



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

EUROPEENNE DE TRAITEMENT DE L'INFORMATION / DOMAIN ADMIN – HIGH TECH INVESTMENTS

Case n°44203: cybermut.be

1. The parties

- 1.1. Complainant: **EUROPEENNE DE TRAITEMENT DE L'INFORMATION**
"EURO_INFORMATION", with registered office at 67905,
Strasbourg Cedex 9, rue du Wacken, 34 (FRANCE),

Represented by:

Ms. Juliane Blameuser, patent and trade mark attorney at
MEYER & Partenaires, bureau Europe, with office at 67000,
Strasbourg, place des Halles, 20;

- 1.2. Licensee: **DOMAIN ADMIN - HIGH TECH INVESTMENTS**, with
registered office at Providence Mahe, Avenue d'Aroha 1,
Suite 1, Mec Complex (SEYCHELLES),

Not represented;

2. Domain name

Domain name: "cybermut.be"
Registered on: 24 December 2009

hereafter referred to as "the Domain Name".

3. Background to the case

On 8 November 2010, 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

CEPANI – NON-PROFIT ASSOCIATION

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Name. The Complainant requests that the Domain Name shall be transferred to the Complainant.

On 14 June 2010, CEPANI communicated the Complaint to the Licensee. This date is to be considered as the date of commencement of the proceedings (art. 3.3. of the Domain Name Rules).

No Response was submitted by the Domain Name Holder within the required deadline.

The undersigned was appointed by CEPANI as third-party decider on 7 July 2010. The undersigned has filed his statement of independence with the Secretariat of CEPANI on the same date.

On 7 July 2010, CEPANI informed the Complainant and the Licensee that the undersigned was appointed as third-party decider.

The proceedings were closed on 14 July 2010.

In an interim decision of 16 July 2010, the third-party decider reopened the proceedings in order to give the possibility to the parties to file each an additional brief regarding the question of the confusing similarity between the Domain Name and the trade marks "CYBERMUT PAIEMENT" produced by the Plaintiff.

The additional brief of the Plaintiff was filed on 21 July 2010.

On 28 July 2010, CEPANI informed that no additional brief has been submitted by the Domain Name Holder within the deadline given by the third-party decider (i.e. 27 July 2010), and asked the latter to render a decision on 10 August 2010.

4. Factual information

4.1 The Complainant is the computing subsidiary of the French company CREDIT MUTUEL - CIC which is one of the most important banking and insurance services groups in France.

In relation to its activities, the Complainant has filed the following trademarks comprising the word "CYBERMUT" in France and in the European Community:

- the French word trademark "CYBERMUT", n° 95 574 964 filed on June 6, 1995, for goods and services on classes 9, 35, 36, 38 and 42;
- the Community word trademark application "CYBERMUT" n° 4114765, filed on October 29, 2004 for goods and services on classes 9, 35, 36, 38 and 42, and currently subject to an opposition proceeding;
- the Community semi-figurative trademark "CYBERMUT PAIEMENT" n° 1501758 filed on February 10, 2000, for goods and services on classes 9, 35, 36, 38 and 42;
- the French word trademark "CYBERMUT PAIEMENT" n° 99 805 916 filed on August 2, 1999, for goods and services on classes 9, 35, 36, 38 and 42.

According to the Complainant, the trademarks "CYBERMUT" have been widely used by the Complainant for several years to designate a panel of online banking services located on a web portal that allows CIC's clients to manage their bank accounts, insurance policies, credits or stock exchange accounts through the internet.

The trademarks "CYBERMUT PAIEMENT" are purportedly used by the Complainant to designate in particular an online secured payment solution offered to the clients of CIC that are registered on the web portal "CYBERMUT".

The Complainant has also registered the following domain names :

- CYBERMUT.COM, registered on November 4, 1997;
- CYBERMUT.NET, registered on November 4, 1997 ;
- CYBERMUT.ORG, registered on September 6, 2001.

These domain names redirect the user towards the website 'creditmutuel.fr' of the CIC, on which the web portal "CYBERMUT" can be accessed with a user name and a password.

