



THE BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

TRUVO BELGIUM / TAKOVICH CARMEN

Case n° 44336

Reference CEPINA: pagedor.be

1. The Parties

- 1.1. Complainant: **TRUVO BELGIUM**,
With corporate seat at 2018 ANTWERP, De Keyserlei 5 box 7

Represented by:

Mr. Peter L'ECLUSE
Ms. Clara VAN HEMELRIJCK
Attorneys at law
Louizalaan 165
1050 BRUSSELS

- 1.2. Licensee: **TAKOVICH CARMEN**
311 Villa Elegante Drive
93314 BAKERSFIELD
UNITED STATES

Licensee has no representative

2. Domain Name

Domain name: www.pagedor.be, pagedor.be
Registered on: July 26, 2005

Hereinafter referred to as the "Domain Name".

3. Background to the case

- 3.1. On 13 January 2014 Complainant submitted its complaint at CEPANI together with its exhibits 1 - 14. The Licensee did not submit an answer form.
- 3.2. Per fax of 10 February 2014 the Third Party Decider was contacted by CEPANI and requested to fulfil the Declaration of Acceptance, Availability and Independence.
- 3.3. On 10 February 2014 the Third Party Decider submitted the Declaration of Acceptance, Availability and

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Independence to CEPANI.

- 3.4. Per registered letter of 12 February 2014, CEPANI informed both Complainant and Licensee of its appointment of the Third Party Decider. Both Parties are informed that the deliberations shall be closed by 19 February 2014 at the latest and that the Third Party Decider should communicate its decision at the very latest by 5 March 2014.
- 3.5. None of the Parties have submitted any remark as regards the procedural schedule.

4. Factual Background

From a study of the file, the Third Party Decider withholds the following facts as relevant:

- 4.1. Complainant is a commercial corporation organised under the laws of Belgium, having its registered office at 2018 Antwerp, De Keyserlei 5, box 7 (Belgium) and publisher of a commercial search engine “pagesdor.be”. It follows from exhibit 12 of Complainant that its domain name “pagesdor.be” is registered since November 13, 1996.
- 4.2. It further follows from exhibits 6 - 11 of Complainant, that Complainant is the owner of the following Benelux trademarks:
 - a. The Benelux verbal trademark “PAGES D’OR”, filed on 12/04/1995 and registered under number 0569244 – for products of classes 9, 16 and 35;
 - b. The Benelux verbal trademark “PAGES D’OR”, filed on 05/11/1997 and registered under number 0622844 – for products of classes 38 and 42;
 - c. The Benelux verbal trademark “PAGES D’OR”, “GOLDENE SEITEN”, “GOLDEN PAGES”, “GOUDEN BLADZIJDEN” filed on 10/12/1987 and registered under number 0155762 – for products of classes 35 and 38;
 - d. The Benelux figurative trademark “i Pages d’Or”, filed on 28/02/2001 and registered under number 0682577 – for products of classes 9, 16, 35, 38, 41 and 42;
 - e. The Benelux figurative trademark “i pagesd’or.be”, filed on 12/06/2013 and registered under number 0939654 - for products of classes 9, 16, 35, 38, 41 and 42; and
 - f. The Benelux figurative trademark “i pagesdor.be”, filed on 25/04/2012 and registered under number 0919182 - for products of classes 9, 16, 35, 38, 41 and 42.
- 4.3. On July 26, 2005, the Domain Name was registered by the organization EuroDNS SA (Registrar) for the account of TAKOVICH CARMEN, 311 Villa Elegante Drive 93314 BAKERSFIELD UNITED STATES (Registrant), the Licensee. In the respective registration, file only the e-mail address carmentako@sbcglobal.net is mentioned.
- 4.4. In October 2013, Complainant became aware of this registration and the explicit pornographic content published via the Domain Name.
- 4.5. Per e-mail of 10 January 2014, the attorney of Complainant summoned the Licensee to:
 - a. Immediately cease its legal practices;
 - b. Immediately transfer its domain name www.pagedor.be to Complainant as well as to assist in any procedures in order to complete this transfer; and

c. Provide him with written confirmation thereof by 13 January 2014 at the latest.

According to Complainant, this letter has not been answered by the Licensee.

