



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

## DECISION OF THE THIRD-PARTY DECIDER

**Rhodia/ Marc Van Loo**

**Case no. 44226: rhodia.be**

### 1. The parties

- 1.1. Complainant: Rhodia Services – Dpt. Marques, with registered office at 93306 Aubervilliers (France), 40 Rue de la Haie Coq

*Represented by:*

Mr. Laurent Becker (Nameshield), counsel, with office at 49100 Angers (France), 27 Rue des arènes

- 1.2. Licensee: MG VAN LOO (Mr. Marc Van Loo), with registered office at 3059 TH Rotterdam (the Netherlands), Marius Richtersstraat 33.

### 2. Domain name

Domain name: "rhodia.be"  
Registered on: 11 August 2010

hereafter referred to as "the domain name".

### 3. Background to the case

On 3 February 2011, Complainant filed a complaint with the Belgian Centre for Arbitration and Mediation (CEPANI-CEPINA) concerning the domain name.

On 11 February 2011, CEPINA informed Licensee of the pending proceedings.

Licensee did not respond to the complaint.

On 10 March 2011, Complainant and Licensee were notified that the

CEPANI – NON-PROFIT ASSOCIATION

Stuiversstraat 8, B-1000 Brussels ● Telephone: +32 2 515 08 35 ● Fax: +32 2 515 08 75  
E-mail: cepina@vbo-feb.be ● Website: <http://www.cepani.be>  
FORTIS BANK: 210-0076085-89 ● KBC: 430-0169391-20 ● BBL: 310-0720414-81

undersigned had been appointed as third-party decider to settle the dispute pursuant to Article 12 of its Rules for Domain Name Dispute Resolution, and that the deliberations would be closed 7 days from the date of the letter, i.e. on 17 March 2011 (not 14 March 2011 as the letter erroneously mentions). The third-party decider would then normally have 14 days as from the conclusion of the deliberations in which to submit his decision to CEPINA's secretariat, i.e. by 31<sup>st</sup> March 2011 at the latest.

#### 4. Factual information

Having examined the evidence submitted by Complainant, the third-party decider finds that the following facts have been established.

##### 4.1. Complainant

- Complainant is a French based chemicals company with offices in various countries, trading under the name "Rhodia".
- The company group to which Complainant belongs, owns various trademark registrations consisting of or containing the word mark "Rhodia". The following of Complainant's trademarks are valid in the Benelux:
  - Benelux trademark no. 0573608 for the word mark "RHODIA", registered in the name of Rhodia S.A.;
  - Community trademark no. 000561126 for the word and figurative mark "RP RHODIA", registered in the name of Rhône-Poulenc Rorer S.A.;
  - International trademark registration no. 144832 for the word mark "RHODIA", registered in the name of Rhodia Services – Dpt. Marques; and
  - International trademark registration no. 186890 for the word mark "RHODIA", registered in the name of Rhodia Chimie.

##### 4.2. Licensee

- Licensee registered the domain name rhodia.be on 11 August 2010. The domain has not been used ever since. Visitors of the website [www.rhodia.be](http://www.rhodia.be) are not redirected to any other website either.
- On 26 January 2011, Complainant wrote to Licensee with the request to transfer the domain name to Complainant. Licensee answered that he was planning to use the domain name as a re-direct to the website [www.dotdeziqn.com](http://www.dotdeziqn.com) (also owned by the Licensee) through which the Licensee allegedly intends selling writing pads and notebooks of the brand "Rhodia". Licensee stated that he was open to discuss a potential transfer of the domain name to Complainant "*depending on the conditions*" (no price is mentioned in Licensee's e-mail) as he claims that rhodia.be is an important asset for the business plan he has in mind (Exhibit 2 of Complainant).

## 5. Position of the parties

### 5.1. Position of Complainant

Complainant requests the third-party decider to order the transfer of the domain name, since all the conditions provided for in Article 10(b)(1) of the Terms and conditions of domain name registrations under the “.be” domain operated by DNS BE are met.

- (i) *Licensee's domain name is identical to a trademark in which Complainant has rights*

Complainant states that Licensee's domain name is identical to the Complainant's word mark “RHODIA”, which is a registered trademark in various countries worldwide.

Complainant also refers to the various “rhodia” domain names which it owns in various other generic and country code top level domains.

