



DECISION OF THE THIRD-PARTY DECIDER

LexCom Informationssysteme GmbH / Simons KS-Systems BV
Case No. 444227 / agroparts.be

1. The Parties

1.1 Complainant:

LexCom Informationssysteme GmbH

Rüdesheimer Str. 23, 80686 Munich, Germany

Represented by:

Mrs. Olivia Petter, lawyer (HGF Europe LLP)

Neumarkter Str. 18, 81673 Munich, Germany

1.2 Domain Name Holder:

Simons KS-Systems BV

de Clermontstraat 32, 3401 Wezeren, Belgium

Represented by:

Mrs. Kristien Simons, owner

de Clermontstraat 32, 3401 Wezeren, Belgium

2. Domain name

Domain name: agroparts.be

Registered on: 6 October 2017

Hereafter referred to as "the Domain Name".



3. Procedure

The Complainant filed its complaint with CEPANI on 22 October 2024. The Complaint is made in English.

In its complaint, the Complainant requests that the Domain Name be transferred to the Complainant and does not offer the possibility to the Domain Name Holder to voluntarily proceed with the execution of the relief sought within 7 calendar days.

The Domain Name Holder filed its response on 15 November 2024 in Dutch. It did not voluntarily proceed with the execution of the relief sought and requested that the proceedings be conducted in Dutch.

Article 12 of the CEPANI Rules for Domain Name Dispute Resolution (hereinafter “the Rules”) provides that, unless the Parties agree otherwise, the language of proceedings shall be the language indicated upon registration or renewal of registration of the Domain Name in the Whois database of the Registration Authority, available on the website www.dnsbelgium.be. For the Domain Name, that language is English. As a result, on 15 November 2024, CEPANI asked the Complainant whether it agreed to further conduct the proceedings in Dutch. On 18 November 2024, the Complainant answered that it wished to maintain English as the language of the proceedings.

On 18 November 2024, the Domain Name Holder filed its response in English.

CEPANI appointed the Third-Party Decider on 21 November 2024.

As the Domain Name Holder’s response was merely included as text in an e-mail, on 22 November 2024, CEPANI sent CEPANI’s “Response template” to the Domain Name Holder and asked it to file its response in the form of that template. The Domain Name filed its response in the form of that template on 5 December 2024. That document is thus considered to be the Domain Name Holder’s official response.

On 9 and 10 December 2024, CEPANI informed the Parties that, in accordance with Article 13 of the Rules, the debates will be closed at the expiration of a period of 7 calendar days after the appointment of the Third-Party Decider, i.e. 16 December 2024. It also informed the Parties that, until that date, the Complainant may request permission from the Complaint Manager to submit retort. CEPANI also informed the Parties that, pursuant to Article 16.2 of the Rules, the Third-Party Decider must inform CEPANI of his decision within 14 days of the conclusion of the deliberations, i.e. 30 December 2024, but that given the Christmas holidays, CEPANI extended this deadline until 6 January 2025.

The Complainant did not request permission from the Complaint Manager to submit retort.



4. Factual background information

4.1 About the Complainant

The Complainant is a company established in Germany which has registered the European Union word trademark “agroparts” under filing number 006541941. This trademark was applied for on 27 December 2007 and was registered on 22 October 2008 for goods and services of classes 9, 38 and 42, i.a. “operating an Internet portal for ordering spare parts” in class 38.

The Complainant uses that trademark for an internet portal for ordering spare parts in the agricultural sector under the domain name “agroparts.com”.

According to the Complainant, its concept is the provision of a one-stop-shop service as the world’s largest multi-brand platform for after-sales in the agricultural sector and it celebrated its 25th anniversary in March 2021.

The Complainant alleges that the platform is currently offered in 29 languages across the world, that the platform has over 130,000 registered users in over 170 countries, that over 5.000 authorised dealers use the platform, and that the 20 brands of spare parts in the agricultural sector generated over 1.5 million orders through this platform.

According to the Complainant, the platform under its trademark “agroparts” (www.agroparts.com) is an integrative IT suite consisting of several modules, which aim to connect all trading levels in the industry. All of the parts of the IT suite are offered under the trademark “agroparts” and consist of the online platform, an off-line catalogue of spare parts, an order management, parts locator, mobile app and the dealer shop.

The Complainant points to and submits a decision of 11 April 2022 of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) in case R1135/2021-4-Agriparts, which found that *“the Complainant services involved the technical operation of an Internet platform designed to generate advertising income for manufacturers focused on the specific group of customers, mainly farmers and dealers who may search and purchase the agricultural spare parts offered by the later”* (par. 77).

