



## DECISION OF THE THIRD-PARTY DECIDER

### CUMA ÇETIN, DBA HORECAKING / RUMEYZA VENTILATION PRODUCTS B.V – MR. OKTAY BOGUTEKIN

Case no. 444208 / domain name horecaking.be

#### 1. The Parties

- 1.1. Complainant: CUMA ÇETIN, DBA HORECAKING, Vijzelweg 21A,  
5145 NK WAALWIJK, THE NETHERLANDS

*Represented by:*

Mr. W.F.J.N. VAN MOOK and Mr. W.F. DAMMERS, Attorneys at law,  
Burgemeester Stekelenburgplein 199, 5041 SC TILBURG, THE  
NETHERLANDS

- 1.2. Domain name holder: RUMEYZA VENTILATION PRODUCTS B.V – MR. OKTAY  
BOGUTEKIN, Torenlaan 5A, 1402 AT BUSSUM,  
THE NETHERLANDS

*Represented by:*

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#### 2. Domain name

Domain name: horecaking.be  
Registered on: August 10, 2015

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

#### 3. Procedure

On February 27, 2024, the Complainant submitted its complaint in view of a decision of a Third-Party Decider, according to the CEPANI Rules for domain name dispute resolution and the dispute resolution policy of DNS.be, incorporated in its general conditions (*Hereinafter referred to as the "Complaint"*).

In the Complaint, the Complainant requests the transfer of the Domain Name to the Complainant.

On March 28, 2024, the Third-Party Decided was appointed by CEPANI.

On April 4, 2024 the deliberations were closed.

Pursuant to Article 16.2 of the CEPANI Rules for domain name dispute resolution, the Third-Party Decided needed to render his decision no later than by April 18, 2024.

#### **4. Factual Background information**

#### **5. Position of the parties**

##### **5.1. Position of the Complainant**

First, the Complainant contends that, since October 1, 2020, he has been operating a sole proprietorship under the trade name "Horecaking" and that therefore the Domain name is identical to the Complainant's trade name "Horecaking", or, at least resembles the Complainant's trade name to such an extent that the Domain Name may create confusion with the Complainant's trade name.

The Complainant further contends that his business focuses on the sale of various heating, cooling and freezing machines and appliances for the hospitality industry. In doing so, the Complainant asserts that he uses various webshops, including webshops under the domain name <horecaking.nl> and the Domain Name.

The Complainant further asserts that, in the past, the Complainant and Mr. Oktay Bogutekin, owner of the Domain name holder, jointly operated a general partnership (in Dutch: "vennootschap onder firma" (VOF)), in which they operated a webshop called "Horecaking". According to the Complainant, they entered to this end, on behalf of the general partnership, into an agreement on May 5, 2016 with Strato AG for the purchase of the Domain Name.

The Complainant further asserts that, as of December 31, 2020, the Complainant took over Horecaking's company, URL and webshop, against payment to the of an amount of EUR 1,650 per month over a period of 24 months; instalments which have entirely been paid. On these grounds the Complainant alleges that he is the exclusive owner of the Domain Name.

Still according to the Complainant, the Domain name holder (i) conducts competitive activities and operates a webshop on the domain name <rumezya.nl> for that purpose; and (ii) as from October 24, 2023 started, without the Complainant's knowledge and/or consent, unlawfully transferring and registering numerous domains from the

Complainant's account to the Domain name holder's account. More specifically in relation to the Domain Name, the Complainant contends that on October, 30 2023 the Domain Name was unlawfully transferred from the Complainant's account to Ms Rumezva Yildizhan's account and then to the account of the Domain name holder without the Complainant's consent. On these grounds the Complainant concludes that (i) the Domain Name was registered in bad faith in the name of the Domain name holder as the Domain Name was unlawfully transferred to the Domain name holder without the knowledge and consent of the Complainant, (ii) the Domain Name was registered to prevent the Complainant, who is the holder of the trade name "Horecaking", from using the Domain Name; (iii) the Domain name is registered primarily in the name of the Domain name holder to disrupt the commercial activities of the Complainant (a competitor); and (iv) the Domain Name is being deliberately used, with a view to gaining a commercial advantage, to lure internet users to a website of the Domain name holder under the domain name <rumezva.nl>, relying on the confusion that may arise concerning the trade name "Horecaking", of which the Complainant is the right holder.

In support of his case, the Complainant further adds that on November 29, 2023, the Midden-Nederland District Court delivered a judgment in which the Domain Name holder was ordered to refrain from acting unlawfully towards the Complainant and to transfer a series of domain names under the sign "horecaking" (but not the Domain Name).

## 5.2. Position of the Domain name holder

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

## 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 CEPANI rules for domain name dispute resolution.

Pursuant to Article 10b (1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, 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 trade name in which the Complainant has rights

The Third-Party Decider first observes that it results from Annex 2 to the Complaint (*i.e.*, an extract from the Commercial Register of Commerce in the Netherlands (Kvk), confirming the registration of the trade name in the name of the Complainant, dated October 27, 2023), the trade name in which the Complainant claims having rights is not "Horecaking", but "HORECA KING" (*i.e.* a two-word sign consisting of the word "HORECA", on the one hand, and, the word "KING", on the other hand, both words separated by a space).

However, in terms of domain name registration, spaces in domain names are not allowed and domain names may be written in one single word (See Decision 44388 (<brasschaattaxi.be>; Decision 44323 <muckboots.be>).

On these grounds, the Third-Party Decider concludes that the Domain Name is identical to the trade name on which the Complainant has rights.

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

It does not result from the case file that the Domain name holder would have rights or legitimate interests in the Domain Name. On the contrary, it results from the annexes to the Complaint, and more in particular from Annex 4 (*i.e.*, the agreement between the Complainant and Mr. Oktay Bogutekin, being the owner of the Domain name Holder), that as of December 31, 2020: (i) the jointly operated a general partnership (in Dutch: "vennootschap onder firma" (VOF)), was dissolved; and (ii) the Complainant took over the company, the URL and the webshop.

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

On the basis of the Complaint and the annexes to the Complaint, the Third-Party Decider finds that the Domain name holder has obtained and/or used the Domain name in bad faith, given the fact that (i) on October, 30 2023, the Domain Name was transferred from the Complainant's account to Ms Rumeyza Yildizhan's account and then to the account of the Domain name holder, without the Complainant's consent and (ii) the transfer of the Domain Name to the Domain name holder was essentially prompted by the Domain name holder to prevent the Complainant from using the Domain Name and to disrupt the commercial activities of the Complainant. It is clear that the Domain name holder knew, or at least, it should reasonably have been known that the Complainant had rights or legitimate interests in the Domain name, given the agreement owner of the Domain name holder (Mr. Oktay Bogutekin) and the Complainant (Annex 4 to the Complaint).

For the sake of being complete, the Third-Part Decider notes that the Domain name holder's reprehensible conduct (described above) has also been condemned by the Midden-Nederland District Court (in Dutch: "Rechtbank Midden-Nederland") in a judgment of November 29, 2023. In this judgment the Domain Name holder was ordered *i.a.* to refrain from acting unlawfully towards the Complainant and to transfer several domain names covering "horecaking" (Annex 7 to the Complaint).

## 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 <**horecaking.be**> is to be transferred to the Complainant.

Brussels, April 16, 2024.

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Gunther Meyer  
The Third-party Decider