- (ii) *Licensee has no right or legitimate interest in the domain name*

Complainant argues that Licensee has no rights or legitimate interests in the domain name since he has no relationship with the Complainant's business and is not authorized or licensed to use Complainant's mark.

Complainant also points out that Licensee is not known by the domain name because he does not operate a website under it. While Licensee claims that he intends to sell “Rhodia” branded products, this is not confirmed by either of his websites (i.e., [www.rhodia.be](http://www.rhodia.be), which is a “parked” domain ever since it was registered on 11 August 2010 or [www.dotdezign.com](http://www.dotdezign.com) which displays a blank page).

Given that Licensee does not prove any bona fide offering of goods or services or legitimate use of the domain name, Complainant concludes that Licensee has no right or legitimate interest in the domain name.

- (iii) *Licensee's domain name has been registered and is being used in bad faith*

Complainant states that Licensee has registered or used the domain name in bad faith because the domain name is identical to Complainant's “Rhodia” trademarks which, according to Complainant, constitute a well-known brand.

Complainant also points out that Licensee has registered the domain name in order to prevent the owner from using the domain name, because Licensee has not provided any proof of legitimate interest in the domain name. Complainant also underlines that the domain name has been in parking page ever since its registration.

## 5.2. Position of Licensee

Licensee did not file any response with CEPINA.

Nevertheless, it can be derived from Exhibit 2 of Complainant (i.e., Licensee's e-mail to Complainant of 27 January 2011) that Licensee is of the opinion that the domain name was not registered in bad faith, because he has/had the intention to start selling "Rhodia" note pads in the Benelux.

Licensee indicated to be willing to transfer the domain name to Complainant, "depending on the conditions", given the fact that this domain name would play an important role in his contemplated business selling "Rhodia" note pads in the Benelux. No specific price was mentioned.

## 6. Discussion and findings

Pursuant to Article 15.1 of the CEPINA rules for domain name dispute resolution, the third-party decider shall decide on the complaint in accordance with the Policy and the CEPINA rules for domain name dispute resolution.

Pursuant to Article 10(b)(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, Complainant has to prove that:

- 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 Complainant has rights; and
- Licensee has no rights or legitimate interests in the domain name; and
- Licensee's domain name has been registered or is being used in bad faith.

### 6.1. Identical or confusing similarity to a name or sign of the Complainant

In order to meet the first condition Article 10(b)(1) of the DNS BE Policy, the domain name must be either identical or confusingly similar to a sign owned by Complainant.

It is sufficient that a domain name conflicts with one of Complainant's rights or interests mentioned in this Article.

It is also sufficient that the domain name is either identical or similar to one of the rights or interests mentioned.

In the case at hand, the domain name is identical to Complainant's earlier trademarks as well as to Complainant's trade name and company name.

As a consequence, the first condition of Article 10(b)(1) is fulfilled.

## 6.2. Absence of rights or legitimate interests of Licensee

In order to meet the second condition of Article 10(b)(1) of the DNS BE Policy, Complainant must prove that Licensee has no right to or legitimate interest in the domain name.

The third-party decider is of the opinion that Complainant has made it plausible that Licensee has no rights or legitimate interests in the domain name.

Licensee does not demonstrate the opposite.

Article 10(3)(b) of the DNS BE Policy provides a non-exhaustive list of circumstances which Licensee can use to demonstrate a right or legitimate interest.

Licensee cannot rely on either of these circumstances.

First, the third-party decider has not been provided with any evidence which allows demonstrating that, prior to being notified of the dispute, 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. Admittedly, Licensee stated that it was planning to start selling "Rhodia" branded products and that the domain name is therefore a valuable aspect of his business plan. However, it fails to demonstrate that it would have any right in the use of this name for such products. Moreover, if it really had rights in the use of the name for these products, it would not offer the transfer of the domain name.

Nor has the third-party decider been provided with any evidence that Licensee is making a legitimate and non-commercial or fair use of the domain name. Rather does Licensee's reaction to Complainant's e-mail of 26 January 2011 suggest that Licensee has registered the domain name with the intention to divert Internet users to his other website [www.dotdeziqn.com](http://www.dotdeziqn.com).

