

BELGISCH CENTRUM VOOR ARBITRAGE EN MEDIATIE

DECISION OF THE THIRD PARTY DECIDER

**Bruynzeel Home Products B.V. & Bruynzeel Home Products Belgium BVBA /
Matthias Moench**

Case nr. 44349: bruynzeel.be

1. Parties

1.1. Complainants:

Bruynzeel Home Products B.V. with registered office at Twijnstraweg 2, 2941BW Lekkerkerk, the Netherlands (hereinafter referred to as "Complainant 1");

Bruynzeel Home Products Belgium BVBA, with registered office at Slingerweg 62, 3600 Genk, Belgium (hereinafter referred to as "Complainant 2");

Both Complainants are duly represented by Mr Edwin Jacobs and Mr Frederic Debusseré, attorneys-at-law;

1.2. Domain Name Holder / Respondent:

Mr Matthias Moench, residing at Friedberger Landstr. 114, 60316 Frankfurt am Main, Frankfurt am Main, Germany.

2. Domain name

Domain name: bruynzeel.be
Registered on: July 12, 2007

Hereinafter referred to as: "Domain Name"

3. History of the Procedure

On May 19, 2014, Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation CEPINA / CEPANI (hereinafter referred to as "the Centre") concerning the Domain Name pursuant to the "CEPINA 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" top-level domain operated by DNS.be).

CEPINA – VERENIGING ZONDER WINSTOOGMERK

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The Complaint was filed in English, pursuant to the CEPINA Rules for Domain Name Dispute Resolution.

No response has been received from the Respondent / Domain Name Holder throughout these proceedings.

On July 4, the Centre appointed Mr Bart Lieben as Third Party Decider to settle the dispute involving the Domain Name.

The deliberations were closed on July 11, 2014.

Following examination of the Complaint and its annexes, the Third Party Decider requested the representatives of the Complainants to produce a special proxy, as required by the CEPINA Rules for Domain Name Dispute Resolution, which proxy was provided by representatives of Respondent on August 25, 2014.

The Third Party Decider provided the Respondent with a brief delay in order to comment on such proxy; however, again, no response was received from Respondent.

Therefore, the Third Party Decider issues the following Decision in accordance with:

- the Complaint submitted on May 19, 2014;
- the CEPINA Rules for Domain Name Dispute Resolution; and
- Article 10 of the Terms and Conditions for Domain Name Registrations under the “.be” top-level domain operated by DNS.be.

4. Factual Background

Complainants are wholesale dealers of building materials, in particular doors, sanitary fittings, insect screens and floors, and form part of an international group.

According to the evidence produced by Complainants, Complainant 1 has obtained the written approval from the owner of various Benelux trademark registrations for or containing the BRUYNZEEL word element to initiate these proceedings. These trademark registrations are for classes 6, 7, 11, 19 and 20, are in full force and effect, and pre-date the registration date of the Domain Name.

Furthermore, each of the Complainants claim to hold trade name rights in BRUYNZEEL, as well as rights in the distinctive element “BRUYNZEEL” figuring in their company names.

The Domain Name has been registered by Complainant on July 12, 2007, as is shown by the WHOIS records of DNS.be.

The Domain Name Holder is Mr Matthias Moench, a resident of Germany.

Currently, the Domain Name does not refer to any website.

5. Positions of the Parties

5.1. Position of the Complainants

Complainants request the Third Party Decider to order the transfer of the Domain Name to Complainant 1, claiming that all of the conditions and requirements set out in Article 10, b), (1) of the Terms and Conditions for Domain Name Registrations under the “.be” top-level domain operated by DNS.be are met:

1. The Domain Name is identical, at least confusingly similar to the sign in which they hold rights (registered trademarks, trade names, company names, ...);
2. The Registrant does not have any rights or legitimate interests in the Domain Name, considering the fact that he has registered thousands of other domain names, some of which relate to dictionary words and/or contain third party trademarks.
3. The Registrant has registered and is using the Domain Name in bad faith, since he is, *inter alia*:
 - a. preventing Complainants to register the Domain Name in the name of one of them, considering the fact that the Domain Name is identical to a distinctive brand;
 - b. offering the Domain Name for sale for an amount in excess of the normal acquisition costs of a Domain Name;
 - c. engaged into a pattern of conduct, considering the fact that panels and third party deciders in various other proceedings relating to domain names – including the UDRP – have ruled the transfer of domain names registered by Respondent to the corresponding trademark owners.

Furthermore, Complainants allege that Respondent is a well-known cybersquatter, domain grabber, and spammer, and is involved in various illegal activities, such as operating phishing websites. They furthermore claim that he has obtained convictions for selling counterfeit drugs.

5.2. Position of the Domain Name Holder

No response has been received from the Domain Name Holder throughout these proceedings.

6. Discussion and Findings

Pursuant to Article 15.1 of the CEPINA 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 DNS.be and following the provisions of 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, the Complainant must provide evidence of the following:

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

6.1. First Condition: Domain Name is identical or confusingly similar to prior right held by Complainants

6.1.1. Prior rights claimed by Complainants

Complainants provide ample evidence of the fact that they hold prior rights in the "Bruynzeel" name: as a distinctive element in their company names and trade names, both in Belgium as in the Netherlands. Furthermore, Complainants have produced a "Declaration regarding CEPINA's Dispute Resolution Procedure", in which the holder of various registered trademarks for or including the word BRUYNZEEL (being Stichting Bruynzeel Merkenbeheer) has granted the right to initiate the present proceedings to Complainant 1.

