



THE BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Avtex Limited/ Vadac B.V.

Case no. 44428: avtex.be

1. The parties

- 1.1. Complainant: Clive Garrett-Evans
residing at Calon Point, no. 1 Fountain Lane, St. Mellons
Cardiff CF3 0FE
United Kingdom

on behalf of Avtex Limited
Unit G5 Capital Business Park
Cardiff CF3 2PX
United Kingdom

Represented by:

Moira Truijens, attorney at law,
with office at Jozef Israëlskade 48-G
1072 SB Amsterdam
The Netherlands

- 1.2. Licensee: Vadac B.V.
Marco Benjamin Van Rooijen
with registered office at Teugseweg 18
7418 AM Deventer
The Netherlands

2. Domain name

Domain name: **"avtex.be"**
Registered on: June 27, 2013

hereafter referred to as "the domain name".

3. Background to the case

On June 6, 2017 the Complainant filed a Complaint with CEPANI according to the CEPANI Rules for Domain Name Dispute Resolution ("the Rules") and the Dispute Resolution Policy of DNS BE (Article 10 of the Terms and conditions for .be domain name registrations).

The Complaint was filed in English pursuant to Article 11 of the Rules.

The Complainant requests that the domain name shall be transferred to the Complainant.

The Licensee was notified of the Complaint and was invited to submit a response. The Licensee did not submit a response to CEPANI.

On July 11, 2017 CEPANI informed Cedric Vanleenhove that it had the intention to propose Cedric Vanleenhove as Third Party Decider.

On July 12, 2017 CEPANI received the declaration of independence of Cedric Vanleenhove.

By registered letter dated July 12, 2017 Cedric Vanleenhove was appointed by CEPANA as Third-Party Decider to settle the dispute pursuant to Article 7.2 of the Rules.

In the aforementioned letter CEPANI stated that the deliberations would be closed by July 19, 2017 pursuant to Article 13 of the Rules and that the Third Party Decider should forward his decision to CEPANI on August 2, 2017 at the latest pursuant to Article 16.2 of the Rules.

On July 19, 2017 the deliberations were closed.

4. Factual information

The Complainant is a company based in the United Kingdom making televisions and associated products specifically for the mobile leisure market relating to motorhomes and caravans. The Complainant has a strong position in this niche market and has been selling its products all over Europe for over 25 years. It also sells in Belgium.

The Complainant uses its EU trademark AVTEX throughout the European Union, including Belgium, as the prime branding for its products. In addition, the trademark is licensed to its partners for certain products in certain EU territories.

The licensee is Vadic B.V., located in the Netherlands. The contact person is Marco Benjamin Van Rooijen. The e-mail addresses for the licensee are marco@vadic.com and info@vadic.com.

The licensee operates in the same field of activities as the Complainant as it also offers products of the same category (technical accessories for the mobile leisure market relating to motorhomes and caravans).

The Licensee registered the domain name on June 27, 2013.

The website www.avtex.be links to the webpage vadac.de/nl/home which contains the products of the Licensee.

5. Position of the parties

5.1. Position of the Complainant

The Complainant requests the Third Party Decider to order the transfer of the domain name to the Complainant since all conditions of the Dispute Resolution Policy of DNS BE (Article 10 of the Terms and conditions for .be domain name registrations) are fulfilled.

The Complainant asserts that the domain name is identical to its trademark AVTEX and that a likelihood of confusion is present.

The Complainant asserts that the Licensee has no rights or legitimate interests in the domain name as the latter does not own any trademark rights in the mark AVTEX, is not commonly known by the domain name (but under the trade name "Vadac") and is not connected to Avtex's business. Furthermore, none of the criteria of Article 10b(3) of the DNS BE Terms and conditions for .be domain name registrations have been met in order for the Licensee to demonstrate it has a right or legitimate interest in the domain name.

The Complainant asserts that the domain name has been registered and is being used in bad faith. Avtex was already selling its products all over Europe for over 25 years at the time of registration of the domain name by the Licensee. The Licensee likely knew of Avtex's trademark when it registered the domain name. Furthermore, the Licensee has placed the domain name for sale on the host website sedo.com for EUR 2500.

As to the use in bad faith, the Complainant states that the domain name is being used to gain commercial advantage by attracting internet users to the Licensee's website vadac.com through the likelihood of confusion which arises with the trademark AVTEX.

5.2. Position of the Licensee

The Licensee did not submit a response.

As a consequence, the dispute shall be decided on the basis of the Complaint (art. 6.4. of the Rules).

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 licensee's domain name is identical or confusingly similar to a trademark, a tradename, a social name or corporation name, a geographical

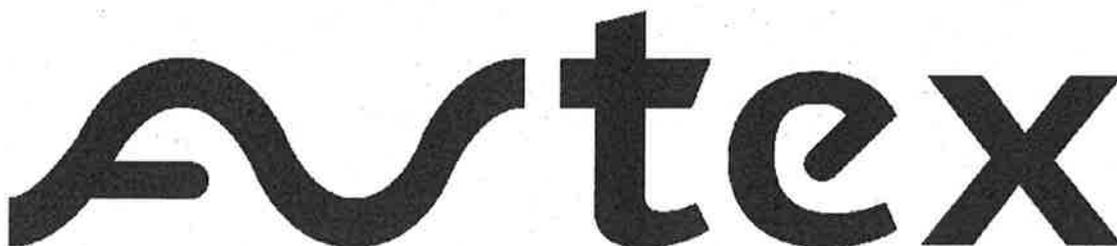
designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights; and

- *the 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. Identical or similar to

Based on the evidence submitted by the Complainant it is clear that the Complainant is the owner of amongst other the following trademarks.

