



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

S.P.R.L. LOOKHATME / Mr. Guido WALLASCH

Case no. 44208/ lookhatme.be

1. The parties

- 1.1. Complainant: S.P.R.L. LOOKHATME;
with registered offices at 1050 Brussels, Rue Alfred Giron 39.

Represented by: Ms Caroline CARPENTIER;
Attorney at Law, with offices at 1050 Brussels, Rue du Mail 13.

- 1.2. Licensee: Mr. Guido WALLASCH;
With address at 51147 Koln, Germany, Zu Den Wiesen 95.

Represented by: Mr. Felix HAUCK;
Attorney at Law, with offices at 50667 Koln, Germany,
Bahnhofsvorplatz 1.

2. Domain name

Domain name: "lookhatme.be"
Registered on: 5 June 2008

hereafter referred to as "the Domain name".

3. Background to the case

- 3.1 On 9 August 2010 Complainant filed a complaint (hereafter the Complaint) with the Belgian Center for Arbitration and Mediation (hereafter "Cepani") against the Domain name.

- 3.2 The Licensee submitted an answer to the Complaint on 3 September 2010.

- 3.3 By letter dated 13 September 2010, Cepani informed the Complainant and the Licensee of the appointment of the undersigned as Third-party decider.

Pursuant to Article 12 of the Cepani Rules for Domain Name Dispute Resolution, the deliberations were closed on 20 September 2010.

Pursuant to Article 15.2 of the Cepani Rules for Domain Name Dispute

CEPANI – NON-PROFIT ASSOCIATION

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Resolution, the Third-party decider had to submit her Decision by 4 October 2010.

4. Factual information

- 4.1 The Complainant was established on 22 August 2006. Hence, it has rights in its corporation name Lookhatme S.P.R.L. as of that date.

The Complainant focuses its business on the design and commercialization of headscarves, headbands and other headgear. It registered as Domain name lookhatme.com on 1 August 2006 and implemented an e-commerce application around these products. A first product was sold in December 2006.

The use by the Complainant of the trade name Lookhatme since 2006 has not been contested by the Licensee.

On 17 December 2007 Ms Dominique Weber, who together with her husband is owner of the Complainant, filed a Community Trade mark for the word "Lookhatme" for amongst other things design services. The trademark was registered on 30 November 2009.

- 4.2 The Licensee is Mr. Guido Wallasch. Mr. Wallasch runs a business offering communication and advertising services.

Mr. Wallasch states that a third company Mondi Hair Design GmbH asked him in June 2008 to register the Domain name as well as the corresponding .de and .eu domains.

- 4.3 It is clear from the exhibits brought forward by the parties that Mondi Hair Design GmbH has been involved in the sale of products designed by the Complainant. Mondi Hair Design was a distributor of Lookhatme products at least until January 2009.

The Complainant has ended the business relationship with Mondi Hair Design. This has caused a dispute between the Complainant and Mondi Hair Design. The dispute was brought before the Tribunal de Commerce (Brussels) in the case with RG nr A/09/06623.

5. Position of the parties

- 5.1. Position of the Complainant

The Complainant requests the transfer of the Domain name to the Complainant.

In summary, the Complainant invokes the following grounds:

- (i) the registration of the Domain name by Licensee infringes the Complainant's rights in its corporation name and its trade name.
- (ii) the Complainant did not authorise Mondi Hair Design, or any other person for that matter, to register the Domain name.
- (iii) Mondi Hair Design was a client of the Complainant, but it was not an exclusive distributor for the sale of the Lookhatme products.

- (iv) Mondi Hair Design tried to sell the Domain name (as well as the corresponding .de and .eu Domains each) for 1500 euro to the Complainant.
- (v) The website under the Domain name refers to another website www.hat4me.de.

In Complainant's view, the Domain name is identical to its trade name and corporation name. The Licensee does not have a right or legitimate interest in the Domain name, and the Domain name has been registered and used in bad faith by Licensee and Mondi Hair Design.

5.2. Position of the Licensee

The Licensee does not dispute that the Domain name is identical to the trade name and corporation name of the Complainant.

The Licensee however disputes that he does not have a legitimate interest in the Domain name and that the Domain name is registered or used in bad faith.

The Licensee argues that:

- (i) he was asked to register the Domain name by Mondi Hair Design, that asserted to be the exclusive distributor of the lookhatme products.
- (ii) he registered the Domain name in his own name because of the internet provider's refusal to register the Domain name directly on the name of Mondi Hair Design.
- (iii) he wanted to transfer the Domain name to Mondi Hair Design. This did not work because of technical reasons.

On Mondi Hair Design, he argues that:

- (i) it is irrelevant whether Mondi Hair Design has a legitimate interest in the Domain name or acted in bad faith as Mondi Hair Design is not the Domain name holder.
- (ii) Mondi Hair Design has a legitimate interest in the Domain name as it was the exclusive distributor of the Lookhatme products.
- (iii) the Complainant had agreed earlier on the registration and use of the Domain name by Mondi Hair Design for the distribution of the products.
- (iv) it is only when the Complainant broke up the business relationship with Mondi Hair Design (thus violating the distribution agreement between the Complainant and Mondi Hair Design), that the Complainant alleged that the Domain name was registered abusively.
- (v) Mondi Hair Design has a legitimate interest to retain the Domain name as long as the Complainant has not settled Mondi Hair Design's claim for damages.
- (vi) Moreover Mondi Hair Design has claimed (in the litigation before the Tribunal de Commerce) for Lookhatme products to be delivered to Mondi Hair Design. It wants to keep the Domain name for marketing these products (to be delivered).
- (vii) The offer for sale of the Domain name was made to settle this part of the dispute with the Complainant.