In its response, the Domain Name Holder does not dispute these factual allegations of the Complainant.



4.2 About the Domain Name Holder

The Domain Name Holder is a company established in Belgium. It registered the Domain Name on 16 October 2017.

The website related to the Domain Name (www.agroparts.be) is in Dutch and French, and is used as a webshop for agricultural machinery parts. According to the Complainant, *“the domain is used for agricultural and garden machinery parts and the Domain Name Holder prides itself to be a company specialised in the supply of parts for agricultural industry and to work exclusively with reliable suppliers”*. This is not disputed by the Domain Name Holder, as it alleges in its response that *“we chose the name agroparts.be at the time because we are active in the agricultural sector and supply agricultural parts”*.

In its response, the Domain Name Holder alleges that *“we mainly supply to the Netherlands and Belgium and sporadically 4 to 5 times a year to Germany. Also our core business is spraying parts, cabine windows and Tractor parts, when you have a look at Agroparts.com, you see almost no similarity.”*

In its response, the Domain Name Holder also alleges that it itself is not active under the trade name “Agroparts” and that all sales on the website related to the Domain Name are made by another company, EVKS BV : *“I have seen that the claim is made to SIMONS KS-SYSTEMS, the brand name Agroparts is not part of this company, all invoicing of Agroparts is done through EVKS BV”*.

In its response, the Domain Name Holder alleges that the Parties would have corresponded about the Domain Name prior to the Complainant’s complaint. However, neither the Complainant nor the Domain Name Holder submitted this correspondence.



5. Position of the parties

5.1 Position of the Complainant

In its complaint, the Complainant argues as follows:

“1. The domain name is identical to the EUTM “agroparts” in the name of the Complainant

According to CEPINA case law, the suffix “.be” is not relevant for establishing the identity or similarity between a domain name and -in this case- a registered trademark (see to that effect case No. 444215 VANLOON.be, July 17, 2023 and No. 44003 Pernod Ricard/World Sites Internet Networks, April 11, 2001).

In the case at hand, the Complainant has a legitimate interest in the sign “agroparts” due to its earlier registered trademark.

The disputed domain name incorporates the Complainant's trademark “agroparts” without any additional terms. Thus, the disputed domain name creates a likelihood of confusion with the Complainant's trademark “agroparts”. It is likely that this domain could mislead Internet users into thinking that they are, in some way, associated with the Complainant (see to that effect case No.444207 “Biontech.be” of January 15, 2024).

2. The Respondent has no rights or legitimate interests in respect of the domain name

According to Art. 10 b) 1) of the Terms and Conditions, the Complainant has to prove that the registrant has no rights or legitimate interests in the domain name.

The domain name holder is not affiliated with the Complainant in any way and has not been authorised by the Complainant to use and register its domain “agroparts.be” or to seek registration of any domain name incorporating said mark.

Furthermore, it has to be considered, that it is difficult to prove a negative effect, namely that the domain name holder has no rights or legitimate interests in the domain name.

Therefore, the Complainant can credibly state that he is unaware of any reason or circumstances which could be indicative for such a right or legitimate interest (see case No. 444215 VANLOON.be dated July 17, 2023 with further references).

The company name of the domain name holder, namely SIMONS KS-SYSTEMS BVBA is different to the domain. Furthermore, there is no proof that prior to the notice of the dispute, the domain name holder has used it with a bona fide offering of goods or services or has been commonly known by the domain name. SIMONS KS-SYSTEMS BVBA has no registered trademark in the sign.

The website under the domain agroparts.be clearly shows that the domain is used with the intent for commercial gain and that the domain name holder tries to attract customers to its website.



The EUTM of the Complainant had been registered for 10 years at the date of the registration of the domain name and had been in use throughout this time period as well.

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

There is a non-exhaustive list of circumstances which constitute bad faith of the use or registration of a domain name under Art. 10 b) 2) of the Terms and Conditions. Among these are:

- Circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the Complainant
- The domain name was registered in order to prevent the owner of a company name to use the domain name.
- The domain name was registered primarily for the purpose of disrupting the business of the competitor.
- The domain name was intentionally used to attract, commercial gain, Internet users, to the registrant's website or other online location, by creating a likelihood of confusion with the Complainant trademark
- The registrant has registered one or more personal names without the existence of a demonstrable link between the registrant and the registered domain names.

In the case at hand, the company name of the registrant is clearly different from the domain name. Furthermore, the domain name is identical to the registered trademark of the Complainant and the offered services on the web page under this domain are highly similar to the ones of the Complainant. They are directed at the same relevant public and the look and feel of the website is highly similar.

