



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

**Vlaams Ministerie van Onderwijs en Vorming – Agentschap voor
onderwijscommunicatie / COM PAPETE – KLTE Ltd.**

Case no. 44186 : edulex.be

1. The parties

- 1.1. Complainant: Vlaams Ministerie van Onderwijs en Vorming – Agentschap voor onderwijscommunicatie;
with registered office at 1210 Brussels (Belgium), Koning Albert II-laan 15, Consciencegebouw 5 A 07;

*Represented by Mr. Luc Stoops, Assistant to the Director,
Vlaams Ministerie van Onderwijs en Vorming, Agentschap voor
Onderwijscommunicatie.*

- 1.2. Licensee: COM PAPETE – KLTE Ltd.;
with registered office at 0000 Panama City (Panama), Ramon Arias Avenue, Maheli Building Office 12-E.

Not represented

2. Domain name

Domain name: "edulex.be"
Registered on: August 14, 2004

hereafter referred to as "the domain name".

CEPANI – NON-PROFIT ASSOCIATION

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

3. Background to the case

On 17 December 2009, the Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation (CEPANI-CEPINA) 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).

The Complaint was filed in French pursuant to Article 11 of the CEPANI Rules for domain name dispute resolution. Since the parties had exchanged e-mail correspondence in English, CEPANI considered that the parties had agreed to change the language of the proceedings into English. In any case, the e-mails exchanged by the parties in 2005 (see hereinafter under No 4 “factual information”), establish that the Complainant and the Licensee have sufficient knowledge of the English language. As a consequence, the English language may be selected by the Third-party decider as the language of the proceedings pursuant to Article 11.1 of the CEPANI Rules for domain name dispute resolution.

On February 24, 2010, the parties were notified by CEPANI that the undersigned had been appointed as Third-party decider to settle the dispute pursuant to Article 6.2 of the CEPANI Rules for domain name dispute resolution, and that the deliberations would be closed by March 3, 2010. By the same notification, the Third-party decider was informed that he had to forward his decision to the CEPANI secretariat within 14 days of the last mentioned date, *i.e.* by March 17, 2010 at the latest.

On February 22, 2010, the Third-party decider sent the statement of independence to CEPANI.

No response was filed by the Licensee after the appointment of the Third-party decider.

On March 3, 2010, pursuant to Article 12 of the CEPANI Rules for domain name dispute resolution, the deliberations were closed.

4. Factual information

The Complainant is the Flemish Ministry for Education and Training. This Ministry is the owner of – and operates – a database under the name “Edulex” comprising all legislation pertaining to education in Flanders, together with administrative circulars based on this legislation. This database is considered in the Flemish education system as the most important source of legislation. This database can be found on the following URL : www.onderwijs.vlaanderen.be/edulex .

The Licensee registered the Domain Name "edulex.be" on August 14, 2004.

The Licensee which is a company with registered offices in Panama, operates a website at the URL <http://www.edulex.be> with a start page in Dutch (with some references in English) and where the different hyperlinks seem to relate to education, scholarships, education loans, etc. These hyperlinks lead however to pages containing sponsored links that do not specifically relate to education.

In 2005, the Complainant contacted the Licensee in order to ask whether the latter would be willing to transfer the domain name "edulex.be" to the Complainant against payment of 50 US dollars. By e-mail of May 22, 2005, the Complainant answered that it was willing to *"make a deal for 2400\$"*.

The parties did not come to an agreement.

5. Position of the parties

5.1. Position of the Complainant

The position of Complainant can be summarised as follows :

- The name "Edulex" is the name of a database of the Flemish Ministry for Education and Training. It comprises the consolidated legislation relating to Flemish education and is known as the only source of legislation for schools and persons concerned by education.
- The Licensee has no rights or legitimate interests in the domain name.

The identity of the Licensee is not clear. The Licensee is a company established in Panama who has no link with legislation pertaining to education in Belgium.

The content of the website "edulex.be" is a mix of Dutch and English and contains numerous "sponsored links" that do not relate – or hardly relate – to education and legislation.

