

DECISION OF THE THIRD-PARTY DECIDER

Supervizome srl – ESNOUSSI Az-Eddine

Case no. 444150 : <sddeboucheur.be and sd-deboucheur.be>

1. The Parties

1.1. Complainant:

Supervizome srl
KOURAMI Anas (Director)
Avenue Louise 207 box 4
1050 Brussels Belgium

Represented by

CHEVEREAU Odile, attorney at law
Boulevard Saint-Michel 65/6
1040 Brussels
Belgium

Hereafter the “**Complainant**”

1.2. Domain Name Holder:

Mr. Az-Eddine ESNOUSSI
Rue Locquenghien 4-12
1000 Brussels
Belgium

Hereafter the “**Domain Name Holder**”

2. Disputed Domain names

Domain name: <sddeboucheur.be>
Registered on: 24 september 2021

and

Domain name: <sd-deboucheur.be>
Registered on: 24 september 2021

Hereafter the “**Disputed Domain Names**”.

3. Procedure

On 6 October 2021, the Complainant filed a complaint with the Belgian Center for Arbitration and Mediation (hereinafter referred to as “CEPANI”).

The Complainant requests that the Disputed Domain Name is to be transferred pursuant to Article 10 of the Terms and Conditions of domain name registrations under the “.be” domain operated by DNS BE (hereafter the “Policy”) and in accordance with the CEPANI rules for domain name dispute resolution (hereafter the “Rules”).

On 8 November 2021, pursuant to Article 7.2 of the Rules, the Third-Party Decider was appointed.

On 15 November 2021, pursuant to Article 13 of the Rules, the deliberations were closed.

4. Factual background

- 4.1. The Complainant offers plumbing and unclogging services in Belgium under the trade name “SD Débouchage”.

The Complainant is *inter alia* the holder of the domain name <sd-debouchage.be>, registered on 3 April 2020, and offers its services via the website to which its domain name resolves (<https://sd-debouchage.be/>).

The Complainant offers its services using the following logo:



The logo was also registered as a Benelux mark on 23 August 2021, with registration number 1447450.

Further, the Complainant is the holder of a Benelux word mark SD DÉBOUCHAGE, registered on 22 June 2021 for services in classes 37 and 39.

- 4.2. The Domain Name Holder is, based on the records of the Crossroads bank for enterprises, a natural person (with the enterprise number 0501.677.169), and appears to offer similar services as the Complainant.

On 23 May 2021, the domain name <sddebouchage.be> was registered by a natural person Az-Eddine BEN MILOUD (according to the Complainant and the third-party decider in the case with nr. 444147, this is the same person as the Domain Name Holder).

This domain name resolved to a website on which the following sign was being used:



The Complainant filed a complaint with CEPANI, and on 30 August 2021 the third-party decider in that case ruled that the domain name was to be transferred (case nr. 444137).

- 4.3. On 7 July 2021, the Domain Name Holder registered the domain name <sd-debouchages.be>. On 16 August 2021, the Domain Name Holder registered the domain name <sddebouchages.be>. On the website, to which these domain names resolved, the Domain Name Holder was offering similar services as the Complainant and was using, inter alia, the following sign:



On 19 September 2021, the Complainant filed another complaint with CEPANI, and on 8 November 2021, the third-party decider ruled that the domain names were to be transferred to the Complainant (case nr. 444147).

- 4.4. On 24 September 2021, the Domain Name Holder registered the Disputed Domain Names (<sd-deboucheur.be> and <sddeboucheur.be>).

The domain name <sddeboucheur.be> is not being used actively by the Domain Name Holder, and does not refer to any website.

The domain name <sd-deboucheur.be> resolves to the website <https://sd-deboucheur.com/>, which appears very similar to the Complainant's website, and the Domain Name Holder is using the following logo's on the website:



5. Position of the parties

5.1. Position of the Complainant:

The Complainant requests that the Disputed Domain Names should be transferred to him. The Complainant argues that all the conditions of Article 10.b.1 of the Policy are fulfilled.

