

DECISION OF THE THIRD-PARTY DECIDER

Kubota Corporation / Hakucho Digital

Case no. 444189: kubota.be

1. The Parties

1.1. Complainant:

Kubota Corporation, Shikitsu Higashi 1-chome 2-47, Naniwa-ku Osaka 556-8601, Japan

Represented by:

Flip Petillion, attorney-at-law, Guido Gezellestraat 126, 1654 Huizingen, Belgium

1.2. Domain name holder:

Mr. Wijnand de Zwaan, Hakucho Digital, Vischmarkt 11, 3841BE Harderwijk, the Netherlands

*Hereafter referred to as the "**Domain Name Holder**".*

2. Domain name

Domain name: Kubota.be
Registered on: 22 December 2000

*Hereafter referred to as the "**Domain Name**".*

3. Procedure

On 21 March 2023, the Complainant filed a complaint (hereafter referred to as the "**Complaint**") with CEPANI under article 10 of the General Terms and Conditions of the Domain Name Registration within the ".be" Domain governed by DNS.be (hereafter referred to as the "**Policy**") and in accordance with the CEPANI Rules for Domain Name Dispute Resolution (hereafter referred to as the "**Rules**").

The Domain Name Holder did not provide a formal response in accordance with article 6 of the Rules.

On 13 April 2023, CEPANI appointed the third-party decider pursuant to the Rules (hereafter referred to as the "**Third-Party Decider**"). The Third-Party Decider accepted the instruction and provided CEPANI with the declaration of independence in accordance with article 7 of the Rules. Pursuant to article 10 of the Rules, CEPANI provided the Third-Party Decider with an electronic copy of the case file, consisting of the completed Complaint.

On the same day, CEPANI informed the Complainant and the Domain Name Holder of the appointment of the Third-Party Decider.

On 19 April 2023 the Domain Name Holder sent an e-mail to CEPANI with the following message: *"I'm not aware of the fact that I'm the domain name holder of Kubota.be. I've never registered this domain name and I don't know how it got registered on my name."*

In the following correspondence exchanged between the Parties, CEPANI and DNS Belgium of which a copy was sent to the Third-Party Decider:

- CEPANI sent a model document to the Parties that would allow the Parties to voluntarily transfer the Domain Name to the Complainant (19 April 2023);
- the Domain Name Holder replied that he was no longer the Domain Name Holder and because of that, would not sign the form (19 April 2023);
- DNS Belgium confirmed that the Domain Name Holder was still formally registered as domain name holder (20 April 2023);
- The Complainant requested the Third-Party Decider to proceed to a decision (21 April 2023).

On 25 April 2023 the Third-Party Decider decided to proceed to closure of the debates, given the fact that both the Domain Name Holder and the Complainant had had the opportunity to share their view.

Neither prior to closure of the debates, neither after closure of the debates, the Third-Party Decider was informed of an amicable settlement agreeable to and signed by both Parties in relation to the Domain Name. Therefore, a decision needs to be taken.

4. Factual Background information

The Complainant is a company founded in 1890. Today, it is a global manufacturing company specializing in agriculture, water, and living environment products, with a worldwide network covering over 120 countries and employing over 43.000 employees. To this date, the Complainant explains to have sold over 5.1 million farm tractors all over the world.

The Complainant registered KUBOTA trademarks in various countries, including in Japan on 16 January 1964 (registration no. 634179) and in the Benelux on 1 March 1973 (word mark, registration no. 50121) (hereafter referred to as the "**Trademark**").

On 22 December 2000 the Domain Name "kubota.be" was registered by a third party not involved in the current proceedings. According to information from DNS Belgium (E-mail exchanged between DNS Belgium and the Domain Name Holder on 20 April 2023, of which a copy was sent to the Third-Party Decider on the same day) the Domain Name was transferred to the Domain Name Holder on 25 May 2016. The Domain Name redirects internet users to the website "mechangroep.nl", held by a company selling products that are competitive to the Complainant's products.

5. Position of the parties

5.1. Position of the Complainant

Complainant requests the transfer of the Domain Name to the Complainant for the following reasons:

- a. The Domain Name Holder's Domain Name is identical to the Trademark;
- b. The Domain Name Holder has no rights or legitimate interests in the Domain Name, since the Domain Name Holder is not commonly known by the Domain Name, the Domain Name carries a high risk of implied affiliation with the Trademark, and the Domain Name Holder unrightfully uses the Trademark to sell competing goods; and
- c. The Domain Name Holder's Domain Name has been registered or is being used in bad faith, since the reputation of the Trademark at the time of the Domain Name registration could not be ignored and since it cannot be excluded that the Domain Name will be used for fraudulent purposes (such as profiting of the likelihood of confusion with the Complainant's Trademark for phishing activities), which all creates confusion for commercial gain.