4.2 The Licensee is a company located in Seychelles which has registered many domain names such as 'wqashingtonpost.com', 'hozmail.de', or 'wictoriassecreet.com'.

On 24 December 2009, the Licensee registered the Domain name CYBERMUT.BE.

This Domain name is used by the Licensee as a parking web page which contains notably several sponsored links pointing to the Complainant direct competitors in the banking, financial and insurance field.

The homepage of the website CYBERMUT.BE mentions that this Domain name is offered for sale by the Licensee (Annex H to the Complaint).

5. Position of the parties

5.1. Position of the Complainant

The Complainant argues that the Domain name is identical to its trademarks "CYBERMUT". In addition, he argues that the Domain name is confusingly similar to its trademarks "CYBERMUT PAIEMENT", because it reproduces the only distinctive part of these trademarks.

The trade marks of the Complainant would enjoy a strong reputation on the internet for online banking, secured payment and insurance services since 1995.

According to the Complainant, the Licensee does not appear to have any rights or legitimate interests in the Domain name. The Licensee is not related to the Complainant business, has never been known under the name "CYBERMUT", and has never engaged in an action that would show a legitimate interest in the Domain name.

To the contrary, the use made of the Domain name by the Licensee as a parking web page which contains sponsored links in French to the websites of the competitors of

the Complainant indicates that he has no rights or legitimate interests in the Domain Name.

Finally, the Complainant argues that the Domain Name has been registered and is being used in bad faith, because it is difficult to imagine that the Licensee could have been ignored the reputed trade marks "CYBERMUT" and "CYBERMUT PAIEMENT" of the Complainant at the time he applied for the registration of the domain name CYBERMUT.BE.

The Licensee would have chosen to register and use the Domain name "CYBERMUT" in order to create a likelihood of confusion with the official websites of the Complainant and, as a result, to divert internet users to his website for commercial gain.

According to the Complainant, the bad faith of the Licensee is supported by the following elements: the Domain name includes several sponsored links to websites offering competing products and services to those of the Complainant; the Licensee has offered the Domain name for sale; the Licensee has registered more than 800 domain names, several of which seem to infringe third parties' trademark's rights; and the Licensee has provided false information regarding its postal address.

5.2. Position of the Licensee

The Domain Name holder did not submit any response.

According to article 5.4. of the Rules of Procedure, the dispute shall be decided on the basis of the Complaint.

6. **Discussion and findings**

Pursuant to Article 15.1 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 confusing similar to

6.1.1. The Complainant invokes that he is the owner of several trade marks “CYBERMUT” and “CYBERMUT PAIEMENT” covering France of the European Union.

Yet, to be admissible under the first condition of the CEPANI rules, a trade mark must be registered and must be enforceable in Belgium (see notably C.E.P.A.N.I., n°44065, ‘marinador.be’; C.E.P.A.N.I., n°44073, ‘kustweb.be’).

Accordingly, the French trade marks “CYBERMUT” and “CYBERMUT PAIEMENT” may not be taken into account, because they do not cover the Belgian territory.

The Community trade mark application “CYBERMUT” may not be taken into consideration either, because it has not yet been registered and is besides subject to an opposition proceeding.

As a result, the undersigned will only examine the arguments of the Complainant as to the Community trade mark “CYBERMUT PAIEMENT”, the validity of which is not contested by the Licensee.

6.1.2. The word element “CYBERMUT” is obviously the most distinctive element, if not the only distinctive element of the Community trade mark “CYBERMUT PAIEMENT”,

In contrast, the other word element of the trade mark of the Complainant, the word “paiement”, has a mere descriptive character in relation to banking and insurance services. The average consumer of Belgium, which speaks notably French, will immediately perceive this descriptive meaning in relation to the goods and services for which the trade mark “CYBERMUT PAIEMENT” has been registered and used by the Complainant, in particular in relation to the online secured payment solution of the Complainant.

