances, evidence of a lack of rights or legitimate interests in the domain names. See *e.g.* CEPANI Case No. 44482, 9 March 2020 (toskani.be).

It must therefore be concluded that the second element under Article 10, b, 1, ii of the Policy is also fulfilled.

6.3. Registration or use in bad faith

The third element of Article 10, b, 1 of the Policy, requires that the Complainant proves that the Respondent registered or used the Domain Name in bad faith.

Bad faith must be proven but may also be derived from reasonable assumptions in certain circumstances. See *e.g.* CEPANI Case No. 44199, 25 June 2010 (eurosocap.be); CEPANI Case No. 44233, 5 July 2011 (piperheidsieck.be); CEPANI Case No. 44080, 31 March 2006 (skype.be).

In the present case, the Third-Party Decider finds it very unlikely that the Respondent was unaware of the Complainant and its trademark rights when it registered the Domain Name. The Complainant's trademarks have been registered more than a decade before the Domain Name, including in France where the Respondent is located. The Domain Name includes the Complainant's distinctive trademark in its entirety and simply adds a hyphen and a term which is visually similar to the suffix "inc", referring to a corporation. Moreover, a simple Internet search would have revealed the Complainant's trademark rights. In the Third-Party Decider's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith.

The Third-Party Decider observes that the Respondent is not presently using the Domain Name. While third-party deciders will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include:

- (i) the degree of distinctiveness or reputation of the complainant's mark,
 - (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use,
 - (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and
 - (iv) the implausibility of any good faith use to which the domain name may be put.
- See CEPANI Case No. 44482, 9 March 2020 (toskani.be) and, by analogy, section 3.3

of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, applicable to UDRP disputes.

In the present case, the Third-Party Decider is of the opinion that all above factors but one apply in this case:

- the Third-Party Decider finds that the Complainant's BELFIUS trademark is distinctive;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use; and
- given the nature of the Domain Name which is confusing similar to the Complainant's trade name, company name and registered trade mark, the Third-Party Decider finds it difficult to conceive any plausible legitimate future use of the Domain Name by the Respondent.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing.

Therefore, the Third-Party Decider finds that the third element under Article 10, b, 1, iii of the Policy is also fulfilled.

7. Decision

Pursuant to Article 10, e, of the Policy, the Third-Party Decider grants the request of the Complainant that the Domain Name "**belfius-inc.be**" be transferred to the Complainant.

Brussels, 9 January 2023.

Diégo Noesen
Third-party decider