



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Beflius Bank SA/ Dioen Kend

Case n° 44301 : beflius.be

1. The Parties

1.1. Complainant: Beflius Bank SA
with registered offices at 1000 Bruxelles, Boulevard Pachéco, 44,
Belgium

Represented by Mr. Philippe Péters and Mr Pierre-Yves Thoumsin,
Attorneys at law
with registered office at 1000 Bruxelles, Terhulpesteenweg, 120,
Belgium

1.2. Licensee: Dioen Kend,
34232 Deos Fiens, Bowman Avenue, 4745, United States

Not represented

2. Domain Name

Domain Name: "beflius.be"

Registered on: June 16, 2012

Hereafter referred to as " the Domain Name".

3. History of the procedure

On April 17, 2013 the Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation (CEPANI-CEPINA, hereafter referred to as the "Center") concerning the Domain Name, pursuant to the CEPANI Rules for Domain Name dispute resolution and the Dispute resolution policy of DNS BE (Article 10 of the Terms and conditions for Domain Name registrations under the ".be" domain operated by DNS BE).

CEPANI – NON-PROFIT ASSOCIATION

rue des Sols 8, B-1000 Brussels ● Telephone: +32 2 515 08 35 ● Fax: +32 2 515 08 75
E-mail: info@cepina-cepani.be ● Website: <http://www.cepani.be>
FORTIS BANK: 210-0076085-89 ● KBC: 430-0169391-20 ● BBL: 310-0720414-81

The Complaint was filed in English pursuant to Article 11 of the CEPANI Rules for Domain Name dispute resolution.

On May 21, 2013, the Licensee was notified of the Complaint and was invited to submit a response by May 28, 2013. The Licensee did not submit his response to the Center.

Mr. Benjamin Docquir was appointed on May 21, 2013 by the Center as the Third-Party Decider to settle the dispute pursuant to Article 6.2. of the CEPANI Rules for Domain Name dispute resolution.

The Center also informed the Third-Party Decider that the deliberation would be closed by May 28, 2013 and that its decision needed to be filed by June 11, 2013. Both the Complainant and the Licensee were informed of the aforementioned appointment and information.

On 17 May 2013, the Third-Party Decider sent the statement of independence to the Center.

On May 28, 2013, pursuant to Article 12 of the CEPANI Rules for Domain Name dispute resolution, the deliberations were closed.

The Third-Party Decider's decision is issued according to:

- the complaint dated 17 April 2013 and annexed documents;
- the Rules of the Belgian Center for Arbitration and Mediation for Domain Name dispute resolution (hereafter "Cepani Rules");
- the " Terms and conditions of Domain Name registrations under the ".be" domain operated by DNS", entitled "Dispute Resolution Policy" (hereafter " the Policy").

4. Factual information

The Complainant is a company under Belgian law named "Belfius Bank".

The Complainant *holds title to the intellectual property*. He is the holder of the registered trademark "Belfius" (word and figurative) for bank-related goods and services (see annexes 1.1, 1.2 and 1.3 to the complaint).

This trade mark was registered, among others, as:

- Community Trade Mark "Belfius" registered on 24 May 2012 for goods and services in classes 9, 16, 35, 36, 41 and 45 as it results from the CTM registration nr. 105.81205
- Benelux Trade Mark "Belfius" registered on 10 May 2012 for goods and services in classes 9, 16, 35, 36, 41 and 45 as it results from the Benelux registration nr. 0914650
- Benelux figurative Trade Mark "Belfius" registered on 11 June 2012 for goods and services in classes 9, 16, 35, 36, 41 and 45 as it results from the Benelux registration nr. 0915962. The trade mark is reproduced as follows:



The Licensee is Dioen Kend. He is domiciled in the United States and his email address is theflytime@gmail.com.

The Licensee registered the Domain Name "beflius.be" on June 16, 2012 (see annex 2.1 to the complaint).

The "beflius.be" website exclusively contains sponsored links to sellers of unrelated products and services and of competing banks (Complainant's competitors).

The Complainant sent two letters to the Licensee requesting to cease and desist the use of the domain name "beflius.be". These letters remained unanswered (see annex 3.1, letter of 10 September 2012 and annex. 3.2, letter of 14 March 2013).