The Domain Name is thus identical to the most distinctive element, if not the only distinctive element, of the trade mark “CYBERMUT PAIEMENT”.

The country code top-level extension “.be” of the Domain name, and the specific typography of the trade mark “CYBERMUT PAIEMENT”, have to be ignored when assessing the similarity of the signs, pursuant to the settled case law of the CEPANI (and WIPO) Panels.

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

Therefore, the first condition is met.

6.2. Rights and legitimate interests

The Licensee does not show any rights or legitimate interests in the Domain name (see notably C.E.P.A.N.I., n°44067, rembestyling.be).

The Complainant has not granted any license or authorization to the Licensee to use its trade mark in any manner, nor is there any affiliation between the Complainant and the Licensee to justify the use of the Complainant’s trade mark by the Licensee.

Rather, the particular use made of the Domain name as a pay-per-click parking webpage (see further point 6.3), supports the finding that the interests of the Licensee in the Domain name are illegitimate (see notably WIPO, D2009-0258, widgetbucks.com; WIPO, D2009-0462, comparts.com).

Therefore, the second condition is met.

6.3. Registration or use in bad faith

According to the settled case law of the CEPANI, it is sufficient to establish that the Domain name has been used in bad faith, even if it was not registered in bad faith (see notably C.E.P.A.N.I., n°44046, zodiac.be).

In the present case, the bad faith of the Licensee can be inferred from the following circumstances:

- the Domain name is used as a pay-per-click parking website which includes several sponsored links in French to the websites of direct competitors of the Complainant such as COFIDIS or CETELEM;
- the Licensee has offered the Domain name for sale;
- the Licensee has registered more than 800 domain names, several of which are confusingly similar to third parties' trademark's rights, such as 'wqashingtonpost.com' or 'hozmail.de', or 'wictoriassecreet.com'.;
- the Licensee has provided a false postal address in the Seychelles.

In particular, the first two elements establish that the Licensee has deliberately chosen to register and use the Domain name "CYBERMUT" in order to create a likelihood of confusion with the trade marks and the official websites of the Complainant ('cybermut.com', 'cybermut.net' and cybermut.org) that would attract internet users on his website.

In that way, the Licensee aimed to generate revenues through the pay-per-click technology used on his parking website and, subsequently, through the sale of the disputed domain name (see notably C.E.P.A.N.I., n° 44067, rembostyling.be).

According to article 10, b, 2°, (iv) of the General Terms and Conditions of DNS, such a use of the Domain Name must be considered as use in bad faith.

Indeed, while the intention to earn revenue through a pay-per-click parking website is not in itself illegitimate, the use of a domain name that is found to be confusingly similar to a trade mark to obtain revenues through a pay-per-click parking website amounts, in my opinion, to bad faith use, given the particular circumstances of the case at hand (see in the same sense WIPO, D2009-0462, 'compart.com'; WIPO, D2009-0258, widgetbucks.com)

Similarly, the fact that domain name registrants may legitimately sell domain names does not imply a right in such registrants to sell domain names that are identical or confusingly similar to trademarks of others to the public without their consent. Thus, the offer for sale of the domain name made on the website of the Licensee, also

constitutes evidence of bad faith on the part of the Licensee in the case at hand (WIPO, n°D2001/1066, 'trip.com').

Finally, the use by the Licensee of false contact details, and the registration by the Licensee of several Domain names that are similar to reputed trade marks and that are used as parking websites, are to be considered as additional circumstances evidencing use in bad faith (see WIPO, No. D2003-0218, 'chanelbiz.com'; WIPO, D 2007-1886, 'evapadberg.com')

In the light of the above, it must be concluded that the Domain name 'CYBERMUT.BE' has been used in bad faith (see similarly, WIPO, No. D2006-1635, 'credi-mutuel.com' ; WIPO Case No. D2004-0706, 'cibermut.com')

Therefore, the third condition is established.

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 "**cybermut.be**" domain name is to be transferred to the complainant.

Brussels, July 30, 2010.



Benjamin Docquir
The Third-party decider
(signature)