4.6. Subsequently, Complainant submitted its complaint at CEPANI on 13 January 2014.

5. **Positions of the Parties**

5.1. **Position of Complainant**

Pursuant to article 10(e) of the Terms and conditions for domain name registrations under the “.be” domain, Complainant requests the Third-Party Decider to order the transfer of the domain name registration for the Domain Name, on the basis of the following grounds:

5.1.1. *Article 10, b), 1, (i) of the Terms and conditions for domain name registrations under the “.be” domain: the Licensee's domain name is identical or confusingly similar to a trademark of Complainant.*

Complainant refers to its trademarks as mentioned hereinabove under paragraph 4.2. as well as its registration of the domain name www.pagesdor.be.

Complainant argues that, *in abstracto*, it is obvious that the PAGES D'OR trademarks and the Domain Name are very similar because the only difference would be the use of an apostrophe (“'”) before “or” and the “s” in pages, which is not included in the Domain Name. Complainant is of the opinion that the apostrophe is not even relevant when Complainant's domain name is compared with the Domain Name.

In addition Complainant argues that, from an auditive perspective, the signs are identical since the “s” at the end of “pages” is not pronounced in French.

5.1.2. *Article 10, b), 1, (ii) of the Terms and conditions for domain name registrations under the “.be” domain: the Licensee has no rights or legitimate interests in the domain name.*

Complainant argues that the Licensee has no prior rights or any legitimate interest in the Domain Name or the sign “PAGEDOR” because the Domain Name was registered in 2005 and until now it was not in use. It was only recently that the website became active as a website with pornographic images. Further, there is no evidence that the Licensee used the Domain Name or a corresponding name in connection with a *bona fide* offering of goods or services prior to the registration of the Domain Name.

In that regard, Complainant remarks that when, on the Website, a visitor follows the links “Join”, “Premium Login”, or “Premium”, the visitor is redirected to the website “wankz.com”. It thus seems that the Licensee operates under a different trading name than “pagedor”. This suggests that it is the Licensee's intention only to attract internet users that were in fact looking for Complainant's website pagesdor.be.

Further, there is no evidence that the Licensee has been commonly known by the Domain Name, even if he has no trade mark. Complainant argues at first that there is, apart from an e-mail address, no information in the WHOIS database which suggests that the Domain Name has been registered by an individual person and not by a company or organisation. It is therefore not clear which company has registered the Domain Name. Secondly, it seems that the company/individual(s) operating the website are using the name “wankz”.

At last, Complainant argues that it is highly unlikely that the Licensee would have been ignorant of Truvo's legal rights to the name “PAGES D'OR®”, at the time he registered the Domain Name and it is clear that the Licensee is in fact making use of the Domain Name with the sole intent to divert consumers for commercial gain and tarnish the trademarks of Complainant.

According to Complainant, the Licensee can therefore not argue that he is making legitimate and non-commercial or fair use of the domain name, without the intent to divert consumers for commercial gain and tarnish the trademarks and domain name at issue.

5.1.3. *Article 10, b), 1, (iii) of the Terms and conditions for domain name registrations under the “.be” domain: the Licensee's domain name has been registered or is being used in bad faith*

Complainant refers to a number of elements that clearly indicate that the Licensee's behaviour falls within the circumstances as summoned in article 10, b), 1, (iii) of the Terms and conditions for domain name registrations under the “.be” domain to conclude that the Licensee therefore acted in bad faith when registering and using the Domain Name.

Firstly, Complainant stresses that it is undisputed that its registered trademark “Pages d’Or” is a well-known trademark in the Benelux. It is therefore unlikely that the Licensee was unaware of the well-known trademarks of the Complainant before the date of registration of the Domain Name. In that regard, Complainant considers the high number of visits to its website www.pagesdor.be of particular interest.

Secondly, Complainant is of the opinion that the Domain Name has been chosen in such a way as to attract Internet users looking for the Complainant's website pagesdor.be.

Finally no demonstrable link between is proven between the name “pagedor” and the services offered via the Domain Name. In addition, the company/individual(s) operating the Website are not operating under the name “pagedor”.

5.2. Position of the Licensee

The Licensee has not filed any observations in response to the Complaint.

6. Discussion and Findings

According to article 16.1. of the CEPANI Rules for domain name dispute resolution, 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.

Article 10, b, 1 of the Terms and conditions for domain name registrations under the “.be” domain determines that Complainant should demonstrate that:

- i. the Licensee's domain name is identical or confusingly similar to a trademark, a trade name, a registered name or a company 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.*

All of these conditions must be complied with cumulative so that Complainant can successfully claim the transfer of the Domain Name.

