

DECISION OF THE THIRD-PARTY DECIDER

Hochtief Aktiengesellschaft/ Mr. Josef Pommersheim

Case no. CEPANI Reference no. 44385: hochtief.be

1. The parties

- 1.1. Complainant: Hochtief Aktiengesellschaft;
residing at Opernplatz 2, 45128 Essen, Germany (hereafter
referred to as the "Complainant").

Represented by:

Mme. Julia Göppel,
with office at Steinsdorfstrasse 10, 80538 Munich, Germany.

- 1.2. Respondent: Mr. Josef Pommersheim;
residing at Hope Street Gardens 123, 8001 Cape Town, South
Africa (hereafter referred to as the "Respondent").

2. Domain name

Domain name: "hochtief.be"
Registered on: 12 March 2015

hereafter referred to as the "Disputed Domain Name".

3. Background to the case

On 24 June 2015, the Complainant filed its complaint in relation to the Disputed Domain Name (hereafter referred to as the "Complaint").

On 30 July 2015, Gunther Meyer was appointed by CEPANI as a Third-Party Decider

(hereafter referred to as the "Panel").

No response to the Complaint was submitted by the Respondent.

On 6 August 2015 the debates were closed.

The Panel had to submit its decision by 20 August 2015.

4. Factual information

The Complainant is a well-established construction group with a long history and worldwide activities.

The Complainant owns several trademarks covering the word "HOCHTIEF", such as (i) the CTM Registration No. 60061, with registration date 13 October 1998, in classes 6, 9, 19, 35, 36, 37, 39, 40, 42; and (ii) the CTM Registration No. 08320996, with registration date 24 December 2009, in classes 6, 7, 9, 19, 35, 36, 37, 39, 40, 41, 42, and 45 (hereafter referred to as the "Complainant's Trademarks"). The Complainant also claims rights following the long standing use of its company name "HOCHTIEF" (hereafter referred to the "Complainant's Company Name") and being the owner and user of several domain name registrations covering the word "HOCHTIEF".

The Disputed Domain Name has been registered by the Respondent on 12 March 2015. The registration mentions as organisation "HOCHTIEF AG HEADQUARTER", with an address located in South-Africa.

On 24 June 2015 the Complaint was filed. The Complainant requests that the Disputed Domain Name be transferred to the Complainant.

5. Position of the parties

5.1. Position of the Complainant

The Complainant contends:

- (i) the Disputed Domain Name is identical or at least confusingly similar to the Complainant's Trademarks and Company Name;
- (ii) the Respondent has no rights or other legitimate interest in and/or to the Disputed Domain Name. When entering and trying to open the Disputed Domain Name, the user is automatically redirected to the homepage of Complainant under "hochtief.com". Furthermore the Respondent is using the Disputed Domain Name for promoting his own services in the area of construction and building material, pretending against its prospective clients being part of the Complainant's group. In addition the Complainant has been informed that Respondent uses the Disputed Domain Name in e-mail communications with prospective clients, in which he pretends being "Head of purchase department international projects" of "HOCHTIEF AG EUROPE" and uses the actual address of the Complainant. According to the Complainant, it is furthermore to expect that the public, who is aware of the international business activities of the Complainant, when wishing to find information on the internet

on the Complainant's services and companies in Belgium will spontaneously introduce www.hochtief.be in order to find information about the Complainant's local activities. The Respondent has never been authorized by the Complainant or any of its affiliated companies to use any of the Complainant's Trademarks or other rights and has in no way any connection or affiliation with the Complainant; and

- (iii) the Disputed Domain Name is registered and/or used in bad faith. The Respondent has knowingly registered the Disputed Domain Name long after Complainant's Trademarks were registered and used. He uses the Disputed Domain Name in an obviously fraudulent and misleading way, pretending to act on behalf of the Complainant in order to attract possible clients or business partners.

5.2. Position of the Respondent

The Respondent did not file a response to the Complaint.

6. Discussion and findings

Pursuant to Article 16.1 of the *CEPANI rules for domain name dispute resolution*, the Panel shall rule on this dispute 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:

- (i) the Disputed 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 Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

6.1. Identical or similar to

The Panel is of the opinion that the Disputed Domain Name is identical to the Complainant's Trademarks and Complainant's Company Name. The suffix ".be" is not relevant in this respect.

6.2. Rights and legitimate interests

The Complainant contends that (i) the Respondent has never been authorised by and has in no way any connection with the Complainant and/or its affiliates and (ii) the organisation on which name the Respondent registered the Disputed Domain Name does (i.e. "HOCHTIEF AG HEADQUARTER", with offices in South-Africa), does not exist.

In absence of any counter-arguments from and/or proof to the contrary by the Respondent, the Panel concludes that it has not been established that the Respondent can show any rights and legitimate interests in and/or to the Disputed Domain Name.

6.3. Registration or use in bad faith

On the basis of the Complaint and the file submitted by the Complainant, on the one hand, and in absence of a response to the Complaint by the Respondent, on the other hand, the Panel concludes the Respondent registered and uses the Disputed Domain Name in bad faith.

Firstly, it appears that (i) the Respondent has never been authorised by and has in no way any connection with the Complainant and/or its affiliates and (ii) the organisation on which name the Respondent registered the Disputed Domain Name does (i.e. "HOCHTIEF AG HEADQUARTER", with offices in South-Africa), does not exist.

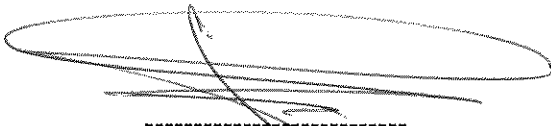
Secondly, it appears that the Disputed Domain Name immediately redirects the internet user to the website of the Complainant under the domain name "hochtief.com".

Thirdly, it appears that the Disputed Domain Name is used by the Respondent in business communication with prospective clients, wherein he pretends being "Head of purchase department international projects" of "HOCHTIEF AG EUROPE" and uses the actual address of Complainant.

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

Diegem, 17 August 2015.



Gunther Meyer
The Third-party decider