6. Discussion and findings

Pursuant to Article 15.1 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 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."*

6.1. Identical or similar to

The productions submitted by the Complainant prove that the Complainant was established in 2006 under the corporation name "Lookhatme S.P.R.L.". The use by the Complainant of the "Lookhatme" trade name since 2006 has not been disputed by the Licensee.

The presence of the suffix ".be" can be considered as irrelevant for determining the identity between the Domain name and the corporation name and trade name invoked by Complainant (see e.g. CEPANI case nr. 44067, *rembostyling.be*, and all references specified in this decision (point 6.1)).

The first condition is fulfilled.

6.2. Rights and legitimate interests

(i) The Licensee has not submitted any circumstance demonstrating that he has rights or legitimate interests in the Domain name.

The Licensee does not bring forward any element other than that he was asked by a client, Mondy Hair Design, to register the Domain name in his own name.

The absence of any personal right or legitimate interest is moreover confirmed by the letter of Mr. Wallasch (in response of the Complainant's default letter in relation to the Domain name) in which he states "*not to be involved in this matter*" and that the Domain name is owned by Mondy Hair Design (exhibit 14 Complainant).

(ii) The Third-party decider agrees with the Licensee that it is irrelevant whether Mondy Hair Design has a legitimate interest in the Domain name. Indeed, article 10b(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, clearly refers to a right or legitimate interest *of the Licensee*.

The case being, a legitimate interest of a third party may become relevant when assessing whether yes or no, the Domain name has been registered or used in bad faith. There, the rules do not specifically refer to the Licensee. A bona fide use by a third party may there be taken into account.

In the absence of a right or legitimate interest of the Licensee, the Third-party decider considers the second condition to be fulfilled.

6.3. Registration or use in bad faith

Bad faith is not presumed, but must be proven by the Complainant.

The registration or use of the Domain name in bad faith are alternative conditions (see Cepina nr. 44158). If *or* the registration in bad faith, *or* the use of the Domain name in bad faith is proven, this will be sufficient to decide in favour of the Complainant.

(a) On the registration of the Domain name

In the Third-party decider's view there is no evidence of a *registration* of the Domain name in bad faith:

- (i) Licensee purports to have been informed of the commercial relationship between Mondi Hair Design and the Complainant before registering the Domain name.

Mondi Hair Design bought products from Complainant for a considerable total amount. If not an exclusive distributor of the Complainant, Mondi Hair Design appears to have been an important reseller of Lookhatme products.

- (ii) Given the close collaboration between Mondi Hair Design and the Complainant in 2007 and 2008, it is most likely that the Complainant was aware of the registration of the Domain name (as well as of the corresponding .de and .eu domains) in June 2008 and of the use of the Domain name by Mondi Hair Design.

There is no proof of an agreement between the Complainant and Mondi Hair Design to register the Domain name (as alleged by Licensee), nor of the opposite. It is only in 2009, when relations between Mondi Hair Design and the Complainant turned sour, that the Complainant accused Licensee and Mondi Hair Design of having registered the Domain name abusively.

Therefore the registration of the Domain name by Licensee upon request of Mondi Hair Design, does not appear to be necessarily made in bad faith.

(b) On the use of the Domain name

The Third-party decider understands that:

- (i) the commercial relationships between Mondi Hair Design and the Complainant have ended early 2009. This gave rise to a conflict

between Mondy Hair Design and Complainant, now pending before the Tribunal de Commerce (Brussels).

- (ii) Mondy Hair Design is willing to sell the Domain name to the Complainant but only for a price of 1500 euro, which it considers to be the economic value of the Domain name. This offer for sale was made to settle this part of the dispute.
- (iii) Licensee moreover purports that Mondy Hair Design must be able to retain the Domain name as long as the Complainant has not settled Mondy Hair Design's claims for damages.

The price of 1500 euro exceeds the normal cost related to the Domain name.

In the Third-party decider's view Licensee is allowing Mondy Hair Design to use the Domain name as a means of increasing pressure on the Complainant. It reflects Licensee's and for that matter Mondy Hair Design's bad faith that they try to use the Domain name as a means to obtain a better position in their commercial conflict with the Complainant, and to recover damages allegedly suffered in the context of this wider commercial conflict.

If its claims for damages are justified, Mondy Hair Design will be able to recover damages from the Complainant in the context of the litigation pending before the Tribunal de Commerce (Brussels).

If the Tribunal de Commerce finds for Mondy Hair Design and orders the Complainant to supply more Lookhatme products, Mondy Hair Design will have other means of promoting the sale of these products, than necessarily having to do so by using a website under the Domain name.

The use of the Domain name by Mondy Hair Design, once the business relationship with the Complainant has ended, will obviously create a likelihood of confusion with the Complainant's trade name and corporation name.

In the Third-party decider's view, the use made of the Domain name in the specific circumstances specified above, is a use in bad faith.

Hence, on the basis of the arguments under 6.3 (b) the Third-party decider considers the third condition to be fulfilled.

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 "lookhatme.be" domain name is to be transferred to the Complainant.

Ghent, 4 October 2010.

Karen ONGENA
The Third-party decider
(signature)