It thus has to be assumed, that the domain name was chosen with the intention to attract, for commercial gain, Internet users to the registrant's website instead of the competitor, namely the Complainant.

Bearing in mind, that the Complainant's services under the registered trademark "agroparts" are very successful and are offered throughout the world in different languages, also in Dutch, it has to be assumed, that the domain name was registered and used in bad faith.

Taking into account, that the Complainant had been active in the market under the registered trademark "agroparts" for 10 years at the date of the registration of the contested domain name, it can reasonably be established, that the domain name holder was well aware of the existence of this website of the Complainant.

As a consequence, it can be assumed that bad faith as the third condition of Art. 10 b) 1) of the Terms and Conditions for .be domain name registrations is met.

Therefore it is kindly requested that the Third Party Decider hereby rules to transfer the domain name in question to the Complainant."



In its complaint, the Complainant files five annexes to support its claims:

- (1) an extract of its trademark from the EUIPO's register;
- (2) a screenshot of the homepage of its website www.agoparts.com ;
- (3) an excerpt of the Complainant's website lexcom-industries.de "agoparts";
- (4) the decision of the Fourth Board of Appeal of the EUIPO of 11 April 2022 in case No. R 1135/2021-4;
- (5) an excerpt of the Whois details of the Domain Name on www.dnsbelgium.be.

5.2 Position of the Domain Name Holder

In its response, the Domain Name Holder argues as follows:

"We would like to respond to these letters , we have already responded in the past .

First of all we would like the communication to be written in our national language , moreover I have seen that the claim is made to SIMONS KS-SYSTEMS , but the brand name Agroparts is not part of this company , all invoicing of Agroparts is done through EVKS BV .

As a first comment you give that our logo is similar to your logo , I notice little similarity in both logos, we had this logo specially designed for our company .

Your logo



Our logo



We chose the name agoparts.be at the time because we are active in the agricultural sector and supply agricultural parts , we mainly supply to the Netherlands and Belgium and sporadically 4 to 5 times a year to Germany . Also our core business is spraying parts , cabine windows and Tractor parts , when you have a look at Agoparts.com , you see almost no similarity .

According to my knowledge there is still freedom of trade and the customer is free to buy his products wherever he wants .



I now also see that you have Kubota products in your range , we have been selling these products through our system much longer than you , that is why we also ask that this name be removed from your site .

If agroparts.com did not want agroparts.be to exist , they should have bought up all the domain names back then .

If our domain name or webshop will be damaged by the removal , we will claim foregone damages and loss of sales .”

In its response, the Domain Name Holder does not file any exhibit.

6. Discussion and findings

Pursuant to Article 16.1 of the Rules, the Third-Party Decider shall rule with due regard for the views of the Parties and in accordance with the Policy of DNS Belgium (included in DNS Belgium’s Terms and conditions for .be domain name registrations), the Registration Agreement and the Rules.

Pursuant to Article 10.b.1 of DNS Belgium’s Terms and conditions for .be domain name registrations, the Complainant must provide evidence of the following:

- *“the domain name 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 a trademark in which the complainant has rights

The Domain Name is clearly identical to the Complainant’s EU word trademark “agroparts” with filing number 006541941.

Furthermore, it is well-established domain name case law that the applicable top-level domain (in this case “.be”) is of no incidence on the appreciation of the identity and confusing similarity between the Domain Name and a trademark (e.g., CEPINA cases No. [44168](#), [44191](#), [444215](#) and [444223](#); WIPO Jurisprudential Overview 3.0, par. [1.11](#)), as the use of a top-level domain is technically required to operate a domain name (T. Bettinger, *Domain Name Law and Practice. An International Handbook*, Oxford, Oxford University Press, 2005, p. 1035, No. IIIA.230).

The Domain Name Holder does not dispute this.

Based on these elements, the Third-Party Decider decides that the first condition is met.



6.2 The domain name holder has no rights or legitimate interests in the domain name

While the overall burden of proof in domain name proceedings is on the complainant, it is established domain name case law that proving that a domain name holder lacks rights or legitimate interests in a domain name may result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge or control of the domain name holder. As such, where a complainant makes out a *prima facie* case that the domain name holder lacks rights or legitimate interests, the burden of proof on this element shifts to the domain name holder to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the domain name holder fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (e.g., CEPINA cases [444185](#), [444203](#), [444223](#), [444224](#); WIPO Jurisprudential Overview 3.0, par. [2.1](#)).

