



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

AXA SA / EDOCO LTD.

Case no. 44206: axabanque.be

1. The parties

- 1.1. Complainant: AXA SA;
with registered office at Avenue Matignon 25, 75008 Paris,
France;
listed in the Paris trade register under number 572 093 920.

Represented by:

Maître Patrice de Candé, Attorney at Law,
with office at rue Marbeuf 29, 75008 Paris, France

- 1.2. Licensee: EDOCO Ltd;
with registered office at Carpenter Court, 1 Maple Road, SK7
2DH Cheschire, Stockport, United Kingdom;
listed in the United Kingdom trade register under number
5498389.

2. Domain name

Domain name: "axabanque.be"
Registered on: 25 September 2008

hereafter referred to as "the Domain Name".

3. Background to the case

The Complaint was submitted to CEPANI-CEPINA, the Belgian Centre for Arbitration and Mediation ("Cepani"), on 12 July 2010.

Cepani informed the Licensee of the Complaint and the Licensee submitted no

CEPANI – NON-PROFIT ASSOCIATION

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official Response.

On 18 August 2010, Cepani informed the Complainant and the Licensee that the undersigned had been appointed as the Third-party decider to settle the dispute pursuant to Article 12 of the Cepani Rules for the Domain Name Dispute Resolution.

4. Factual information

4.1. The Complainant

The Complainant, AXA SA, is the holding company of the AXA Group.

The AXA Group is a worldwide company with subsidiaries in Europe, Asia and America, providing services to individuals and businesses in the areas of banking/mortgage, finance, insurance and real estate.

AXA BANQUE and AXA BANK EUROPE are other companies of the AXA Group which are exclusively dedicated to banking and mortgage services.

AXA BANQUE has developed an online service allowing its clients to manage their accounts via the websites www.axabanque.fr and www.axabanque.com.

The Complainant owns the following trademark rights on which its Complaint is based:

- the international trademark AXA, No 490030, registered on 5 December 1984 for services in classes 35, 36 and 39 and designating Algeria, Austria, Benelux, Bosnia, Croatia, Czech Republic, Germany, Egypt, Hungary, Italy, Liechtenstein, Monaco, Morocco, Portugal, North Korea, Romania, Russia, Saint-Marin, Serbia, Slovakia, Slovenia, Sudan, Switzerland, Ukraine and Vietnam.
- the Community trademark AXA (figurative), No 373894, filed on 28 August 1996 and registered for services in classes 35 and 36;



- the French trademark AXA, No 1282650, filed on 7 August 1984 and registered for goods and services in classes 12, 14, 16, 18, 25, 28, 34, 35, 36, 39 and 41.
- the Benelux trademark AXA, No 436317, filed on 20 November 19874 and registered for services in classes 35, 36, 41, 42 and 45.
- the French trademark AXA BANQUE, No 1282656, filed on 7 August 19844 and registered for goods and services in classes 12, 14, 16, 18, 25, 28, 34, 35, 36, 39 and 41.

The Complainant also owns the domain names "axa.com", "axa.fr", "axa.be", "axabanque.fr" and "axabanque.com".

4.2. The Licensee

The Licensee, EDOCO Ltd, is a UK based company but no further information is provided about the Licensee or its activities.

On 25 September 2008, the Licensee registered the Domain Name "axabanque.be"

The website that is currently being operated under the Domain Name relates to banking, finance and insurance services and provides links to several service providers in the industry.

5. Position of the parties

5.1. Position of the Complainant

The complaint relies upon the following grounds:

(i) The Licensee's Domain Name is identical or at least confusingly similar to the trademarks of the Complainant:

- The Domain Name includes the term "AXA", which is identical to the above-mentioned AXA trademarks of the Complainant. The term AXA has in itself no particular meaning and has therefore a strong distinctive character. In the Domain Name, only the word "Banque" is added ("bank" in French), which is descriptive. In addition, the AXA trademarks are a well-known trademarks. The Domain Name is confusingly similar to the earlier trademarks of the Complainant .

The Complainant supports these findings with WIPO Cases No D2005-1044, *Finaxa SA v. Spiral Matrix*; No D2001-0903, *Oki Data Americas, Inc v. ASD, Inc.*; No D2000-0553, *AT&T Corp. v. WordlclassMedia.com*; No D2000-1627, *Scholastic Inc. v. 366 Publications*; No D2004-0509, *FINAXA v. Managing Trustee/MeridianGlobal*.

