DECISION OF THE THIRD-PARTY DECIDER

Trezia / Porchester Partners Inc.

Case no. 44229: ardennes-etappes.be

1. The parties

1.1. Complainant: SPRL Trezia, with registered office at 4970 Stavelot, 3b Ster

Represented by:

Mr. Vincent Lamberts, attorney-at-law with offices at 4000 Liège, Place Verte 13.

1.2. Licensee: Porchester Partners Inc. c/o Ms. Janice Liburd, with registered office at Mossfon Building, East 54th street, 2nd floor, 0832-0886 Panama.

2. Domain name

Domain name: "**ardennes-etappes.be**"
Registered on: 21 February 2010

hereafter referred to as "the domain name ".

3. Background to the case

On 8 March 2011, Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation (CEPANI-CEPINA) concerning the domain name.

On 8 March 2011, CEPINA informed Licensee of the pending proceedings.

Licensee initially responded that it was willing to transfer the domain name to Complainant. As a consequence, CEPINA suspended the procedure. Despite several reminders from CEPINA, Licensee did not execute the transfer agreement required for the trade to effectively take place. Hence, CEPINA resumed the procedure and appointed a third-party decider.

On 27 July 2011, Complainant and Licensee were notified that the undersigned had been appointed as third-party decider to settle the dispute pursuant to Article 12 of its Rules for Domain Name Dispute Resolution, and that the deliberations would be closed 7 days from the date of the letter, i.e. on 3 August 2011. The third-party decider would then normally have 14 days as from the conclusion of the deliberations in which to submit his decision to CEPINA's secretariat, i.e. by 17 August 2011 at the latest.

4. Factual information

Having examined the evidence submitted by Complainant, the third-party decider finds that the following facts have been established.

4.1. Complainant

- Complainant is a Belgian based company which specializes in designing, operating and managing websites offering holiday accommodation in the Belgian Ardennes, trading under the name "ARDENNES-ETAPE".

- Complainant owns a Benelux trademark registration no. 0707498, registered on 1st October 2002 (application date 26 September 2001), containing the word element "ARDENNES-ETAPE", as depicted below:

4.2. Licensee

- Licensee is a company that specializes in domain name management and sales. It owns thousands of domain names and appears to be offering them for sale.

- Licensee registered the domain name "ardennes-etappes.be" on 21 February 2010. Licensee uses the domain name for operating a website containing links to other websites specialising in offering holiday accommodation in the Belgian Ardennes.

- On 8 March 2011, Complainant filed a complaint with CEPINA. The complaint was notified to Licensee on 8 March 2011. On 21 March 2011, Licensee replied to CEPINA that it was willing *"to give the domain ardennes-etappes.be to the complainant"*, requesting that Complainant would start the transfer and saying that Licensee would then confirm the transfer e-mail. On the same date, CEPINA answered to Licensee that the transfer of the domain name requires the execution of a transfer agreement between Licensee and Complainant. Licensee confirmed, on 29 March 2011, that *"the domain is ready to be transferred to the complainant"* but, in spite of several reminders by CEPINA (e-mails from 9 May 2011, 27 June 2011 and 18 July 2011) which included the transfer agreement as signed by Complainant, Licensee never actually executed this agreement.

5. Position of the parties

5.1. Position of Complainant

Complainant requests the third-party decider to order the transfer of the domain name, since all the conditions provided for in Article 10(b)(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE are met.

(i) Licensee's domain name is identical or confusingly similar to a trademark and trade name in which Complainant has rights

Complainant states that Licensee's domain name is quasi identical and confusingly similar to Complainant's trade name "ARDENNES-ETAPE" and to Complainant's combined word and figurative mark with the word elements "ardennes-etape", which is a registered trademark in the Benelux.

Complainant also refers to the various "ardennes-etape" domain names which it (or an associated company)[1] owns in other generic and country code top level domains, including the ".be" domain ("ardennes-etape.be").

(ii) Licensee has no right or legitimate interest in the domain name

Complainant argues that Licensee has no rights (as a trademark, company name, business name etc.) or any legitimate interests in the domain name since none of Licensee's activities justifies the use of the term "ardennes-etappes".

Complainant also points out that Licensee is not known by the domain name.

Complainant states that the domain name is only used to attract Internet users to a website containing sponsored links to websites of third parties offering products or services that are similar to Complainant's products or services.

In support of the lack of legitimate interest, Complainant also refers to the fact that Licensee, on the website operated under the domain name, is offering the domain name for sale.

Finally, Licensee refers to WIPO case law holding that parking pages or a page of links built around a trademark do not constitute a bona fide offering of goods or services.

(iii) Licensee's domain name has been registered and is being used in bad faith

[1] The domain name "ardennes-etape.be » appears to be owned by an associated company of Complainant, called Asteria SPRL.

Complainant states that Licensee must necessarily have been aware of Complainant's rights in the trademark and trade name "'ardennes-etape" because Complainant has been very well-known by this name in Belgium since 2001, and because Licensee, on the website which it operates under the domain name, also provides a link to Complainant's website.

Complainant further refers to CEPINA and WIPO case law where it was decided that the domain name at issue was filed in bad faith because it was being intentionally used to attract, for commercial gain, Internet users to the domain name holder's website and further to websites offering products/services similar to those of the complainant.

5.2. Position of Licensee

Licensee did not file a response to the complaint.

It merely indicated its willingness to transfer the domain name to Complainant, but failed to execute the steps that are necessary to achieve such transfer.

