

**DECISION OF THE THIRD-PARTY DECIDER**

**For-Trans / Domain Manager Ltd**

**Case no. 44345: for-trans.be**

**1. The parties**

- 1.1. Complainant: BVBA FOR TRANS, Company with Limited Liability;  
with registered office at 9890 Gavere, Legen Heirweg 38;

*Represented by:*

Mrs Greta Deweirdt, Manager,  
with office at 9890 Gavere, Legen Heirweg 38.

- 1.2. Domain name holder:  
Domain Manager Ltd, with registered office at N13 4BS  
London, UK, 483 Green Lanes;

**2. Domain name**

Domain name: "For-Trans.be"  
Registered on: 2 March 2014

hereafter referred to as "the Domain Name".

**3. Background**

The Complainant states that it had for several years the rights on the website "for-trans.be" and that it was managed by a hosting service. When the Complainant discovered that its website and e-mail addresses were no longer working, the Complainant tried to contact its hosting service, but with no result. The Complainant then learned that its domain name "for-trans.be" was placed in quarantine and would be released on 2 March 2014.

The Complainant contacted Belgacom in order to take over the hosting of its new website and it signed a new subscription with Belgacom in that respect. The Complainant was convinced that Belgacom would also take care of the registration of the Domain Name "for-trans.be", including the registration in Complainant's name, but this was not the case.

Consequently, the Domain name holder was able to register the Domain Name when it was released on 2 March 2014. The Complainant tried in vain to contact the Domain name holder in order to arrange a voluntarily transfer of the Domain Name. The Complainant tried to contact the domain name holder several times but never received a response.

Consequently, the Complainant decided to file the current complaint.

#### **4. Factual information**

The Complainant is the owner of the trade name and company name "For-Trans".

The Complainant was previously the owner of the Domain Name "for-trans.be" under which it operated its website. This is not being contested by the Domain name holder. When checking the internet archive service Wayback Machine, it contains a capture dated 14 September 2013 confirming the allegations of the Complainant.

These allegations are not being contested by the Domain name holder.

The Domain Name was put in quarantine and was released on 2 March 2014 on which date it was registered by the Domain name holder.

The Complainant discovered afterwards that the Domain Name was offered for sale on the website [www.domainname.de](http://www.domainname.de). The Complainant contacted "domainname.de" with regard to the Domain Name. By e-mail dated 19 March 2014, "domainname.de" advised to contact the Domain name holder by placing a bid on its marketplace.

The Complainant didn't do so, but sent the same day an e-mail to the Domain name holder explaining what had happened and requesting the voluntarily transfer of the Domain Name. The Domain name holder did not reply to the e-mail of the Complainant.

The Complaint was filed with Cepani on 22 April 2014

On 22 May 2014, Cepani appointed the undersigned as the third party decider to settle the dispute involving the Domain Name.

The undersigned filed his Statement of Independence with the secretariat of Cepani. Pursuant to the article 12 of the Cepani Rules for Domain Name Dispute Resolution, the deliberations were closed by 30 May 2014.

## **5. Position of the parties**

### **5.1. Position of the Complainant**

The Complainant requests the transfer of the Domain Name in accordance with article 10(b) of the Terms and Conditions for Domain Name Registrations under the '.be' domain names operated by DNS.BE, on the basis of (i) the identity between the Domain Name and Complainant's trade and company name; (ii) the absence of a right or legitimate interest for the Domain name holder; and (iii) the bad faith registration and non-use of the Domain Name.

Regarding the first condition, the Complainant argues that it is undeniable that the Domain Name is identical to the Complainant's trade name and company name "For Trans".

Regarding the second condition, being the absence of a right or legitimate interest for the Domain name holder, the Complainant submits that the Domain name holder has no prior rights or any legitimate interest in the Domain Name or the name "for-trans". According to the Complainant, the absence of rights or legitimate interest is also evident from the fact that the Domain Name is for sale.

Regarding the third condition, being the bad faith registration and use, the Complainant points out that the Domain Name is being offered for sale. No response was given when the Complainant tried to contact the Domain name holder. The Domain name holder failed to mount a defence or raise legitimate arguments to justify the registration of the Domain Name.

### **5.2. Position of the domain name holder**

The Domain name holder did not reply to the Complainant's submissions. Consequently the dispute shall be decided on the basis of the complaint (article 6.4 of the Cepani Rules for Domain Name Dispute Resolution).

## **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 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 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**

It is clear that the Complainant has prior rights in the name "for-trans". The Complainant has established the existence of the company and trade name "For-Trans". *In abstracto* it is obvious that the company name and trade name "For-Trans" and the domain name "For-trans.be" is almost identical. The relevant part of the domain name is "for-trans" as the ".be" extension must not be taken into account according to the well-established case law of Cepani.

The Domain name holder does not dispute this identity.

As a consequence, the first condition of article 10.b(1) of the Terms and Conditions of DNS.be is met.

### **6.2. Rights and legitimate interests**

Article 10.b.3 of the DNS policy gives a non-exhaustive list of circumstances that lead to a finding that the Domain name holder does not have rights or legitimate interests because:

- prior to any notice of the dispute, the Domain name holder did not use the Domain Name or a name corresponding to the Domain Name in connection with a bonafide offering of goods or services or made demonstrable preparation for such use;
- the Domain name holder has not been commonly known by the Domain Name, even if he has acquired no trademark;
- the Domain name holder is not making a legitimate and non-commercial or fair use of the Domain Name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or trade name at issue.

Since the Complainant reasonably asserts that the Domain name holder does not have any rights or legitimate interest, the burden of proof lies on the Domain name holder, who has to prove that he actually does have rights or legitimate interests.

In the absence of such proof, it must be concluded that the second requirement is also met.

### **6.3. Registration in bad faith**

According to article 10.b.2 of the Terms and Conditions of DNS.be, the evidence of such bad faith registration or use of a domain name can be demonstrated by various circumstances among which:

- circumstances indicating that a domain name was registered or acquired primarily for the purpose of selling, renting or otherwise transferring the Domain Name to the Complainant who is the owner of the trademark, trade

name, registered name or company name, geographical designation, name or origin, designation of source, personal name or name of the geographical entity or to a competitor of the Complainant for a price that exceeds the costs directly related to the acquisition of the Domain Name.

The Complainant has indeed shown that the Domain Name was offered for sale online. Moreover, the Complainant points out that no response was given when the Complainant tried to contact the Domain name holder. The Domain name holder failed to mount a defence or raise legitimate arguments to justify the registration of the Domain Name.

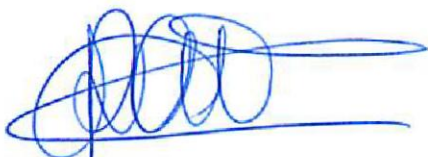
This statement is not contradicted by the Domain name holder and therefore the third party decider accepts that bad faith has been established.

So that it is efficiently evidenced that the Domain Name was registered and/or used in bad faith.

## 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 "for-trans.be" domain name is to be transferred to the Complainant.

Brussels, 11 June 2014.



-----  
Veerle Raus  
The Third-party decider