- The Domain Name "axabanque.be" reproduces entirely the above-mentioned trademark AXA BANQUE of Complainant and is identical to this trademark.

(ii) The Licensee has no rights or legitimate interests in respect of the Domain Name:

- The name of the Licensee, "EDOCO Ltd", has no resemblance with any of the marks "AXA" or "AXA BANQUE" and does not provide the Licensee with any right or legitimate interest to use the well-known trademark "AXA".
- The Licensee was never granted any license or other permission to use the trademarks of the Complainant nor is it involved in any relationship with the Complainant and accordingly it used the trademarks of the Complainant for its own use and without authorisation.

(iii) The Domain Name has been registered or is being used in bad faith:

a) The Domain Name was registered in bad faith:

- Given the well-known and distinctive character of the AXA trademark, it is inconceivable that the Licensee was unaware of the prior rights of the Complainant.
- The Licensee is known for registering well-known trademarks as domain names for use as a "click-through" business (Cepani case No 44154, Galenco.be, *Omega Pharma N.V. / Edoco Ltd*).

b) The Domain Name is being used in bad faith:

- The Domain Name is used to gain unfair benefit of AXA as the website displays links to commercial websites relating to insurance or financial products and services offered by competitors of the Complainant;
- It is likely that the Licensee's purpose is to collect money on a pay per click basis, which is a bad faith use, as confirmed by WIPO Case No D2009-0462 *Compart AG v. Compart.com / vertical Axis, Inc.*

5.2 Position of the Licensee

The Licensee provided no official response but sent an e-mail to CEPINA dated 12 Augustus 2010 stating "Please transfer the domain to the parties, who own the rights".

6. Discussion and findings

Pursuant to Article 15.1 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 licensee'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 the Complainant has rights; and*
- *the licensee has no rights or legitimate interests in the domain name; and*
- *the licensee's domain name has been registered or is being used in bad faith."*

6.1. The Domain Name is identical and similar to trademarks of the Complainant

The relevant part of the Domain Name is AXABANQUE as the “.be” extension must not be taken into account.

The Domain Name is *identical* with the AXABANQUE trademark of Complainant.

The Domain Name includes the entire sign “AXA” and is confusingly *similar* to the above-mentioned AXA trademarks of the Complainant because “AXA” is the most distinctive element of the domain name, the other element being “BANQUE” (i.e. Bank in French), which is descriptive.

In assessing the identity or similarity of the Domain Name with trademarks of the Complainant, it is irrelevant for which territory these trademarks were registered (CEPANI decision No 44062 , *Moby v. Pugliese - Mare In*, 29 May 2005). The French trademark AXABANQUE is therefore of full relevance.

The Licensee does not dispute this identity and similarity.

As a consequence, the first condition set forth in article 10b(1) of the Terms and conditions is met.

6.2. The Licensee as no rights or legitimate interests

Through the Domain Name, the Licensee makes use of the trademarks of the Complainant without any authorisation.

It was previously held in a CEPANI domain name case that the Licensee is familiar with registering domain names with well-known trademarks to derive revenue from “click-through” business (CEPANI case No 44154, *galenco.be*, *Omega Pharma NV / Edoco Ltd.*).

Since the above plausibly demonstrates the absence of any legitimate right or interest in respect of the Licensee, the burden of the proof hence lies on the Licensee, which has to prove that it actually has rights or legitimate interests.

In the absence of such evidence, it must be concluded that the second condition is met.

6.3. The Domain Name is registered or used in bad faith

The website displayed under the Domain Name provides commercial links, mainly related to the fields of activity of the Complainant (see exhibits 21 and 22 of the Complainant).

The most obvious purpose of this website would hence be to derive profit from the use of the trademarks of the Complainant.

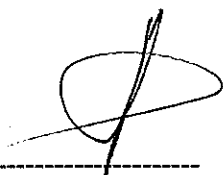
Without any other response from the Licensee except an e-mail stating that the site may be transferred to the parties who own the rights, it is sufficiently evidenced from the above that the Domain Name was registered and is being used in bad faith.

Given the bad faith, the last condition 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 "**axabanque.be**" domain name is to be transferred to the Complainant.

Brussels, 7 September 2010.

A handwritten signature in black ink, consisting of a large, stylized loop with a vertical stroke through it, positioned above a horizontal dashed line.

Tom Heremans
The Third-party decider
(signature)