6.1. Identical or confusingly similar to a trademark in which the complainant has rights

6.1.1.
Firstly, Complainant should prove that its claim is based on a name - *in casu* “PAGES D’OR”, “i Pages d’Or” and “pagesdor.be” - that is qualified as a trademark, a trade name, a registered name or a company name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity.

Secondly, Complainant should demonstrate that Licensee's domain name www.pagedor.be is identical or confusingly similar.

Complainant refers to its Benelux verbal trademarks “PAGES D’OR”, respectively registered under the numbers 0569244, 0622844, 0155762, its Benelux figurative trademarks “i Pages d’Or” registered under the numbers 0682577, 0939654, 0919182 (hereinafter these verbal and figurative Benelux trademarks are together referred to as the “Benelux trademarks “PAGES D’OR” and “i Pages d’Or””) as well as its registration of the domain name www.pagesdor.be

6.1.2.
It follows from the exhibits 6 - 11 of Complainant which date from 01/07/2014, that the Benelux trademarks “PAGES D’OR” and “i Pages d’Or” are registered on the name of “Truvo Belgium Comm. V.” having its address at “B-2018 Antwerpen, De Keyserlei 5, bus 7”

The status of all the Benelux trademarks “PAGES D’OR” and “i Pages d’Or” is referred to as “merk ingeschreven” (“trademark registered”).

Consequently, Complainant proves to have trademark rights in the names “PAGES D’OR” and “i Pages d’Or” its claim is based on.

Complainant further correctly argues that, from a visual perspective, the only difference found between its Benelux verbal trademarks “PAGES D’OR” and the Domain Name consists of an apostrophe before “or” and an “s” in pages. Moreover, no auditive difference is found between both signs when pronounced in French.

The Licensee's domain name is therefore confusingly similar to the Benelux verbal trademarks “PAGES D’OR” of Complainant.

6.1.3.
Exhibit 12 of Complainant, dated 10/01/2014, consists of a print of the website www.dns.be as regards the registration of the domain name www.pagesdor.be.

It follows from this exhibit that the domain name www.pagesdor.be was registered on 13 November 1996 on the name of Steven Princen of “Truvo Belgium Comm. V.” having its address at “B-2018 Antwerp, De Keyserlei 5, bus 7”.

Complainant thus also proves to have rights in the domain name “pagesdor.be”.

According to constant CEPANI case-law, the suffix “be” is not relevant in order to establish the identity or the similarity between a domain name and a trademark¹.

The Domain Name is without doubt confusingly similar to Complainant's domain name www.pagesdor.be.

Article 10, b, 1 of the Terms and conditions for domain name registrations under the “.be” domain is thus fulfilled.

¹ Agnola S.p.A. and Antonietta Maria Loprete, case n° 44042; Consitex S.A. and Piero Gerolanda, case n° 44039; Consitex S.A. and Lanificio Ermenegildo Zegna & Figli S.p.A. v. Giuseppe Strano, case n° 44038; Accor SA v. Mw. Veerle Lefever case nr. 4035; Monsanto Company and Monsanto Technology LLC v. Libertus Ijzerman, case n° 44034; Sterling Fluid Systems v. Baleno N.V., case n° 4031; Le petit-Fils de L.U. Chopard & Cie. V. Joël Glecer, case n°. 44030; Allianz Aktiengesellschaft v. Constantin European Internet Club ASBL, case n° 4025

6.2. Rights or legitimate interests

6.2.1.

Article 10, b, 3 of the Terms and conditions for domain name registrations under the “.be” domain determines that the Licensee can demonstrate his rights or legitimate interests to the domain name by the following circumstances:

- *prior to any notice of the dispute, the Licensee used the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use; or*
- *the Licensee (as an individual, business, or ;,other organization) has been commonly known by the domain name, even if he has no trademark; or*
- *the Licensee is making a legitimate and non-commercial or fair use of the domain name, without intent to misleadingly divert consumers for commercial gain or to tarnish the trademark, trade name, social ,name or corporation name, geographical designation, ,name of origin, designation of source, personal name or name of the geographical entity at issue.*

The Licensee however has not filed any observations in response to the Complaint.

6.2.2.

