



BELGIAN CENTER FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

HUNTSMAN ADVANCED MATERIALS GmbH / DOMAIN SOLUTIONS CORP.
Case No. 44298 : araldite.be

1. Parties

1.1. Complainant:

HUNTSMAN ADVANCED MATERIALS GmbH, with registered office at 4057 Basel, Klybeckstrasse 200, Switzerland,

Represented by:

Ms. Silvia CARTOIS, representative with power-of-attorney, Everslaan 45, 3078 Everberg, Belgium,

Hereafter referred to as « the Complainant ».

1.2. Licensee:

DOMAIN SOLUTIONS CORP., with registered office at 110025 Shenyang, Songgong St. 26, China,

Not represented,

Hereafter referred to as « the Licensee ».

2. Domain Name

Domain name : “**araldite.be**”

Registered on : 6 March 2012

Hereafter referred to as the « Domain Name »

3. Background to the case

On 30 April 2013, the Complainant filed a complaint with CEPANI according to the CEPANI rules for domain name dispute resolution and the dispute resolution policy of DNS, incorporated in the General Conditions, concerning the Domain Name. The Complainant requests that the Domain Name shall be transferred to the Complainant.

The CEPANI communicated the Complaint to the Licensee but no response was submitted by the Licensee.

On 28 May 2013, the undersigned was appointed by CEPANI as third-party decider.

On the same day, CEPANI informed the Complainant and the Licensee that the undersigned was appointed as third-party decider.

The deliberations were closed on 4 June, 2013 and the decision was due on 18 June 2013 at the latest.

4. Factual information

The Complainant is a global manufacturer of chemical products including an adhesive line of products under the trade name « Araldite » (see www.go-araldite.com).

The Complainant owns several trademarks under the name Araldite (International trademark No.0304222; European trademark No.2974475; European trademark No.5648456; Benelux trademark No.874118 ; Benelux Figurative trademark No.880654; European Figurative trademark No.10505964).

The Complainant has submitted four exhibits to support its complaint.

The Domain Name was registered on 6 March 2012.

The website www.araldite.be displays a page which contains a number of sponsored links to websites of third parties. At some of those websites, products or services similar to those of the Complainant are offered.

5. Position of the parties

5.1. Position of the Complainant

5.1.1.

The Complainant argues that the Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights.

From the wording of the complaint, it seems that the Complainant does not invoke other rights such as trade name. It merely states that Araldite is its leading adhesive line of products and that the brand name was originally created in 1946.

5.1.2.

The Complainant argues that the Licensee has no rights of legitimate interests in the domain name.

According to the Complainant, the Araldite mark is well-known by both industrial and consumer markets and recognized as a superior adhesive product, especially in China. Considering the fact that the Licensee operates in China, it is therefore very unlikely that the Licensee was not aware of the well-known and registered trademark Araldite.

The Complainant also argues that the Domain Name has been registered without any content being placed on the corresponding website.

According to the Complainant, based on these findings it follows that the Licensee cannot assert legitimate or faire use of the disputed Domain Name.

5.1.3.

The Complainant argues that the Domain Name has been registered in bad faith or is being used in bad faith.

The Complainant mentions a case “*Giorgio Armani S.p.A. v. Domain Solutions Corp.*” (Nr. DCH2012-0014) before the WIPO Arbitration and Mediation Center, in which case a WIPO expert concluded that there was no proof of any legitimate use of the “armaniexchange.ch” domain name by the Licensee.

The Complainant argues that considering the fact that Araldite is a famous brand and no content is being placed on the corresponding website, it is obvious that the Licensee shows a pattern of deliberately filing famous brands in order to prevent the trademark holder from using them and probably for the purpose of selling them.

The Complainant states that a letter requesting the transfer of the domain name had been sent to the Licensee on 18 June 2012 but no response was received. The Complainant does not submit the relevant correspondence.

5.2. Position of the Licensee

The Licensee did not file any response with CEPANI.

Pursuant to Article 6.4. Rules of Procedure, the dispute shall be decided on the basis of the Complaint.

6. **Discussion and conclusions**

Pursuant to Article 15.1 of CEPANI Rules for domain name dispute resolution, the Third-Party Decider shall decide on the Complaint in accordance with the DNS.BE Policy and the CEPANI Rules for domain name dispute resolution.

