

DECISION OF THE THIRD-PARTY DECIDER

BVBA Fertiliteitscentrum Dr. Decleer

Case no 444209: centrumdecleer.be

1. The parties

- 1.1. **Complainant: BVBA Fertiliteitscentrum Dr. Decleer**, with registered office at 9980 Aalter, Weststraat 16, Belgium,

Represented by:

Mr. Bart De Ruyck, attorney-at-law, with registered office 9051 Gent, Jean-Baptiste de Ghellinklaan 23/301

- 1.2. **Domain Name Holder:** Mr. Igor Stepanov, 5 Predportovy 2-1 apt 240, 196240 Saint-Petersbourg, Russian Federation

2. Domain name

Domain name: **centrumdecleer.be**
Registered on: 14 January 2024

hereafter referred to as “the Domain name”.

3. Procedure

On 8 March 2024, Complainant filed a complaint with exhibits with the Belgian Centre for Arbitration and Mediation (CEPANI-CEPINA) concerning the domain name.

The Domain name holder did not file a response to the complaint.

On 10 April 2024, the Complainant and the Domain name holder were notified that the undersigned had been appointed as Third-Party Decider to settle the dispute.

Pursuant to Article 13 of the CEPANI Rules for domain name dispute resolution the deliberations were closed on 17 April 2024.

The deadline for submitting the decision of the Third-Party Decider was extended to 6 May 2024.

The Complainant declared that there are no other legal proceedings in relation to the Domain Name.

4. Factual background information

Complainant is a company which is since many years active in the Belgian fertility world, lead by Dr. Wim Decler.

The exhibits produced by Complainant show that the Complainant is widely known under the name "centrum decler".

The founder, director and pivotal figure of the company is doctor Wim Decler.

It appears from the exhibits produced by Complainant that the Company in the past already used the domain name "centrumdecler.be" and the e-mail address info@centumdecler.be.

The Domain Name Holder registered the domain name on 14 January 2024.

The corresponding website www.centrumdecler.be leads to a Russian webshop.

5. Position of the parties

5.1. Position of Complainant

Complainant request the Third-Party Decider to order the transfer of the domain name to Complainant, stating that the conditions thereto are met:

- (i) Domain name is identical or confusingly similar to Complainant's company name, trade name and personal name*

Complainant states that the domain name is almost identical to the Complainant's company name, Fertilitieitscentrum Dr. Decler and also identical to the trade name "Centrum Decler".

Complainant also refers to the fact that it used the domain name "centrumdecler.be" and also the e-mail address "info@centrumdecler.be in the past.

Furthermore, Complainant states that the Domain Name contains the last name of the founder/director of the Complainant, namely doctor Wim Decler. Complainant refers to CEPANI cases in which was decided that the surname counts as a personal name.

(ii) *Domain name holder has no right or legitimate interest in the domain name*

Complainant states that the Domain Name Holder is a private individual from the Russian Federation who:

- does not bear the name “Delceer”
- is not active in the medical field
- does not have a medical title
- has no company
- does not operate a (medical) center
- uses a different name and logo for its website

The website of the Domain Name Holder is a deceptive e-commerce website.

Complainant concludes therefrom that the Domain name holder has no rights or legitimate interests in the domain name.

(iii) *The domain name has been registered and is being used in bad faith*

Complainant states that the Domain Name Holder’s sole purpose was to occupy the Domain Name (“domain name squatting”) and to cause harm to Complainant’s reputation and business.

Complainant refers to the previous registration of the domain name “centrumdecleer.be” which was not renewed due to a dispute with an external developer.

Complainant states that patients believe that the website has been hacked and healthcare providers express great concern when visiting the website.

Finally Complainant draws the attention to the fact that the website of the Domain Name Holder aims to mislead visitors by offering a fraudulent online store. The site is fooling visitors into thinking it is a webshop.

On these bases, the Complainant concludes that the domain name was registered and is being used in bad faith.

5.2. Position of the Domain name holder

The Domain name holder did not file any response to the Complaint with CEPANI.

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 following the parties’ views and in accordance with the dispute resolution policy of DNS.be, the registration agreement and following the provisions of the CEPANI Rules for domain name dispute resolution.

Pursuant to Article 10(b)(1) of the Terms and conditions for .be domain name registrations, the Complainant must prove that:

1. the Domain name holder's 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 Complainant has rights; and
2. the Domain name holder has no rights or legitimate interests in the domain name; and
3. 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 the company name, trade name and personal name of the Complainant

To meet the first condition of Article 10(b)(1) of the Terms and conditions for .be domain name registrations, the domain name must be either 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 Complainant has rights

In the case at hand, the Domain name is identical to the trade name of the Complainant, namely "centrum delceer", and also confusingly similar to the company name "Fertiliteitscentrum Dr. Decleer".

The first condition of Article 10(b)(1) is therefore fulfilled.

6.2. The Domain name holder has no right or legitimate interests in the domain name

To meet the second condition of Article 10(b)(1) of the Terms and conditions for .be domain name registrations, Complainant must prove that the Domain name holder has no right to or legitimate interest in the domain name.

The Third-Party Decider is of the opinion that Complainant has made it plausible that the Domain Name Holder has no rights or legitimate interests in the Domain Name.

First, there are no indications that the Domain Name Holder has used the Domain Name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services. No evidence is available showing that the Domain Name Holder would have been commonly known by the Domain Name.

There are also no indications that the Domain Name Holder is making a legitimate and non-commercial or fair use of the domain name. The corresponding website appears not to be a legitimate webshop.

In general, there does not appear to be any potentially legitimate connection between the Domain Name Holder and the Domain Name.

Finally, the Domain Name Holder did not file any reply to the complaint.

The Third-Party Decider therefore concludes that the Domain Name Holder has no rights or legitimate interests in the Domain Name and that the second condition of Article 10(b)(1) is also fulfilled.

6.3. The domain name has been registered or is being used in bad faith

The third condition of Article 10(b)(1) of the Terms and conditions for .be domain name registrations requires the Complainant to demonstrate that the Domain name holder registered or used the domain name in bad faith. Article 10(b)(2) provides a non-exhaustive list of circumstances in which case a domain name is considered to be used or registered in bad faith. Amongst these circumstances feature the registration of the domain name with the purpose to use the domain name to attract, for commercial gain, Internet users by creating confusion.

In the case at hand, even though the Domain Name Holder has not tried to sell the domain name to Complainant, and the Domain Name leads to a webshop, the Third-Party decider is of the opinion that the bad faith of the Domain name holder has been sufficiently established.

Bad faith can also be inferred from other relevant circumstances (see e.g. CEPANI decision no. 444110 regarding the domain name clarins-online.be and CEPANI decision no. 44471 regarding the domain name blablabus.be).

The following circumstances allow inferring bad faith of the Domain Name Holder:

- the Domain Name was previously owned and used by Complainant
- the corresponding website appears to be a fraudulent online store:
 - numerous links on the website do not work
 - the Play Store and App Store buttons do not work
 - the buttons for social media are not active
 - it is not possible to add items to a shopping cart no to checkout
- the fact that the Domain name holder did not respond to the complaint is also indicative of its bad faith.
- any good faith use of the domain name by the Domain name holder is implausible.

As a consequence, the third condition of Article 10(b)(1) 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 BE, the Third-Party Decider hereby rules that the domain name registration for the domain name centrumdecleer.be shall be transferred to Complainant.

Paal, 6 May 2024

SURMONT, Jan

The Third-Party Decider