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 since all conditions provided in the Policy, contained in article 10, b), (1), are fulfilled.

The Complainant claims that the Domain Name is confusingly similar to the trademarks in which the Complainant has rights.

The Complainant is of the opinion that the Licensee has no rights or legitimate interests in the Domain Name. In this respect, the Complainant argues that he has never granted permission to the Licensee to use the Domain Name. The Complainant also argues that the Licensee is not engaged in any business which would require using the BELFIUS trademarks. The Complainant stresses that the Licensee registered the Domain Name with the sole aim of attracting internet users who wish to visit the Complainant's website.

Lastly, the Complainant asserts that the Licensee's Domain Name has been registered and is being used in bad faith. The Complainant argues the Domain Name has been registered in bad faith as the trademarks of the Complainant are well-known. The Complainant argues that the Licensee has registered a domain name that corresponds to a case of "typosquatting". He argues that the Licensee registered the Domain Name with the sole aim of attracting internet users and derive profit from the use of the trademarks of the Complainant. He also stresses that the Licensee provided false information since the emails sent to the Licensee remained unanswered.

5.2. Position of the Licensee

The Licensee did not file a response in the course of the proceedings before the Third-Party Decider.

6. Discussion and findings

Pursuant to Article 15.1 of the CEPANI Rules for Domain Name dispute resolution, the Third-Party Decider shall decide in accordance with the Terms and conditions of Domain Name registrations under the ".be" domain operated by BNS BE and following the provisions of the CEPANI 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, the Complainant must provide evidence of the following:

- “ the Licensee’s Domain Name is identical of 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 confusingly similar

According to article 10, b), (1), (i) of the Policy, the Complainant has to prove that he has rights in a trademark and that the domain name is identical or confusingly similar to such trademark.

(a) As to the existence of prior rights

The Complainant provides evidence that he is the owner of the trade mark “Belfius” as a community word mark and as Benelux and Community figurative trade marks (see annex 1.1, 1.2 and 1.3 to the complaint). The Complainant’s rights on its trade marks does not seem questionable *prima facie*, and the Third-Party Decider therefore regards them as valid.

(b) As to the identity and the risk of confusion

According to established case law, the risk of confusion is established on the basis of a comparison *in abstracto* of the signs in presence (see example, Cepani, case 44106). The Third-Party Decider finds the Domain Name “beflius” to be confusingly similar to the trade mark “Belfius”. The only differences between the Domain Name and the trade mark are that : (1) the letters “l” and “f” that are reversed ; (2) the suffix “.be”.

The first difference is minor and does not distinguish the Domain Name from the trade mark. Visually, phonetically and conceptually, both signs are even hard to distinguish from each other.

As to the second difference, according to the well established case law of Cepina, the suffix “ be” does not exclude the identity and/or the similarity since the suffix refers only to the geographical extension and origin of the website.

The Licensee does not dispute this similarity.

As a result of the above, the Domain Name can be considered as confusingly similar to the trade mark of the Complainant.

The Third-Party Decider therefore concludes that the first condition is met.

6.2. Rights and legitimate interests

According to article 10, b), (1), (ii) of the Policy, the Complainant has to prove that the Licensee has no rights or legitimate interests in the disputed Domain Name.

It is settled case-law that the Complainant must not be imposed the burden of proving a negative assumption (i.e. the absence of rights and of legitimate interest). This burden of proof is considered to be satisfied when, taking into account all the facts of the case, the Complainant could credibly state that he is unaware of any reason or circumstance which could be indicative of such a right or legitimate interest (examples, Cepani, cases nr. 4038, 4064, 4030, 4013). Furthermore, a licensee is expected to cooperate and produce evidence of the existence of a right or a legitimate interest.

The Licensee does not collaborate to the administration of evidence in the case at hand, since he did not reply to the Complainant's emails nor to the complaint. The Third party Decider has not been informed of any evidence proving that, prior to any notice of the dispute, the Licensee used the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services, or that the Licensee made demonstrable preparations for such use.

The Licensee has not produced evidence that he has been commonly known by the Domain Name, and there appears at first sight to be no connection between the Licensee's name and the Domain Name.

The Domain Name was registered with the Registrar on June 16, 2012. At this time, the Complainant had already registered its trademarks.

The Complainant states that the Licensee had no license or permission from the Complainant to use the Trademark or to apply for use any Domain Name incorporating that mark.

