



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD PARTY DECIDER

Gebrola NV / Thomas Antwiler

Case no. 44222: gebrola.be

1. The parties

- 1.1. Complainant: Gebrola NV, with registered office at 3920 Bocholt, Bosstraat 18, listed with the Crossroads Bank for Legal Entities under number 418.703.072.

Represented by its director Mr. Martien De Laat, residing at 3920, Lommel, Quinten Metsysdreef, 8.

- 1.2. Licensee: Thomas Antwiler;
residing at Basseterre (KN), Frigate Bay Road, 558, Suite 711.

2. Domain name

Domain name: "gebrola.be"
Registered on: 10 July 2008

hereafter referred to as "the domain name".

3. Background to the case

On 18 January 2011, the Complainant filed a complaint with CEPINA on the basis of article°10 of the general terms and conditions of the domain name registration within the ".be"-domain governed by DNS BE (hereafter referred to as "the Policy") by means of the form in attachment V of the CEPINA rules for domain name dispute resolution (hereafter referred to as "the Rules").

On 10 February 2011, CEPINA invited Mr. Geert Glas to act as third party decider as specified in the Rules (hereafter referred to as "Third Party Decider"). The Third Party Decider accepted this invitation and provided CEPINA with the declaration of independence required by article 7 of the Rules.

Pursuant to article°6.2 of the Rules, CEPINA formally appointed the Third Party Decider by email of 14 February 2011 and provided him with an electronic copy of the case file, consisting of the completed complaint form (hereafter referred to as "the Complaint").

CEPANI – NON-PROFIT ASSOCIATION

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On the same day, CEPINA informed the Complainant and the Licensee of the appointment of the Third Party Decider and notified that pursuant to article°12 of the Rules, deliberations between them would close on 21 February 2011.

Because the Complaint did not clearly identify in whose name the Complaint was filed, the Third Party Decider requested the Complainant on 11 March 2011 to clarify its identity in accordance with article°12 of the Rules.

That same day, the Complainant responded that the Complaint was filed in the name of Gebrola NV, represented by Mr. Martien De Laat.

Subsequent hereto, deliberations between the parties were closed on 16 March 2011.

The Licensee did not file any response to the Complaint.

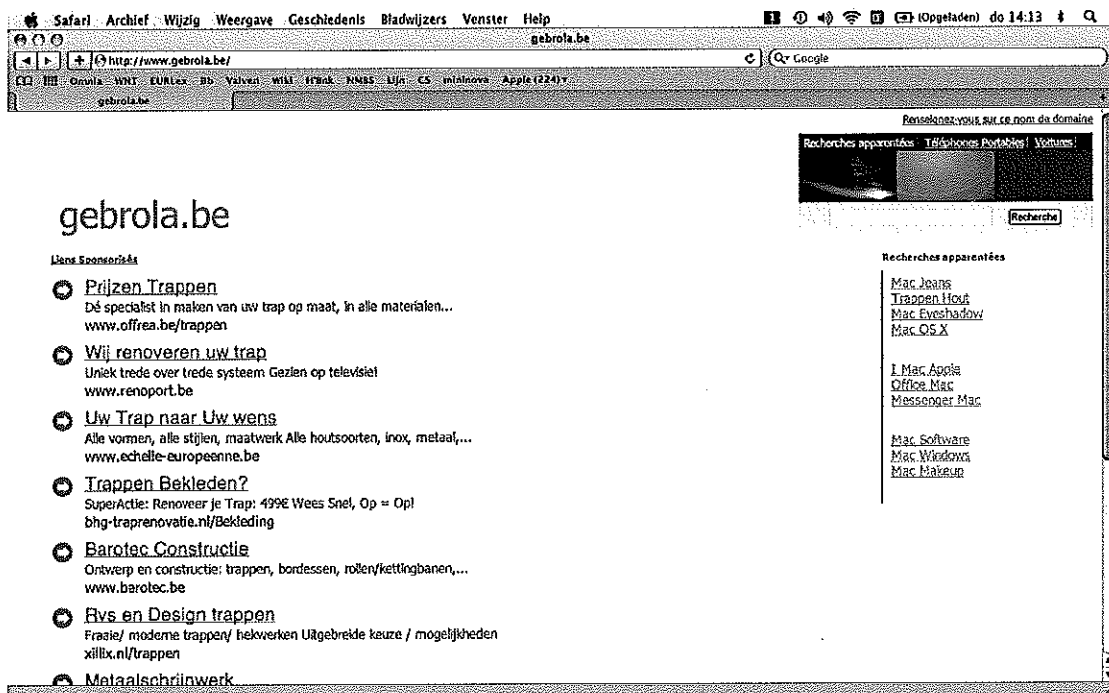
4. Factual information

The Complainant is a company founded in 1978 by Mr. Martien De Laat and appears to be active in the staircase industry.