- EU trademark 010154433 for the word mark AVTEX for the classes 9, 16 and 20
- EU trademark 011166493 for the following figurative mark for class 9:



According to established CEPANI case law the suffix .be is irrelevant when assessing the identical character of the domain name (see e.g. CEPANI case no. 4030 "chopard.be", February 17, 2003 and CEPANI case no. 44409 "del-arte.be", September 21, 2016).

One of the invoked trademarks is a figurative trademark. The domain name should be compared to the verbal elements of said trademark (CEPANI case no. 44398 "sla.be", May 13, 2016).

The domain name and the word mark AVTEX are identical. From an oral, visual and conceptual point of view they are the same (CEPANI case no. 44411 "lenovo.be", October 13, 2016). The same applies to the verbal element of the figurative trademark. Even if the identical character would be disputed because the word mark is written in capitals, the domain name and the word mark AVTEX are confusingly similar (CEPANI case no. 44002 "stubru.be", March 5, 2001).

Since the Licensee did not submit a response, it does not contest the arguments of the Complainant.

As a result, the Third Party Decider concludes that the first condition is met.

6.2. Rights and legitimate interests

The Complainant needs to prove that the Licensee does not hold any rights or legitimate interests in the domain name. This requires a negative proof which is impossible: "*negativa non sunt probanda*" (CEPANI case no. 44013 "smirnoff.be", February 7, 2002). Prima facie evidence by the Complainant suffices, in the sense that it must prove that there are serious grounds to consider that the Licensee does

not have rights or legitimate interests in the domain name, taking all the circumstances of the case into account (CEPANI case no. 44019 "verfaillie.be", October 29, 2002).

Avtex has not granted any license or otherwise authorised the Licensee to use the trademarks or to obtain any domain name incorporating the trademark. The licensee does not own any trademark rights in the mark AVTEX. It is not commonly known by the domain name but under the trade name "Vadac" and is not connected to Avtex's business. The licensee only uses the domain name to direct internet users to the Licensee's own website, namely vadac.de, thereby making commercial use of the domain name with the intent of commercial gain.

In absence of any counter-arguments from and/or proof to the contrary (for instance by invoking any of the criteria of Article 10b(3)) by the Licensee, it has been established that the Licensee cannot show any rights or legitimate interests in the domain name (CEPANI case no. 44021 "napster.be", November 12, 2001; Cass. 24 March 1947, *Pas.* 1947, I, 123).

As a result, the Third Party Decider concludes that the second condition is met.

6.3. Registration or use in bad faith

In order to prove bad faith registration or use the Complainant can inter alia rely on the circumstances enumerated in Article 10b(3) of the DNS BE Terms and conditions for .be domain name registrations. The behaviour of the Licensee falls under the third and fourth circumstance of Article 10b(3) of the DNS BE Terms and conditions for .be domain name registrations. These circumstances read:

- *the domain name was registered primarily for the purpose of disrupting the business of a competitor*
- *the domain name was intentionally used to attract, for commercial gain, Internet users to the registrant's web site or other on-line location, by creating confusion with the complainant's trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the registrant's web site or location or of a product or service on his web site or location*

The Licensee registered the domain name on June 27, 2013. At that time the Complainant was already selling its products throughout Europe (including Belgium) for over 25 years and already held its Avtex trademarks. As the Licensee and the Complainant are active in the same commercial field (the supply of technical accessories for the mobile leisure market relating to motorhomes and caravans), the Licensee must have been aware of the Complainant's trademarks. Furthermore, the Licensee has offered the domain name for sale on the website sedo.com for the sum of EUR 2500.

The Licensee uses the domain name to attract, for commercial gain, internet users to its website vadac.de by creating confusion with the Complainant's trademark AVTEX. Internet users wishing to find information about Avtex and its products who type the internet address avtex.be will be directed to the Licensee's website. As the Licensee offers similar products as the Complainant, internet users assume there is a

connection between both companies, which is not the case. CEPANI case law states that directing internet users to another website than the one of the domain name is an indication of the fourth circumstance (CEPANI case no. 44077 "kuota.be", February 23, 2006).

Evidence of the fourth circumstance implies the existence of the third circumstance (CEPANI case no. 44097 "infrasigna.be", February 14, 2007).

The Licensee did not submit a response to the arguments raised by the Complainant.

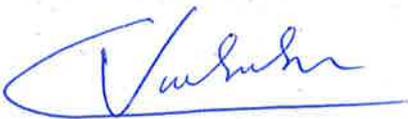
The Third-Party Decider finds that the Licensee has both registered and used the domain name in bad faith.

As a result, the Third Party Decider concludes that the third condition 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 "**avtex.be**" domain name is to be transferred to the Complainant.

Ghent, July 27, 2017



Cedric Vanleenhove
The Third-Party Decider