In this Declaration, reference is made to - for instance:

- Benelux trademark application no. 970298 (which has obtained a registered status) for the BRUYNZEEL word mark;
- Benelux trademark application no. 771922 (which has obtained a registered status) for the figurative mark, containing BRUYNZEEL as a dominant word element.

Respondent has not provided any counterarguments in this respect.

Based on the above elements, the Third Party Decider rules that this requirement is met.

6.1.2. Domain Name is identical, at least confusingly similar to the prior rights held by Complainants

Complainants argue that the Domain Name "bruynzeel.be" is identical to the sign for which Stichting Bruynzeel Merkenbeheer holds trademark rights, and for which the latter has granted the right to Complainant 1 in view of these proceedings.

Furthermore, the word BRUYNZEEL is clearly the distinctive element in Complainants' company names and trade names they invoke. Furthermore, referring to the Complainants' commercial activities, active use of such trade names and company names has been established.

Respondent has not provided any counterarguments in this respect.

Based on the above elements, the Third Party Decider rules that this requirement is met.

6.2. Second Condition: Respondent has no rights or legitimate interests in the Domain Name

According to Article 10, b), (1), (ii) of the Terms and Conditions of Domain Name Registrations under the “.be” domain operated by DNS.be, the Complainant must demonstrate that Respondent has no rights or legitimate interests in the Domain Name.

According to standing case law, the Complainant(s) must not be imposed the burden of proving a negative; it suffices for the Complainant(s) to credibly demonstrate that he (they) is (are) unaware of any reason or (factual) circumstance that could be indicative of such a right or legitimate interests.

Complainants state that Respondent has no connection or affiliation with Complainants or Complainants' group of companies; that Respondent has not been licensed or otherwise authorized Respondent to use the aforementioned trademarks, trade names and company names or to apply for or use any domain name incorporating these trademarks, trade names and company names.

Furthermore, Complainants refer to Registrant's widely established practice of registering a multitude of domain names, some of which relate to descriptive terms, others to trademarks or other distinctive signs held by third parties. The evidence produced by Complainants is convincing to such an extent that they are one of many companies that have been targeted by Respondent, who has obtained various convictions and is considered a well-known cybersquatter.

Respondent has not provided any counterarguments in relation to the claims made by Complainants in their Complaint. Respondent has not produced any evidence of any claim relating to rights or legitimate interests in the Domain Name.

Based on the above circumstances, factual elements and arguments (including the absence thereof), the Third Party Decider considers this requirement is met.

6.3. Third Condition: Respondent has registered or is using the Domain Name in bad faith

According to Article 10, b) 1) of DNS.be's Terms and Conditions, “[...] Complainant has to assert and to prove, in compliance with the rules of procedure, that [...] the domain name holder's domain name has been registered or is being used in bad faith.”

According to the Complainants, the Domain Name has been registered in order to prevent a holder of a prior right - such as the ones invoked by Complainants - to register said Domain Name. Reference is being made to the highly distinctive character of the BRUYNZEEL trademark and trade name, as well as the pattern of conduct in which Respondent has been engaged in, considering the fact that he apparently is the holder of many other domain names, including domain names incorporating third party brands.

Secondly, Complainants state that Respondent has registered the Domain Name primarily for the purposes of selling, renting, or otherwise transferring the Domain Name to the owner of the trademark, trade name, or company name, for a price that exceeds the costs directly related to the acquisition of the domain name.

According to the evidence produced by Complainants, the website that is operated under the Domain Name clearly displays an offer to sell the Domain Name; according to the Complaint, the purchase price has been set at USD 999, which is clearly an amount in excess of the costs directly related to the acquisition of the Domain Name. Furthermore, evidence is provided of the fact that – in other cases – Respondent has offered domain names (some of which also contained signs in which third parties held prior rights) for similar amounts.

Third, Complainants have produced ample evidence of the fact that Respondent has engaged in cybersquatting activities before, referring to various similar previous proceedings in which Respondent was involved and in which the panels have ruled against Respondent.

Complainants refer to a multitude of decisions in UDRP and similar cases from WIPO, the NAF and the ACID, in which the Panels decided to transfer the domain name registrations in question to the third party complainant.

Again, the Domain Name Holder has not provided for any counterarguments or – evidence in this respect.

Complainants provide further evidence of the fact that Respondent has engaged in various questionable or even illegal activities, including typosquatting, domain name grabbing, selling counterfeit goods online, and spamming.

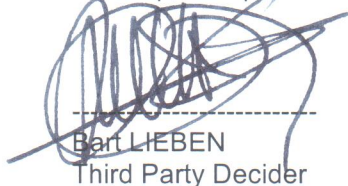
Therefore, based on the information provided in the Complaint and its annexes, it is clear that Respondent has indeed registered the Domain Name and is using the Domain Name in bad faith as referred to in Article 10, b), (1), third indent of the Terms and Conditions of DNS.be.

Based on the facts, evidence and circumstances provided by Complainants, the Third Party Decider is of the opinion that this third requirement 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 “brunzeel.be” domain name is to be transferred to Bruynzeel Home Products B.V.

Antwerp, 3 September 2014.



Bart LIEBEN
Third Party Decider