The Complainant alleges that the Domain Name Holder is not affiliated with the Complainant in any way and has not been authorised by the Complainant to use and register the Complainant's trademark, that the Domain Name Holder's company name (i.e. Simons-KS Systems) is different from the Domain Name, and that the Complainant's trademark had been registered for 10 years at the date of the registration of the Domain Name and had been in use throughout this time period as well. The Domain Name Holder does not dispute these allegations and there are *prima facie* no indications that these allegations would be incorrect. Based hereon, the Third-Party Decider finds that Complainant makes out a *prima facie* case that the Domain Name Holder lacks rights or legitimate interests in the Domain Name, so that the burden of proof on this element shifts to the Domain Name Holder to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name.

In its response, the Domain Name Holder alleges: *"We chose the name agroparts.be at the time because we are active in the agricultural sector and supply agricultural parts, we mainly supply to the Netherlands and Belgium and sporadically 4 to 5 times a year to Germany. Also our core business is spraying parts, cabine windows and Tractor parts, when you have a look at Agroparts.com, you see almost no similarity."*

The Domain Name Holder's basis for claiming rights and legitimate interest in the Domain Name is thus that the words "agro" and "parts" are dictionary words and the combination of both words is descriptive of selling agricultural parts, and that this was the reason why it registered the Domain Name. It adds that, prior to the notice of the dispute, it used the Domain Name in connection with selling agricultural parts, that its customers are located in fewer countries than those buying products on the Complainant's website, and that its core products are not sold on the Complainant's website.

It is indeed generally known that the word "agro" exists in various European languages and is used as a prefix or abbreviation to form words related to agriculture (see the decision of the Fourth Board of Appeal of the EUIPO of 11 April 2022 in case No. R 1135/2021-4, par. 84, attached to the Complainant's complaint as Annex 4). With respect to the word "part", an English-speaking public will perceive it as a descriptive reference to the nature of the goods, i.e. that they are or are related to spare parts, and a non-English-speaking public will consider this word as a meaningless word (*idem*, par. 84). At least for an English-speaking public, it can thus reasonably be assumed that the combination of "agro" and "parts" may be perceived as a descriptive reference to selling agricultural spare parts.



However, it is established domain name case law that merely registering a domain name comprised of one or more dictionary or descriptive words does not by itself automatically confer rights or legitimate interests on the domain name holder. In order to find rights or legitimate interests in a domain name based on its dictionary or descriptive meaning, two conditions need to be met: (1) The domain name should be genuinely used (or at least demonstrably intended for such use) in connection with the relied-upon dictionary or descriptive meaning, and (2) the domain name may not be registered or used to trade off third-party trademark rights (WIPO Jurisprudential Overview 3.0, par. [2.1](#)). In other words, there may be no circumstances indicating that the domain name holder's aim in registering the disputed domain name was to attempt to profit from the complainant's trademark (WIPO case No. [D2016-1199](#)). In this respect, panels in domain name disputes tend to look, for instance, at factors such as the status or fame of the complainant's trademark (WIPO Jurisprudential Overview 3.0, par. [2.1](#)).

With respect to the first condition, it is not disputed by the Parties that the Domain Name is genuinely used in connection with the relied-upon dictionary or descriptive meaning, i.e. for the sale of agricultural spare parts, and the sale of such products is in itself a legitimate business.

With respect to the second condition, there are, however, various elements that, taken together, indicate that the Domain Name Holder's aim in registering the Domain Name was to profit from the Complainant's trademark:

- The Complainant already obtained a registration of its EU word trademark "agroparts" in 2008. In its complaint, the Complainant alleges to be the world's largest multi-brand platform for after-sales in the agricultural sector, and in its response the Domain Name Holder does not dispute this. The Domain Name Holder registered the Domain Name no less than 9 years later.
- The Domain Name Holder does not dispute that, at the moment it registered the Domain Name, it was not generally known under the name "agroparts". On the contrary, it alleges that *"I have seen that the claim is made to SIMONS KS-SYSTEMS, but the brand name Agroparts is not part of this company, all invoicing of Agroparts is done through EVKS BV"*. It does not submit any information or evidence about that company EVKS BV.
- Like the Complainant, the Domain Name Holder is a professional company active in the sector of selling agricultural spare parts. It is reasonable to assume that, at the moment it registered the Domain Name, the Domain Name Holder, in that capacity, knew, or should have known, the Complainant's trademark and related world's largest multi-brand platform for after-sales in the agricultural sector, which at that time already existed already about 9 years.

The Domain Name Holder's allegation that its customers are located in fewer countries than those buying products on the Complainant's website, i.e. mainly only in Belgium and The Netherlands and sporadically in Germany, is not relevant in this respect, as the Domain Name Holder does not allege that the Complainant would not be active in these countries and as even attempting to profit from the Complainant's trademark in those countries only suffices.