- The Licensee's domain name has been registered and is being used in bad faith.

This domain name is used to attract, for commercial gain, Internet users who may be confused as to the origin, the sponsoring or the links on the website.

This domain name was registered for the purpose of selling it for a price that exceeds the costs relating to the registration of the domain name.

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 DNS BE and following the provisions of 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."*

Before examining whether the domain name "edulex.be" is identical or similar to one of the earlier rights referred to at Article 10b(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, one must examine whether the Complainant proves that it is the owner – or legitimate user – of one of the earlier rights referred to at Article 10b(1).

The name of the database of the Complainant is not a trade name, not a social name, not a corporation name nor is it personal name. Nor is it a geographical designation, a name of origin, a designation of source, or a name of a geographical entity.

The use of the sign "edulex" for the Complainant's database could be considered as use as a trade mark.

However, the Complainant does not furnish any proof of registration of the sign "edulex" as a trade mark (at Benelux level, at international level covering the Benelux or at Community level).

According to Article 2.2 of the Benelux Convention on Intellectual Property (hereinafter referred to as "BCIP"), "*the exclusive right to a trade mark arises from registration of the trade mark, the application thereof having been made on the Benelux territory (Benelux application) or resulting from registration with the International Bureau (international application).*"

Under the Benelux system, the rights to a trade mark only arise from registration thereof (see A. Braun and E. Cornu, *Précis des marques*, Larcier, 2009, No 83). This obligation of registration is also referred to at Article 2.19 BCIP. According to this provision,

"1. Except for the holder of a well-known trade mark within the meaning of Article 6bis of the Paris Convention, no one can, whatever the nature of the action filed, claim before the courts a sign considered as a trade mark, within the meaning of Article 2.1, par. 1 and 2, except when he can invoke the registration of the trade mark he has filed.

2. If necessary, the inadmissibility is raised ex officio by the judge."

According to Article 6 of Council Regulation No 207/2009 of 26 February 2009 on the Community trade mark, "*a Community trade mark shall be obtained by registration*".

The Complainant does not prove that it is the owner of a registered trade mark "edulex". Nor does it establish that the sign "Edulex" whereupon it claims having rights would be a well-known trade mark within the meaning of Article 6bis of the Paris Convention, *i.e.* a trade mark that is known by a large proportion of the public and this well-known character going beyond the sector concerned by the said mark (A. Braun and E. Cornu, *op. cit.*, No 180). Although a well-known trade mark within the meaning of Article 6bis of the Paris Convention is protected without registration, the Complainant does however not claim this protection in his Complaint and does not establish either that the sign "Edulex" would comply with the conditions for protection of such a mark.

Except for a well-known trade mark, unregistered trade marks are not valid earlier rights within the meaning of Article 10b(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE (see T. Heremans and C. Morlière, "Enregistrement abusif de noms de domaine : litiges judiciaires et extrajudiciaires", in E. Cornu et al., *La protection des marques sur Internet*, Bruylant, 2007, p. 19; B. Docquir, "Le contentieux des noms de domaine", *J.T.*, 2007, p. 63; see also, CEPANI, case No 4005, *Hengstler Belgium v. Bintz Technics*, 8 May 2001).

Furthermore, the Complainant does not prove that it has been granted any right on the name "edulex" for its on-line database by statute, by decree or by any other statutory provision (see in this regard T. Heremans and C. Morlière, "Enregistrement abusif de noms de domaine : litiges judiciaires et extrajudiciaires", *op. cit.*, p. 21).

Since the Complainant does not furnish any element of proof that it has an earlier right within the meaning of Article 10b(1)(i) of the Terms and conditions for domain name registrations under the “.be” domain operated by DNS BE, the condition of Article 10b(1) is not met. The complaint is therefore inadmissible and must be dismissed.

Given the above, there is no need to examine the remaining conditions under Article 10b(1) of the Terms and conditions for domain name registrations under the “.be” domain operated by DNS BE.

7. Decision

Consequently, the complaint is inadmissible and is dismissed.

Brussels, March 11, 2010



Emmanuel Cornu
The Third-party decider