Pursuant to Article 10 (b) (1) of the Terms and Conditions of Domain Name Registration under the «.be» for Domain operated by DNS.BE., the Complainant has to prove that :

- (i) the Licensee's domain name is identical or confusingly similar to a trademark, a trade name, a registered name or a company 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
- (ii) the Licensee has no rights or legitimate interests in the domain name; and
- (iii) the Licensee's domain name has been registered or is being used in bad faith.

6.1. Is identical or confusingly similar to

The pieces of evidence submitted by the Complainant show that the Complainant has registered several trademarks under the name Araldite prior to the Domain Name registration. For instance, the international trademark No. 304222, covering Benelux, has been registered in 1965.

The elements submitted by the Complainant are not contested by the Licensee.

The Domain Name is identical to the trademarks (and trade name) of the Complainant.

According to the CEPANI case-law, the suffix “.be” has no relevance in order to establish the identity or similarity between a domain name and a trademark.

Therefore, the first condition is met.

6.2. Right and legitimate interest

The Licensee has not submitted any circumstance demonstrating its rights or legitimate interest to the Domain Name.

The file does not contain any evidence that the Licensee has been commonly known by the Domain Name and/or that the Licensee owns trademark or other rights with respect to the Domain Name.

There is no proof of any authorization by the Complainant, regarding the use of the Domain Name.

None of the (non-exhaustively) listed circumstances in Article 10 (b) (3) of the Terms and Conditions of Domain Name Registration under the «.be» for Domain operated by DNS.BE appears to be present in the case at hand.

There are no indications that the Licensee has used the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, according to the pieces of evidence submitted by the Complainant, the Domain Name is used to attract internet users towards a website which contains sponsored links to websites of third parties offering products/services similar to those of the Complainant (epoxy adhesive ...). The elements submitted by the Complainant are not contested by the Licensee.

Most likely, the Licensee derives income from such “pay-per-click” business. Such practice does not constitute a legitimate and non-commercial or fair use of the Domain Name.

Under such circumstances, the burden of the proof lies on Licensee, which has to prove that he actually does have rights or legitimate interests. In the absence of such evidence, it must be concluded that the second condition is met.

6.3. Registered or being used in bad faith

The arguments submitted by the Complainant were not contested by the Licensee. These arguments indicate with a reasonable degree of certainty the existence of bad faith.

The website www.araldite.be is not used by the Licensee. The website displays a page that contains a number of sponsored links to websites of third parties. At some of those websites, products or services similar to those of the Complainant are offered. Such domain names use is an advertising practice which is known as “parked domain monetization”.

It is clear that the Domain Name is intentionally used to attract, for commercial gain, Internet users to the Licensee’s website and further to websites offering products/ services similar to those of the Complainant, by creating likelihood of confusion with the Complainant’s trade name and corporation name. This circumstance is in itself a sufficient proof of the Licensee’s bad faith.

The Complainant also mentioned a case “*Giorgio Armani S.p.A. v. Domain Solutions Corp.*” (Nr. DCH2012-0014) before the WIPO Arbitration and Mediation Center. In this case the famous Italian brand Armani filed a complaint against the same Licensee for using the “*armaniexchange.ch*” domain name and displaying a Parking-Website with advertising. The WIPO expert concluded that there was no proof of any legitimate use of this domain name. This case is not related to the present dispute but it provides an indication that the use of domain names for parked domain monetization, by the Licensee, is apparently conducted on a regular basis.

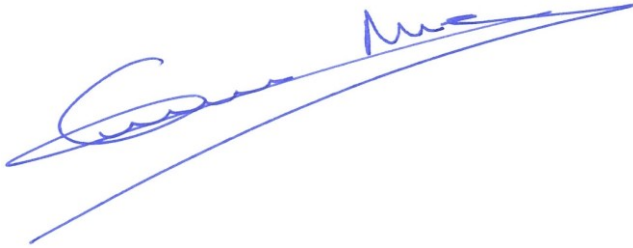
The Complainant does not prove that the Domain Name originally was registered in bad faith (even though one might reasonably consider that the Domain Name has been registered in bad faith since it has been registered after the trademark) but in any case it is sufficiently proven that the Domain Name is currently being used in bad faith.

Therefore, the third condition is met.

7. Decision

The third-party decider decides, according to Article 10 (e) of the Terms and Conditions of Domain Name Registration under the « .be » for Domain operated by DNS.BE, to transfer to the Complainant the registration of the domain name “araldite.be”.

Brussels, 11 June 2013.

A handwritten signature in blue ink, consisting of a large, stylized initial 'G' followed by a series of loops and a long horizontal stroke extending to the right.

Guillaume RUE
Third-party decider