Finally, the third-party decider has also not been provided with any evidence that Licensee has been commonly known by the domain name. This is because Licensee has not used the domain name at all.

In light of these circumstances, the third-party decider concludes that Licensee has no rights or legitimate interests in the domain name.

## 6.3. Registration or use of the domain name in bad faith

In order to meet the third and last condition of Article 10(b)(1) of the DNS BE Policy, Complainant must prove that Licensee registered or used the domain name in bad faith.

It is sufficient that the domain name is registered in bad faith "or" is used in bad faith.

Article 10(b)(2) provides a non-exhaustive list of circumstances which prove that a domain name is registered or used in bad faith.

Bad faith must be reasonably established (T. HEREMANS, *Domeinnamen: een juridische analyse van een nieuw onderscheidingssteken*, Larcier, Gent, 2003, 124). Bad faith may be demonstrated by any means, including presumptions and circumstances that indicate with a reasonable degree of certainty the existence of bad faith.

Complainant suggests that the mere identity between Licensee's domain name registration and Complainant's trade mark already demonstrates Licensee's bad faith. However, the mere identity between the domain name and the complainant's trade mark is in itself not sufficient to establish bad faith. Such identity can, together with other specific circumstances of the case, however, serve as circumstantial evidence to establish bad faith on the part of the licensee (see CEPINA Case No. 44025 of 2 January 2003, Allianz AG v Constantin European Internet Club ASBL).

Complainant also states that Licensee registered the domain name to prevent any use by Complainant which is the owner of the trademark "Rhodia".

In this respect, the third-party decider refers to the second circumstance mentioned in Article 10(b)(2), which specifically requires that a pattern of such conduct by Licensee must be established, for this circumstance to constitute proof of bad faith. Absent proof that Licensee has indeed engaged in a pattern of such conduct, this is not sufficient to conclude that bad faith is involved.

The circumstances nos. 3 to 5 mentioned in Article 10(b)(2) are not present either (i.e., no proof of intention to disrupt the business of a competitor; no proof of intention to attract Internet users to Licensee's website to create confusion as to the source, sponsorship, affiliation, or endorsement of Licensee's website or products or services offered thereon; no registration of a personal name).

On the other hand, the third-party decider is of the opinion that the first circumstance of Article 10(b)(2) is met. The circumstances of the case are such as to make it plausible that Licensee did have the intention to take financial advantage of the registration of the domain name. Although he did not name a price upon being contacted by Complainant, he did not refuse to transfer the domain name either. His reply rather suggests that he would not be willing to transfer the domain name to Complainant for an amount which is proportional to the cost of registration (cf. the reference to conditions that would be in line with Licensee's statement that the website is an important asset for his alleged business plan, a statement of which no proof whatsoever has been submitted to the third-party decider).

As mentioned above (see no. 6.2.), Licensee's statement that he is considering a business plan consisting of the distribution of products such as writing pads and note books of the brand "Rhodia" is not credible. Since Licensee has not filed any response to the complaint, he has failed to demonstrate that he indeed has or is exploring commercial relationships with the owner of the "Rhodia" brand for writing pads and notebooks, which would allow him to register the corresponding domain name under the ".be" domain. It rather looks like Licensee has adopted a specific strategy consisting of registering a domain name which corresponds to the registered trademarks of different, unrelated companies that are active in different sectors of trade, with the mere intent to maximize the profit to be made by selling the domain name to either of these brand owners. Such is a clear indication of bad faith.

Also, the circumstances mentioned in Article 10(b)(2) are non exhaustive and other circumstances can be relevant to decide that a domain name was registered or is being used in bad faith.

First of all, although it is not decisive in itself, the fact that the domain name is completely identical to the Complainant's well-known trademark (see above no. 6.1.), is an indication of bad faith.

Also, as set out by Complainant, "Rhodia" is moreover a well-known mark in the chemical industry. This circumstance, together with the third-party decider's earlier finding (see above no. 6.2.) that Licensee lacks any rights or legitimate interests in the domain name, also adds to the finding of bad faith.

In light of all these circumstances, the third-party decider is therefore of the opinion that the third condition of Article 10(b)(1) is also met.

## **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 "rhodia.be" domain name is to be transferred to Complainant.

Brussels, 31<sup>st</sup> March 2011.



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Benoît Michaux  
The third-party decider  
(signature)