Like the Complainant's trademark and internet portal, the Domain Name is used for selling agricultural spare parts. The Domain Name Holder alleges that its core products are not sold on the Complainant's website but does not submit any evidence that this would be the case.



The Domain Name Holder thus fails in its burden of proof that it would have rights or legitimate interests in the Domain Name.

Based on these elements, the Third-Party Decider decides that the second condition is met.

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

A finding of bad faith requires a complainant to show by a preponderance of evidence that it is more likely than not that the domain name holder registered or uses the domain name in bad faith. The circumstances enumerated in Article 10.b.2 of DNS Belgium's Terms and conditions for .be domain name registrations for finding bad faith are not exhaustive. Bad faith is broadly understood to occur where a domain name holder registers or uses a domain name in an attempt to take unfair advantage of a complainant's trademark (WIPO Jurisprudential Overview 3.0, para. [3.1](#)).

The registration of dictionary words which are economically highly interesting cannot stand alone as an indication of bad faith, but needs to be accompanied by other indications (CAC .EU Overview 2.0", p. [52](#)). In domain name disputes, a finding of bad faith may be made where the domain name holder "knew or should have known" of the registration and/or use of the complainant's trademark prior to registering the domain name (e.g., WIPO Case No. [D2001-0763](#) and [D2015-0773](#)). This is especially the case if the domain name holder is a competitor of the complainant (CAC .EU Overview 2.0, p. [52](#)).

On the balance of probabilities, various elements indicate the Domain Name Holder's aim in registering the Domain Name was to profit from the Complainant's trademark:

- The Complainant already obtained a registration of its EU word trademark "Agroparts" in 2008. In its complaint, the Complainant alleges to be the world's largest multi-brand platform for after-sales in the agricultural sector, and in its response the Domain Name Holder does not dispute this. The Domain Name Holder registered the Domain Name no less than 9 years later.
- The Domain Name Holder does not dispute that, at the moment it registered the Domain Name, it was not generally known under the name "agroparts". On the contrary, it alleges that *"I have seen that the claim is made to SIMONS KS-SYSTEMS, but the brand name Agroparts is not part of this company, all invoicing of Agroparts is done through EVKS BV"*. It does not submit any information or evidence about that company EVKS BV.
- The Domain Name is identical to the Complainant's trademark. The Domain Name Holder did not add any word or name or adapt anything that would distinguish the Domain Name from the Complainant's trademark.



- Like the Complainant, the Domain Name Holder is a professional company active in the sector of selling agricultural spare parts. It is reasonable to assume that, at the moment it registered the Domain Name, the Domain Name Holder, in that capacity, knew, or should have known, the Complainant's trademark and related world's largest multi-brand platform for after-sales in the agricultural sector, which at that time already existed already about 9 years.

Were a complainant's trademark is not inherently distinctive and it also corresponds to a dictionary or descriptive word, if a domain name holder can credibly show that the complainant's trademark has a limited reputation and is not known or accessible in the domain name holder's location, panels may be reluctant to infer that a domain name holder knew or should have known of the complainant's trademark rights at the time he registered the disputed domain name (WIPO Jurisprudential Overview 3.0, par. [3.2.2](#)). However, the Domain Name Holder does not show this. On the contrary, in its response, it does not dispute the Complainant's allegation to be the world's largest multi-brand platform for after-sales in the agricultural sector.

In addition, the fact that the Domain Name Holder registered the Domain Name without any rights or legitimate interests (see above) also supports a finding of registration and use in bad faith (WIPO Case No. [D2001-1216](#)).

The Domain Name Holder's allegation that there is little similarity in the logos of both companies is not relevant for assessing whether or not it registered the Domain Name in bad faith.

The Domain Name Holder's allegation that, if the Complainant "*did not want agroparts.be to exist, they should have bought up all the domain names back then*", is incorrect. There is no legal obligation for a trademark owner to register all domain names incorporating its trademark, let alone with all possible country code and generic top-level domains. The Domain Name Holder also does not identify where such alleged obligation would be laid down.

Based on these elements, the Third-Party Decider decides that the third condition is met.

7. Decision

Consequently, pursuant to Article 10.e of DNS Belgium's Terms and conditions for .be domain name registrations, the Third-Party Decider hereby rules that the domain name registration for the "**agroparts.be**" domain name is to be transferred to the Complainant.

Brussels, 6 January 2025

Frederic Debusseré,
Third-Party Decider