

**DECISION OF THE THIRD-PARTY DECIDER**

Fluvius System Operator CV / David Kocis

**Case No. 444184 CEPANI: mijnfluvius.be and wwwfluvius.be**

**1. Parties**

1.1. **Complainant:** FLUVIUS SYSTEM OPERATOR CV  
Brusselsesteenweg 199,  
9090 MELLE  
BELGIUM

*Represented by:*

REMARKABLE EUROPE NV  
Trademark Attorney  
Onafhankelijkheidslaan 14  
9000 GENT  
BELGIUM

1.2. **Domain name holder:** David KOCIS  
Frantiska Formana 278/30  
70030 OSTRAVA  
CZECH REPUBLIC

**2. Domain name**

Domain name: **"mijnfluvius.be"** and **"wwwfluvius.be"**  
Registered on: 21 June 2021 (mijnfluvius.be) and 20 July 2021  
(wwwfluvius.be)

Hereafter jointly referred to as the "Domain Names"

### **3. Procedural history**

On 17 January 2023, Complainant filed a Complaint with CEPANI requesting that the Domain Names be transferred.

On 14 February 2023, CEPANI appointed Flip Petillion as Third-Party Decider. On 21 February 2023, 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, Fluvius System Operator CV, is the official grid operator company for electricity and natural gas in the Flemish Region. The Complainant also provides cable television and sewage networks in various municipalities of the Flemish Region and manages public lighting in the same region.

The Complainant holds various FLUVIUS trademarks, including the following:

- Benelux word mark FLUVIUS No. 1005937, registered on 15 February 2017 in classes 37, 38, 39 and 42;
- Benelux figurative mark No. 1011670, registered on 1 June 2017 in classes 37, 38, 39 and 42:



- Benelux word mark FLUVIUS No. 1389860, registered on 4 June 2019 in classes 9, 11, 17, 19, 35, 36, 37, 38, 39, 40, 41 and 42;
- EU word mark FLUVIUS No. 018018873, registered on 20 July 2019 in classes 9, 11, 17, 19, 35, 36, 37, 38, 39, 40, 41 and 42;
- Benelux figurative mark No. 1389878, registered on 4 June 2019 in classes 9, 11, 17, 19, 35, 36, 37, 38, 39, 40, 41 and 42:



- EU figurative mark No. 018018880, registered on 20 July 2019 in classes 9, 11, 17, 19, 35, 36, 37, 38, 39, 40, 41 and 42:



The Complainant also owns the domain name <fluvius.be>, registered on 22 November 2016.

The Domain Names have been registered on 21 June 2021 (<mijnfluvius.be>) and 20 July 2021 (<wwwfluvius.be>). The Domain Names appear to resolve to similar parking pages containing “pay-per-click” (‘PPC’) links to third-party websites. In addition, the website linked to the domain name <wwwfluvius.be> includes an offer to buy the domain name <wwwfluvius.be>.

The Complainant provides evidence of letters of notice it sent to the Respondent on 7 July 2022 and 8 August 2022.

## **5. Parties contentions**

### **5.1. Complainant**

In summary, the Complainant requests that the Domain Names be transferred. The Complainant argues that the Domain Names are confusingly similar to its FLUVIUS trademarks, trade name and company name. The Complainant further claims that the Respondent cannot assert any rights or legitimate interests for the Domain Names. According to the Complainant, the Respondent is not known by the Domain Names and is not making a legitimate noncommercial or fair use of the Domain Names as the Respondent acts with a profit motive and attempts to misleadingly and unfairly redirect the Complainant's customers to other commercial sites and profit from the Complainant's fame and reputation. Finally, the Complainant argues that the Respondent registered or used the Domain Names in bad faith. According to the Complainant, the Respondent was aware or should have been aware of the Complainant's earlier rights when it registered the Domain Name. Moreover, the Complainant claims that the Domain Names are used to lure Internet users to other websites with a view to gaining a commercial advantage relying on confusion with the Complainant's trademarks, trade name and company.

### **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 Names are 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 Names; and
- the Respondent's Domain Names have been registered or are 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 FLUVIUS.

The domain name <mijnfluvius.be> incorporates the Complainant's FLUVIUS trademark in its entirety, simply adding the Dutch word "mijn".

The domain name <wwwfluvius.be> also incorporates the Complainant's FLUVIUS trademark in its entirety, simply adding the prefix "www".

According to the Third-Party Decider, the Complainant's trademark is easily recognizable within the Domain Names and the added elements do not prevent a finding of confusing similarity. "Mijn" is a descriptive term and "www" is a mere technical prefix (See e.g. CEPANI Case No. 44406, 26 August 2016 (wwwbelfius.be)).

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 Names are confusingly similar to the Complainant's FLUVIUS 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 Names. 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 Names 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 Names 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 “David Kocis”.

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 <mijnfluvius.be> incorporates the Complainant’s FLUVIUS trademark and simply adds the Dutch word “mijn”. The Complainant shows that it uses the term ‘Mijn Fluvius’ and the subdomain “mijn” linked to its domain name (<mijn.fluvius.be>) for its customer portal.

Regarding the domain name <wwwfluvius.be>, the Third-Party Decider observes that it is a typosquatted version of the URL resolving to the Complainant’s official website [www.fluvius.be](http://www.fluvius.be), as the domain name <wwwfluvius.be> simply leaves out the dot between the subdomain “www” and the Complainant’s <fluvius.be> domain name.

The Third-Party Decider therefore finds that the Domain Names carry a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Moreover, the Third-Party Decider observes that the Domain Names appear to resolve to parking pages containing PPC links such as “Klantenservice” for the domain name <mijnfluvius.be> and “Vacation Lettings” for the domain name <wwwfluvius.be>. Even though the majority of these links do not directly refer to the Complainant or its products and services, the Third-Party Decider finds that in the circumstances of the present case, such use of the Domain Names does not amount to a use in connection with a *bona fide* offering of goods or services.

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 Names. 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 Names.

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 Names.

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 Names 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 Names. The domain name <wwwfluvius.be> not only includes the Complainant's distinctive trademark in its entirety, it is also typosquatted version of the URL resolving to the Complainant's official website [www.fluvius.be](http://www.fluvius.be). Similarly, the domain name <mijnfluvius.be> is nearly identical to the URL [mijn.fluvius.be](http://mijn.fluvius.be) which the Complainant uses to refer to its "Mijn Fluvius" customer portal. 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 uses the Domain Names to resolve to a parking page containing pay-per-click links. In the Third-Party Decider's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain by creating a likelihood of confusion with the Complainant's trademark. While the intention to earn click-through-revenue is not in itself illegitimate, the Third-Party Decider finds that the use of domain names that are confusingly similar to a complainant's trademark (as is the case here) to obtain click-through-revenue constitutes bad faith use.

Moreover, the Complainant shows that the email address used by the Respondent to register the Domain Names has been linked to other domain names which were found to be registered and/or used in bad faith in UDRP proceedings. The Third-Party Decider finds that this indicates a pattern of bad faith conduct by the Respondent or entities which are at least related to the Respondent, as they use the same email address.

Given the nature of the Domain Names which indicates typosquatting behaviour and the circumstances of this case, the Third-Party Decider also accepts the

Complainant's argument that there is a substantial risk that the Domain Names are used or would be used for scamming or phishing purposes.

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 Names "**mijnfluvius.be**" and "**wwwfluvius.be**" be transferred to the Complainant.

Brussels, 7 March 2023.

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Flip Petillion  
Third-party decider