According to the Complainant:

- The Disputed Domain Names are confusingly similar to the trademark and trade name in which the Complainant has rights;

- The Domain Name Holder has no rights or legitimate interests in the Disputed Domain Names; and
- The Disputed Domain Names were registered or are being used in bad faith.

The Complainant also emphasizes that this is already the third case with CEPANI against the same Domain Name Holder:

- As already mentioned, the first case concerned the domain name <sddebouchage.be> (CEPANI case number 444137).
- The second case concerned the domain names <sddebouchages.be> and <sd-debouchages.be> (CEPANI case nr. 444147).

In both cases the Third Party Decider ruled that the disputed domain name(s) was/were to be transferred to the Complainant. According to the Complainant the facts in the case at hand are not any different.

The Complainant argues the Domain Name Holder clearly acts in bad faith. He registered the Disputed Domain Names knowing that they are confusingly similar with the Complainant trademarks and trade names. His bad faith also results from the fact that he is also copying the Complainant's website and content thereon.

The Complainant argues that the Domain Name Holder, who is a competitor, is jealous of the Complainant's success, that he is trying to mislead the Complainant's customers, and that his goal is to disrupt the Complainant's commercial operations.

5.2. Position of the Domain Name Holder:

Contrary to the previous cases in which the Complainant and the Domain Name Holder were involved (case nr. 444137 and case nr. 444147), the Domain Name Holder did not submit any response.

6. Discussion and findings

Pursuant to Article 16.1 of the rules, the Third-party Decider shall rule on domain name disputes with due regard for the Rules and the Policy.

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

- The disputed domain name is identical or confusingly similar to a trademark, a trade name, 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 (6.1); and
- The domain name holder has no rights or legitimate interests in the disputed domain name (6.2);

- The disputed domain name has been registered and is being used in bad faith (6.3.).

6.1. Concerning the first condition - the Disputed Domain Name is identical or confusingly similar to the trademark and trade name of the Complainant

6.1.1. The Complainant is the owner of the following two Benelux trademarks:

- The wordmark “SD Débouchage” with registration number 1445429, registered on 22 June 2021;
- The Benelux logo with registration number 1447450, registered on 23 Augustus 2021:



Further, the Complainant is the holder of the domain name <sd-debouchage.be>, registered on 3 April 2020, and offers its services via the website to which its domain name resolves and which makes use of sd-debouchage as a trade name since April 2020 (<https://sd-debouchage.be/>).

6.1.2. On 24 September 2021, the Domain Name Holder registered the Disputed Domain Names (<sd-deboucheur.be> and <sddeboucheur.be>).

6.1.3. In the case at hand, the Third-Party Decider rules that the Disputed Domain Names are at least confusingly similar to the trademarks and trade name in which the Complainant has rights.

The first 9 letters of both signs are identical (“SD DEBOUCH”). The marginal differences between the signs (the last three letters, “AGE” vs. “EUR” or the presence of a hyphen) between the signs are insufficient to establish no similarity.

It is also accepted that a pattern of multiple respondent domain names targeting the complainant’s mark or the broader use of the website, may support a finding of confusing similarity.¹ In the case at hand, it is not the first time that the Domain Name Holder is targeting the Complainant or even copying his website, which supports the finding of confusing similarity between the signs.

It is further generally accepted that the addition of the suffix '.be' is irrelevant to the assessment of the identity / similarity.²

¹ WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereafter “WIPO Overview 3.0”), section 1.7. The Third-Party decider considers this overview and the UDRP case law relevant due to the similarities between the Policy and the Uniform Dispute Resolution Policy (UDRP).

² See for example: CEPANI case nr. 44123 <agfeo.be>; CEPANI zaak nr. 44201 <thelovediamond.be> and <lovediamond.be>.

Considering the above, the Third-Party decider rules that the first element of Article 10.b(1) of the Policy is met.