6. Discussion and findings

Pursuant to Article 15.1 of the CEPINA rules for domain name dispute resolution, the third-party decider shall decide on the complaint in accordance with the Policy and the CEPINA rules for domain name dispute resolution.

Pursuant to Article 10(b)(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, Complainant has to prove that:

- 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 Complainant has rights; and
- Licensee has no rights or legitimate interests in the domain name; and
- Licensee's domain name has been registered or is being used in bad faith.

6.1. Identity or confusing similarity to a name or sign of Complainant

In order to meet the first condition Article 10(b)(1) of the DNS BE Policy, the domain name must be either identical or confusingly similar to a sign owned by Complainant.

It is sufficient that a domain name conflicts with one of Complainant's rights or interests mentioned in this Article.

It is also sufficient that the domain name is either identical or similar to one of the rights or interests mentioned.

In the case at hand, both names are phonetically and conceptually identical. The visual differences are negligible. Licensee's domain name only differs with two characters from Complainant's trade name and trademark, i.e. in that the second word is "etappes" instead of "etape". Hence, the domain name is very similar and in fact quasi identical to Complainant's earlier trademark (at least the word element thereof, which is the most distinctive part of the mark) as well as to Complainant's trade name.

Complainant has also sufficiently demonstrated that this strong similarity brings about a risk of confusion. Licensee has itself created a website under the domain name "ardennes-etappes.be". This website contains various links to competitors of Complainant who also offer holiday accommodation in the Belgian Ardennes, and also to Complainant's website. Visitors to the website operated under Licensee's domain name hence risk to be confused. Also, Internet users risk ending up on the website operated under Licensee's domain name due to a typing error ("etappes" instead of "etape") in the website of Complainant.

As a consequence, the first condition of Article 10(b)(1) is fulfilled.

6.2. Absence of rights or legitimate interests of Licensee

In order to meet the second condition of Article 10(b)(1) of the DNS BE Policy, Complainant must prove that Licensee 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 Licensee has no rights or legitimate interests in the domain name.

None of the (non-exhaustively) listed circumstances in Article 10(b)(3) of the DNS BE Policy appears to be present in the case at hand.

First, there are no indications that 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, the fact that Licensee has used the domain name to build a website containing links to competitors of Complainant, indicates that Licensee is using the domain name to generate "pay-per-click" income from sponsored links to websites of third parties offering services that compete with those of Complainant. Such does not constitute a bona fide offering of goods or services.

Second, there are also no indications that Licensee is making a legitimate and non-commercial or fair use of the domain name. Using a domain name to build a website containing links to competitors of Complainant is generally held not to constitute a legitimate and non-commercial or fair use of the domain name. The absence of legitimate and non-commercial or fair use of the domain name is further supported by the fact that Licensee, at least since 22 April 2010 (exhibit 7 of Complainant), is offering the domain name for sale through the corresponding website, where it says that *"le nom de domaine ardennes-etappes.be est mis en vente par son propriétaire"* (exhibit 9 of Complainant).

Finally, no evidence is available showing that Licensee would have been commonly known by the domain name.

Apart from its e-mails confirming that it was ready to transfer the domain name to Complainant, Licensee did not file any (substantive) reply to the complaint and hence fails to demonstrate that these circumstances, or other circumstances that would demonstrate the existence of any rights or legitimate interests of Licensee in the domain name, would be present in the case at hand.

The third-party decider therefore concludes that Licensee 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. Registration or use of the domain name in bad faith

In order to meet the third and last condition of Article 10(b)(1) of the DNS BE Policy, Complainant must prove that Licensee registered or used the domain name in bad faith.

Article 10(b)(2) provides a non-exhaustive list of circumstances which prove that a domain name is registered or used in bad faith.

The third-party decider is of the opinion that at least two of those circumstances are present in the case at hand.

First, Complainant has sufficiently demonstrated that Licensee has intentionally used the domain name to attract, for commercial gain, Internet users to Licensee's website by creating confusion with Complainant's trademark and trade name as to the source, sponsorship, affiliation, or endorsement of Licensee's website or products or services offered thereon. Indeed, Licensee is using the domain name to operate a website which offers links to companies that are active in the field of offering holiday accommodation in the Belgian Ardennes, including a link to Complainant's own website. Hence, Licensee cannot have been ignorant of Complainant's earlier rights in the sign "ardenne-etape". It is also clear from the circumstances that Licensee gains money through the Internet users' visits to the websites mentioned in the sponsored links on Licensee's website. This circumstance is in itself sufficient proof of the Licensee's bad faith.

Second, the facts of the case also indicate that the domain name was registered primarily for disrupting Complainant's business. Indeed, by using the domain name to operate a website containing sponsored links to direct competitors of Complainant, Licensee must have intended (and effectively does) disrupt Complainant's business. This circumstance is another proof of the Licensee's bad faith.

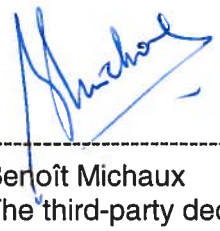
Additionally, the third-party decider is of the opinion that the first circumstance of Article 10(b)(2) is probably also met. The circumstances of the case are such as to make it plausible that Licensee did have the intention to take financial advantage of the registration of the domain name. Complainant has demonstrated that Licensee has put the domain name for sale shortly after the registration of the domain name, and in any event as from 22 April 2010 (exhibit 7 of Complainant).

In light of all these circumstances, the third-party decider is of the opinion that the third condition of Article 10(b)(1) is 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 "ardennes-etappes.be" domain name is to be transferred to Complainant.

Brussels, 10 August 2011.



Benoît Michaux
The third-party decider
(signature)