In his complaint, Complainant states the following as regards the circumstances summoned in article 10, b, 3 of the Terms and conditions for domain name registrations under the “.be” domain:

- a. *prior to any notice of the dispute, the Licensee used the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use*

Complainant is of the opinion that this condition was never fulfilled because (i) its domain name pagesdor.be was registered in 1996 whereas the Domain Name was registered in 2005 and only recently became active as a website with pornographic images, (ii) there is no evidence that the Licensee used the Domain Name or a corresponding name in connection with a *bona fide* offering of goods or services prior to the registration of the Domain Name, and (iii) the Licensee in fact seems to operate under a different trading name.

These statements have been verified by the Third Party Decider on the basis of the submitted file, and no contradiction was found. They should therefore be considered credible and correct.

The Licensee has not replied to the Complaint and has therefore not asserted any right or legitimate interest in its registration of the Domain Name.

On the basis of the submitted file, the Third Party Decider concludes that the Domain Name is merely used to attract internet users that are in fact looking for Complainant’s website pagesdor.be.

The Domain Name is thus not used in connection with a *bona fide* offering of goods or services.

- b. *the Licensee (as an individual, business, or ;,other organization) has been commonly known by the domain name, even if he has no trademark*

The actual use of the Domain Name was demonstrated hereinabove.

It follows from what is mentioned hereinabove under “a.” that the company/individual(s) operating the Website accessible via the Domain Name are not operating under the name “pagesdor”.

Consequently, it is not proven that the Domain Name is in any way related to the activities of the Licensee.

- c. *the Licensee is making a legitimate and non-commercial or fair use of the domain name, without intent to misleadingly divert consumers for commercial gain or to tarnish the trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity at issue.*

It follows from what is demonstrated hereinabove that the Licensee uses the Domain Name with the sole intent to divert internet users to its website “wankz.com”.

On the basis of the submitted file, the Third Party Decider concludes that both websites offered via the Domain Name and the domain name “wankz.com” have a clear commercial objective.

Whereas the submitted file does not contain any evidence as regards the alleged famous status of Complainant’s Benelux trademarks “PAGES D’OR” and “i Pages d’Or”, it is however demonstrated that there is no link between the company/individual(s) operating the Website accessible via the Domain Name and the name “pagedor”.

Further, and as a consequence of the lack of evidence as regards the alleged famous status of its Benelux trademarks “PAGES D’OR” and “i Pages d’Or”, Complainant does not prove that it is Licensee’s intention to tarnish Complainant’s trademarks.

Nevertheless, because of the obvious absence of a link between the activities of the Licensee and the domain name, the Third Party Decider concludes that it is sufficiently demonstrated that the Licensee has an intent to misleadingly divert consumers for commercial gain.

As a result of the above mentioned findings, the Third Party Decider concludes that the second condition is fulfilled.

6.3. Registration in bad faith

Pursuant to article 10, b), 2 of the Terms and conditions for domain name registrations under the “.be” domain, The evidence of such in bad faith registration or use of a domain name can *inter alia* be demonstrated by the following circumstances:

“[...] the domain name was intentionally used to attract, for commercial gain, Internet users to the Licensee’s web site or other on-line location, by creating confusion with the complainant’s trademark, trade name, registered name or company 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 Licensee’s web site or location or of a product or service on his web site or location. [...]”

The Complainant refers to the alleged famous status of its Benelux trademarks “PAGES D’OR” and “i Pages d’Or” as well as its website www.pagesdor.be. As mentioned hereinabove, the submitted file however does not contain any evidence in that regard.

The mere fact that Complainant registered several Benelux word and figurative trademarks, should not be considered sufficient proof of the alleged well-known status.

The list of circumstances summoned in article 10, b), 2 is however not exhaustive and should be considered an indication only.

It follows from the submitted file that there is no link between the company/individual(s) operating the Website accessible via the Domain Name and the name “pagedor”. Complainant correctly argues that there is no demonstrable link between the name “pagedor” and the services offered on the Website.

This conclusion is confirmed by the fact that visitors of the website www.pagedor.be are transferred to the website www.wankz.com.

The Third Party Decider therefore concludes that it can reasonably be assumed that the Licensee is using the Domain Name in bad faith and that the Domain Name was intentionally used to attract, for commercial gain, internet users to the Licensee's website or other on-line location, by creating confusion with the Complainant's trademark.

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 "pagedor.be" domain name is to be transferred to Complainant.

Ghent, 5 March 2014.

Stephane CRIEL
Third Party Decider