6.2. Second condition - The Domain Name Holder has no rights or legitimate interests in the Disputed Domain Name

6.2.1. According to article 10.b.1, ii) of the Policy, the Complainant has to prove that the Domain Name Holder has no rights or legitimate interests in the Disputed Domain names.

It is widely accepted that, considering the difficulty of proving a negative fact, a complainant must only establish a *prima facie* case that the domain name holder has no rights or legitimate interests. If the Complainant succeeds, the burden of proof then shifts to the domain name holder to provide relevant evidence demonstrating rights or legitimate interests in the domain name.³

6.2.2. The case at hand is already the third case the Complainant had to initiate proceedings against the Domain Name Holder. In the previous cases, who seem to be very similar to the current case, the third-party decider ruled that the Domain Name Holder had no legitimate rights in the domain name concerned.

As the case at hand is again very similar, the Domain Name Holder seems to engage in a pattern of trademark-abusive domain name registrations.

6.2.3. Further, the Domain Name Holder does not seem to make any legitimate, non-commercial or otherwise fair use of the Disputed Domain Names. On the contrary, the Domain Name Holder, who is a competitor of the Complainant, seems to be copying the Complainant's website and logo.

Therefore, and also taking into account the previous cases, the Domain Name Holder seems to intend to misleadingly divert consumers for commercial gain to its own website.

6.2.4. Considering the above, the Third-Party Decider determines that the Complainant has sufficiently established, that the Domain Name Holder has no right or legitimate interests in the Disputed Domain Name. The Domain Name Holder also provides no arguments, let alone any evidence to suggest the contrary.

Therefore, the Third-party Decider rules that the second element of Article 10.b(1) of the Policy is met.

³ See for example: CEPANI case nr. 44233 <piperheidsieck.be>.

6.3. Third condition - The Disputed Domain Name has been registered or is being used in bad faith

6.3.1. Pursuant to Article 10.b.1(iii) of the Policy, the Complainant must demonstrate that the Disputed Domain Name has been registered *or* is being used in bad faith.

Bad faith can be demonstrated by any legal means, such as presumptions and circumstances that indicate, with a reasonable degree of certainty, that the domain name holder knew, or should have known the Complainant's trademark, trade name or other rights to the name concerned, and that the domain name holder nevertheless opted to register the domain name.⁴

Further, Article 10.b(2) of the Policy provides a non-exclusive list of circumstances that can demonstrate bad faith. Among these circumstances are, for example:

- the registration of a domain name to disrupt the business of a competitor;
- the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's trade mark or trade name.

Bad faith will also be found if a complainant asserts that a domain name holder has targeted the complainant in some way, or at least had the complainant or its trade mark in mind, when he registered or used the domain name.

6.3.2. In the case at hand, the Domain Name Holder is aware of the existence the Complainant prior rights on the sign "SD Débouchage".

The Domain Name Holder had already been the subject of two other CEPANI Third-party decisions concerning the same rights of the Complainant (see title 6.1). Therefore, there even seems to be a pattern of bad faith, as the Domain Name Holder has registered several trademark-abusive domain names, directed at the same brand owner.

The Domain Name Holder also copied the Complainant's trade name, logo and parts of the Complainant's website. Such use is clearly intended to attempt to attract, for commercial gain, Internet users to the Domain Name Holder's website, by creating a likelihood of confusion with the Complainant's trade mark and trade name.

Therefore, the Third-Party Decider finds that the conditions of the third element of Article 10.b(1) of the Policy are also met.

⁴ CEPANI case nr 444147 <sd-debouchages.be> and <sddebouchages.be>.

7. Decision

Consequently, pursuant to Article 10(e) of the Policy, the Third-Party Decider hereby rules that the domain name registration for the Disputed Domain Names <**sd-deboucheur.be**> and <**sddeboucheur.be**> are to be **transferred** to the Complainant.

Brussels, 29 November 2021.



Mireille BUYDENS
The Third-Party Decider