The Complainant contends (without providing evidence) that it was the rightful owner of Domain Name until 2008, but that the Domain Name was not renewed and released for registration as a result of a mistake made by the Internet service provider of the Complainant.

The Domain Name was registered by the Licensee on 18 July 2008.

When visited on 17 February 2011, the website linked to the Domain Name showed the following web page.



The mention of "*Liens Sponsorisés*" clearly indicates that the Domain Name is used to provide sponsored links to the websites of direct competitors of the Complainant, such as Offrea and Echelle Europeenne.

5. Position of the parties

5.1. Position of the Complainant

The Complainant requests that the Domain Name be transferred to it on the basis that:

- The Domain Name is identical or confusingly similar to its corporation name (Gebrola), which no other company in Belgium has;
- The Licensee has no connection with NV Gebrola whatsoever;
- The Domain Name is used in bad faith as it is currently subject to cybersquatting, i.e. the display of links to the websites of competitors of the Complainant.

In this regard, the Complainant further contends (without providing any evidence) that the Licensee has offered to sell the Domain Name to the Complainant for 1000 EUR. Moreover, the Complainant alleges that the Licensee is involved in other complaints concerning use of domain names in bad faith.

5.2. Position of the Licensee

The Licensee did not file any response during the present arbitration proceedings.

6. Discussion and findings

Pursuant to article 15.1 of the Rules, the Third Party Decider shall rule on domain name disputes with due regard for the Policy and the Rules.

Pursuant to article 10b(1) of Policy, the Complainant must provide evidence of the following:

- i. " 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*
- ii. the licensee has no rights or legitimate interests in the domain name; and*
- iii. the licensee's domain name has been registered or is being used in bad faith."*

As the Licensee did not file any response in the course of the present arbitration proceedings, the Third Party Decider will decide the matter on the basis of the Complaint, in accordance with article°5.4 of the Rules.

6.1. Identical or similar to a corporation name

The requirement under article°10b(1)(i) of the Policy is satisfied when the Complainant evidences that the Domain name is identical or confusingly similar to its corporation name (see for instance CEPINA case, 22 October 2002, nr. 44019, Verfaillie Bauwens bvba v. Stichting Juridisch Eigendom Domeinen).

In the current matter it has been established that (i) Gebrola constitutes the corporation name of the Complainant and (ii) that the Domain Name is literally identical to the Complainant's corporation name, given that the ".be"-extension of a domain name is never taken into account when determining the identical or similar character (see for instance CEPINA case, 21 November 2003, nr. 44039, S.A. Consitex v. Piero Gerlanda: "*According to constant CEPINA case-law, the suffix '.be' is not relevant in order to establish the identity or the similarity between a domain and a trademark*"). See also CEPINA case, 17 February 2003, nr. 4030, S.A. le Petit Fils du L.U. Chopard & Cie v. Joël Glecer and CEPINA case, 22 October 2002, nr. 44019, Verfaillie Bauwens bvba v. Stichting Juridisch Eigendom Domeinen).

For these reasons, the Third Party Decider finds that the requirement under Article°10b(1)(i) of the Policy is satisfied.

6.2. Rights and legitimate interests

Article°10b(1)(ii) of the Policy requires that the Complainant evidences that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Given the difficulty of proving such a negative fact ("*negativa non sunt probanda*"), decisions have often rightly considered this burden of proof satisfied if, 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 right or legitimate interest (see CEPINA case, 7 February 2002, case nr. 4013, Guinness UDV North America Inc. v. Mr. Olivier Noël; CEPINA case, 17 February 2003, case nr. 4030, S.A. Le Petit Fils de L.U. Chopard & Cie v. Monsieur Joël Glecer).