Since the Licensee did not submit any response, the content of its website is the main element to consider on this point.

However, the content of the "beflius.be" website cannot convince the Third-Party Decider of the existence of any of Licensee's legitimate interests in the Domain Name.

The content of the "Beflius.be" website is, indeed, exclusively made of sponsored links to other companies, under which direct competitors of the Complainant mainly in Belgium (see Annex 2.2 to the complaint). In the Third-Party Decider's view, it is difficult to consider hosting of sponsored links to Complainant's competitors as an element justifying a legitimate interest in the Domain Name (see example Cepani, case nr. 44067). Therefore, in the case at stake, the Licensee appears to make a commercial use of the Domain Name with an intent for commercial gain to misleadingly divert Internet users.

The Third-Party Decider therefore considers that the Licensee did not show any legitimate interest in the Domain Name.

The second requirement of article 10, b), of the Policy is therefore met.

6.3. Registration or use in bad faith

Bad faith may never be presumed but must be reasonably proven. This principle was settled by Cepina case law (see Cepani, cases nr. 4049, 4067, 44150).

Case law also reiterated the principle that one may not deduct bad faith from the mere fact that a Licensee does not file a response (see Cepani, cases nr. 4045 and 4053). However, although not being in itself a sufficient evidence for bad faith, the absence of a response, in combination with other elements, may nevertheless serve as a circumstantial evidence for establishing a licensee's bad faith.

Bad faith can be proven by any means, including presumptions and circumstances that indicate, with a reasonable degree of certainty, that the Licensee knew, or ought to know, the Complainant's trademarks and nevertheless registered the Domain Name..

It must also be stressed that under DNS.be terms and conditions, bad faith may be established at the registration or during the use of the Domain Name.

As to the registration, the trademarks of the Complainant were registered before the date of registration of the Domain Name. The use of the word "beflius" is very similar to the trade mark of the Complainant "belfius". This matter constitutes a typical case of "typosquatting", in the opinion of the Third-Party Decider, whereby the Licensee willingly registered a domain name which is almost identical to the Complainant's trademarks, but for two letters that in the eyes of any reasonable user would easily remain unnoticed, in order to take advantage of typographic errors and to divert the public to its own website.(see Cepani nr. 44105). Indeed, the Domain Name at stake is a well-known trade mark in Belgium. It is extremely unlikely that a third party would choose this word as a Domain Name. The Licensee must have been aware of the trademark rights when it registered the Domain Name so that it can reasonably be assumed that Licensee intentionally chose for the Domain Name in order to misleadingly divert Internet users (see Cepani, case 4014). Given the reputation of the trade mark of the Complainant, combined with the fact that the Domain Name is used to promoted bank-related goods and services competing with the ones of the Complainant, the Third Decider is convinced that the Licensee, at the time of registration, knew the bank of the Complainant and its official website accessible via the address www.belfius.be and filed the domain Name "beflius.be" to take advantage of typing errors of Internet users or to divert the Internet traffic for commercial and lucrative purposes. This is a typical case of "typosquatting" (see Cepani nr. 44185).

Beside the above-mentioned bad faith at the time of the registration of the Domain Name, the Third-Party Decider is of the opinion that the Domain Name is currently being used in bad faith. The content of the ,"beflius.be" website is indeed exclusively made of sponsored links. The sponsored links system implies that links hoster receives money each time a user click thereon (see case nr. 44209 socco.be). Furthermore, the website displayed under the Domain Name provides commercial links, mainly links to competing bank related goods and services (see case nr. 44228 scapa.be). It is therefore obvious that the Licensee's use of the Domain Name is made to attract, for commercial gain, Internet users to Licensee's website by creating a likelihood of confusion with the Complainant's trade mark.

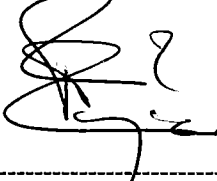
Therefore, together with the absence of any response from the Licensee, the Third-Party Decider finds that these circumstances show that the Licensee has registered and used the Domain Name in bad faith.

As a result, the Third Party Decider considers 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 "beflius.be " Domain Name is to be transferred to the complainant.

Brussels, June 7, 2013



Benjamin Docquir

The Third-Party Decider