5.2. Position of the Domain Name Holder

The Domain Name Holder points out in his e-mails to CEPANI that:

- He was not aware that he or his company Hakucho Digital was the Domain Name Holder of the Domain Name;
- He has no link with Mechan Groep, i.e. the company behind the website that kubota.be is directing internet users to;
- He thinks a mistake has been made by Hakucho Digital's web agency that may have linked the Domain Name to Hakucho Digital; and
- He is willing to transfer ownership of the Domain Name to the Complainant if possible.

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 Rules.

Pursuant to Article 10b (1) of the Policy, the Complainant must provide evidence of the following:

- *“the domain name holder 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 domain name holder has no rights or legitimate interests in the domain name; and*
- *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. More specifically, the Domain Name Holder's Domain Name is identical to the Complainant's Benelux word trademark “Kubota”.

The relevant part of the similarity of the Domain Name with the Trademark is “Kubota”, as the “.be” extension shall not be taken into account pursuant to the well-established case law of CEPANI (see *inter alia* CEPANI 9 January 2023 No. 444176, “belfisu.be”, 7 December 2023 No. 444175, “coyotesystem.be” and 20 April 2023 No. 444187 “wolfspeed.be”).

The first condition is fulfilled.

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

The Domain Name Holder has not submitted any circumstances demonstrating that he has rights or legitimate interests in the Domain Name. On the contrary, The Domain Name Holder confirms that he has no interests in the Domain Name. Moreover, the Domain Name Holder states to be willing to transfer the ownership

of the Domain Name to the Complainant. The Complainant's contentions are therefore not contradicted by the Domain Name Holder.

Previous CEPANI case law has settled that the Complainant cannot be held to prove a negative fact and that it suffices that the Complainant states that it has no knowledge of any circumstances showing that the Domain Name Holder has a right or legitimate interests in the Domain Name (see inter alia CEPANI 9 January 2023 No. 444176, "belfisu.be", 1 July 2022 No. 444167, "yslbeauty.be", 21 February 2022 No. 444140, "meguiarsshop.be").

In the present case, the Complainant asserts that the Domain Name Holder does not have any rights or legitimate interests in the Domain Name.

The Complainant indicates that the Domain Name Holder is not commonly known by the Domain Name, that it does not appear to have any rights in the word "Kubota" and that it does not seem to be affiliated with the Complainant. By redirecting the internet user to the website of a direct competitor of Kubota, i.e. the Mechan Groep, no legitimate interests of the Domain Name Holder can be proven.

The second condition is fulfilled

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

Article 10, b) (2) of the Policy sets forward how a bad faith domain name registration can be demonstrated. One of the circumstances in which such bad faith registration can be demonstrated is when:

"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."

It should be noted that the notion of bad faith is a broad notion and that according to previous CEPANI decisions, it is sufficient that the Domain Name has been registered in bad faith or is being used in bad faith, these two criteria being non-cumulative (see CEPANI 21 February 2022 no. 444140 'meguiarsshop.be' and 24 November 2022 no. 444173 "marktplaatsbelgie.be").

The Complainant has provided sufficient evidence of the reputation of the "KUBOTA" mark at the time of registration of the Domain Name on 22 December 2000. "Kubota" has been used for several years worldwide by the Complainant. The Trademark was, at the time of the Domain Name registration in 2000, already

registered in the Benelux, which includes the Netherlands (i.e. the country where the Domain Name Holder is located).

The current use of the Domain Name is identical to the Complainant's Trademark and is used to direct internet users to a website that offers products for sale which directly compete with the Complainant's products. More specifically, the website internet users are being directed to the website of Mechan Groep. The Complainant provides evidence showing that the Mechan Groep used to distribute Complainant's products in the past. Such cooperation was, however, terminated in 2014. Currently, the Mechan Groep sells competitive products.

The Complainant has therefore sufficiently shown that the Domain Name is used in bad faith to attract internet users to the website, by creating confusion for commercial gain.

The third condition is 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 "**kubota.be**" domain name is to be transferred to the Complainant.

Sint-Martens-Latem, 8 May 2023.

Karen ONGENA
The Third-party Decider