In essence, the Complainant contends that there is no connection between it and the Licensee so that it is unaware of any rights or legitimate interests of the Licensee regarding the Domain Name, nor does it know any circumstances, which, pursuant to article°10b(3) of the Policy, could establish such right or legitimate interest for the Licensee.

Moreover, by not submitting a response, the Licensee has failed to state any circumstances that might demonstrate, pursuant to article°10(b)1 of the Policy, any rights or legitimate interests in the Domain Name (see CEPINA case, 2 January 2003, case nr. 4025, Allianz Aktiengesellschaft v. Constantin European Internet Club ASBL; CEPINA case, 12 November 2002, case nr. 4021, Napster Inc. v. TheInternetOne C.V.).

It thus appears from the case that (i) prior to any notice of the dispute, the Licensee did not use, and had not made any demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; (2) there is no indication that the Licensee is commonly known by the Domain Name; and (3) there is no indication that the Licensee is making a legitimate and non-commercial or fair use of the Domain Name.

For these reasons, the Third Party Decider finds that the requirement under Article°10b(1)(ii) of the Policy is satisfied.

6.3. Registration in bad faith

Article°10b(1)(iii) of the Policy requires that the Complainant evidences that the disputed domain name has been registered or is being used in bad faith.

This evidence can be delivered by any means (CEPINA case, 2 January 2003, nr. 4025, Allianz Aktiengesellschaft v. Constantin European Internet club ASBL and CEPINA case, 16 July 2010, nr. 44202, Ryanair Ltd. v. Lili Karizama).

Article°10b(3) of the Policy gives a non-exhaustive list of circumstances that can evidence the registration or use of a domain name in bad faith. One of these circumstances is the use of a domain name "*to attract, for commercial gain, Internet users to the domain name holder's web site or other on-line location, by creating a likelihood of confusion with the Complainant's trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the domain name holder's web site or location or of a product or service on his web site or location.*"

In line with previous CEPINA decisions, the Licensee's use of the Domain Name to redirect Internet users to a web page containing several sponsored links to the Complainant's direct and local competitors - from which it can be reasonably inferred that the Licensee is making a profit from the Domain Name's connotation in the staircase industry - is to be considered as an intentional attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark, as described in article°10b(3) of the Policy (CEPINA case, 11 January 2011, nr. 44217, Groupe Partouche v. Mandarin Data Processing, Eric Richard; CEPINA case, 17 January 2011, nr. 44218, Groupe Partouche v. Raymond Pousaz. See also, on the same subject, the following WIPO decisions: *Overstock.com, Inc. v. Metro Media*, WIPO Case No. DME2009-0001; *Fifth Third Bancorp v. Texas International Property Associates*, WIPO Case No. D2007-0537; *Brink's Network Inc v. Asproductions*, WIPO Case No. D2007-0353; and *Alpine Entertainment Group, Inc. v. Walter Alvarez*, WIPO Case No. D2007 1082).

Considering furthermore that the name Gebrola is very distinctive for the products and services offered by Complainant, it can be reasonably excluded that the Licensee registered this Domain Name and provides sponsored links to other staircase manufacturers all by coincidence. This indicates that the Licensee registered the Domain Name intentionally because of its confusing character, thus being aware aware of the rights of the Complainant to the Domain Name (see CEPINA case, 7 February 2002, nr. 4013, Guinness UDV North America v. Olivier Noël and CEPINA case, 19 May 2010, nr. 44195, Duttonhofer GmbH & co. KG v. Geheugenkaart BVBA).

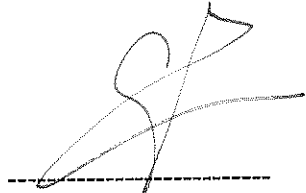
It has therefore been established that the Domain Name was registered or is being used in bad faith.

For these reasons, the Third Party Decider finds that the requirement under article°10b(1)(iii) of the Policy is satisfied.

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 "**gebrola.be**" domain name is to be transferred to the Complainant.

Brussels, 21 March 2011.

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a horizontal line and a vertical stroke that loops back to the top of the 'G'.

Geert Glas
The Third Party Decider
(signature)