



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

LARUCHEQUIDITOUÏ / Mr. Jean-François BOMBEECK

Case no. 44306: LARUCHEQUIDITOUÏ.be

1. The parties

1.1 Complainant: La Ruche qui dit Oui, 75009 PARIS, rue Richer, n°20/22.

Hereinafter referred to as "*the Complainant*"

1.2 Licensee: Mr. Jean-François BOMBEECK, 1367 HUPPAYE, rue Fauconval, n° 38.

Hereinafter referred to as "*the Licensee*"

2. Domain name

Domain name: "laruchequiditoui.be"

Hereafter referred to as "the domain name".

3. Background of the case.

The Complainant submitted a Complaint against the Licensee seeking the transfer of the domain name.

No response was submitted by the Licensee.

The undersigned was appointed by CEPANI as Third Party Decider to settle the dispute involving the domain name, after having transferred his declaration of independence.

4. Factual information.

The Complainant is a French company which puts directly in touch local producers of honey and final consumers.

The Complainant is the owner of the trademark Laruchequiditoui.

Copy of this trademark registration is attached to the complaint.

The Licensee registered the Domain name "LARUCHEQUIDITOUI.BE"

5. Position of the parties.

5.1 Position of the Complainant.

The Complainant wants the transfer of the domain name at stake.

The Complainant argues that:

- the trademark "www.laruchequiditoui.fr" is already registered in Belgium.
- it has been using the URL for 18 months in France and that the name is very rare and uncommon.
- the holder has registered this name and still has not used it.
- the holder will never use the domain name but registered it in order to delay the development of the company abroad or to get money out of it.
- the holder has no right to keep the domain name.

5.2 Position of the Licensee.

The Licensee did not submit any response. Thereof, the Third Party Decider does not know his position.

Pursuant to article 5.4 of the Rules for Domain Name dispute resolution, the dispute shall be decided on the basis of the Complaint and its exhibits.

6. Discussion and findings

Pursuant to article 10. b "Dispute Resolution policy" of Terms and conditions for domain name registrations under the ".be" domain operated by DNS BE:

"The licensee must submit a dispute to alternative dispute resolution proceedings if a third party (a "Complainant") asserts to the Dispute Resolution Entity, in compliance with the rules of procedure, and proves that :

(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."

Pursuant to the rules for Domain Name Dispute Resolution in force as from the 1st of January 2011 :

"2.2. The Complaint shall be considered complete only if it is submitted in electronic form (info@cepina-cepani.be) and in three original signed hard copies to the seat of the complaint

manager (CEPANI, Stuiversstraat 8, 1000 Brussels) and if it is established as the model form found in annex IV, and if it contains at least : (...)

2.2.6. a description of the grounds on which, in accordance with the Policy, the Complaint is made; The description may not contain more than 5,000 words and must include all the particulars set out in the dispute resolution policy of DNS.BE"

It is the Panel's view that these rules mean two things:

- The Complainant must formally claim that all three conditions are met, and
- The Complainant must submit reasonable evidence and argumentation to support this.

First condition:

It is generally settled that the ccTLD suffix ".be" does not have to be taken into account for the determination of the similarity (see among others 44076, 44060, 44059, 44054, 44053, 44138).

The domain name at stake is "laruchequiditoui.be".

The Third Party Decider finds therefore that the domain name is identical or similar to the trademark of the Complainant.

The first condition is fulfilled.

Second and third conditions:

The whole argumentation of the Complainant is particularly short and can be reproduced hereafter because of its exceptional briefness: *"We want to file a complaint because the domain name we use in France, our brand: www.laruchequiditoui.fr is already registered in Belgium.*

We believe the holder will never use this domain name but registered it in order to delay our development abroad or get money out of it. Indeed, we have been using the URL for 18 months in France and the name is very rare and uncommon. On these grounds, we believe a complaint can be made".

As a matter of fact, the Complainant does not claim that the second and third conditions of article 10(b) 1 are met, neither does he provide any evidence thereof.

The fact that the domain name is unused may, depending on the facts of the case, be seen as a sign of bad faith. But this sole element is not sufficient, per se, to establish bad faith.

Based on the Complaint, the Third Party Decider can only come to the conclusion that the second and third conditions are not met/proven.

Could the Third Party Decider fill the blank and make self-enquiry?

The answer is negative, for at least two reasons:

- Pursuant to article 15 (a) of the Dispute Resolution Policy and the Rules, the mission of the Third Party Decider is to make a decision "following the parties views".

"The Third-Party Decider shall decide following the parties views and in accordance with dispute resolution policy, the registration agreement and following the provisions of the present Rules."

- Self-enquiry by the Third Party Decider would raise major issues in terms of defence right and could potentially breach the adversarial principle (*audi alteram partem* rule) as well as the equality of parties and impartiality of the Decider.

"The Third-Party Decider shall ensure at all times that the Parties are treated equally and that each Party can exercise its rights (Article 10.2 of the Rules).

The Complainant is invited to submit a stronger Complaint with more relevant arguments and evidence in accordance with the resolution policy of DNS.BE.

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 denies the request that the registration of the Domain Name "Laruchequiditoui.be" must be transferred to the Complainant.

Brussels, July, 4th, 2013

WERY Etienne

The Third-party decider

(signature)

