



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

RYANAIR LTD. / JUNE KIM

Case no. 44191/ ryanair.be

1. The parties

- 1.1. Complainant: RYANAIR Ltd.;
with registered office at Dublin Airport, Dublin, Ireland
(Corporate Head Office). Contact person: Suzanne Hannon.
- 1.2. Licensee: Ms June KIM;
With address at 9999 Seoul, 20 Centre City Ave, Korea.

2. Domain name

Domain name: "ryanair.be"
Registered on: 10 April 2005

hereafter referred to as "the Domain name".

3. Background to the case

- 3.1 On 2 February 2010 Complainant filed a complaint (hereafter the Complaint) with the Belgian Center for Arbitration and Mediation (hereafter "Cepani") against the Domain name. The Licensee did not submit an answer to the Complaint.

By letter dated 5 March 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 12 March 2010.

Pursuant to Article 15.2 of the Cepani Rules for Domain Name Dispute Resolution, the Third-party decider had to submit her Decision by 26 March 2010.

4. Factual information

- 4.1 Complainant did not provide information on its activities, nor on the activities of the Licensee. Given a very brief explanation in the Complaint, and given

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the absence of an answer from the Licensee, the Third-party decider has little factual information to base her Decision upon.

4.2 Complainant states to have registered a number of Community trademarks with OHIM:

- CTM 000338301,
Which is a figurative trademark with word element Ryanair, registered on 17 November 1999 for several goods and services out of classes 16, 35, 36, 37, 38, 39 and 42;
- CTM 004168721,
Which is a word mark Ryanair, registered on 5 December 2005 for several goods and services out of classes 16, 28, 35, 36, 37, 38, 39 and 42;
- CTM 004187721,
Which is a word mark Ryanairhotels.com, registered on 9 January 2006 for several goods and services out of classes 16, 39 and 43;
- CTM 001493329,
Which is a figurative trademark with word element Ryanair.com the low fares websites, registered on 27 March 2001 for several goods and services out of classes 16, 35, 36, 37, 38, 39 and 42.

Hereafter, reference is made to these trademarks as the "Ryanair trademarks".

5. Position of the parties

5.1. Position of the Complainant

The Complainant requests the cancellation of the agreement between the Registrar (EuroDNS) and Licensee with respect to the Domain name.

In summary, the Complainant invokes the following grounds:

- (i) The registration of the Domain name by Licensee constitutes an unauthorised use of the Ryanair trademarks,
- (ii) Licensee has registered earlier www.ryanair.at with the Austrian Domain Registry, which Complainant succeeded to recover. This indicates that Licensee wants to prevent Complainant from acquiring domain names that correspond to the Ryanair trademarks,
- (iii) There is a lack of demonstrable link between Licensee and the Domain name, and
- (iv) The Domain name is being used in the course of trade.

In Complainant's view, the elements (ii) to (iv) are evidence of the Licensee's bad faith.

5.2. Position of the Licensee

The Licensee did not reply to the Complaint by submitting an answer to Cepani. Hence, the Third-party decider did not receive any input from the Licensee which she can take into account.

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

Complainant asserts that the Domain name constitutes an unauthorised use of the Ryanair trademarks.

Complainant did not file copies of the registrations of these trademarks as exhibits. Given the fact that these Community trademarks are easily to be found in the public register of OHIM that is publicly accessible via the Internet, the Third-party decider will take these trademarks into account.

Identity, or similarity that may induce confusion, between the Domain name on the one hand and one or more of the Ryanair trademarks on the other hand, is sufficient for the first condition to be fulfilled.

(i) The Third-party decider finds that there is *identity* between the Domain name and CTM 004168721, which consists of a word mark Ryanair, registered on 5 December 2005 for several goods and services out of classes 16, 28, 35, 36, 37, 38, 39 and 42.

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

(ii) Likewise, the Third-party decider considers the Domain name to be *confusingly similar* to CTM 000338301, which is a figurative trademark with word element Ryanair, registered on 17 November 1999 for several goods and services out of classes 16, 35, 36, 37, 38, 39 and 42. In the Third-party

decider's view the word element 'Ryanair' is more dominant than the graphic representation.

A figurative trademark composed of words can be confusingly similar to a domain name (see e.g. CEPANI case nr. 44055: lowepro.be). There is *confusing similarity* as soon as there exists a considerable risk that the ordinary Internet user familiar with the Complainant's services/ goods will start a search on the Internet for the Complainant by entering the Domain name at stake into his/her browser (followed by a very common generic Top Level Domain) (see WIPO Case nr. D2002-0015). In the Third-party decider's view, this risk is indeed considerable in this case.

The Domain name is both from a phonetic and visual point of view, *identical* to the word element in this trademark. The Domain name is *confusingly similar* with the figurative trademark as a whole.

(iii) The two other Ryanair trademarks consist of a word element Ryanair and less distinctive other words (Ryanairhotels.com, resp. Ryanair.com the low fares website). The latter trademark (Ryanair.com the low fares website) also has a specific graphic representation. Given the Third-party decider's assessment under points (i) and (ii), it is not necessary to also consider whether the Domain name is confusingly similar with these more complex trademarks.

The first condition is fulfilled.

6.2. Rights and legitimate interests

Complainant states that there is no demonstrable link between the Licensee and the Domain name and that the registration of the Domain name was abusive. In the Third-party decider's view it is indeed questionable whether the Licensee has any rights and/or legitimate interests in the Domain name.

The Licensee has not submitted any argumentation in favour of any rights or legitimate interests in the Domain name.

Therefore, the Third-party decider considers the second condition to be fulfilled.

6.3. Registration or use in bad faith

(i) Complainant argues that the Domain name was registered in order to prevent Complainant, owner of the Ryanair trademarks, from reflecting this name in a corresponding domain name.

Pursuant to article 10b(2) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, this is an indication of bad faith provided that the Licensee has engaged in a pattern of such conduct.

In Complainant's view there is indeed a pattern of such conduct as it recently recovered the identical domain name ryanair.at from Licensee.

(ii) Complainant also argues that Licensee's bad faith is proven by the fact that the Domain name is being used in the course of trade. Complainant does not explain which particular use is made of the Domain name and in what way this use illustrates Licensee's bad faith.

The use of the Domain name in the course of trade, may, depending on the circumstances, be an element which indicates *bad faith*:

e.g. when the Domain name was registered primarily for the purpose of selling the Domain name to the Complainant for valuable consideration in excess of the costs directly related to the Domain name;

or an element which indicates *good faith*:

e.g. when the Licensee, prior to any notice of the dispute, uses the Domain name in connection with a bona fide offering of goods or services.

By lack of clear argument from Complainant's side, the Third-party decider will disregard the argumentation which consists of the use of the Domain name by Licensee in the course of trade.

(iii) CEPANI case law accepts that bad faith is present where the trademark of the Complainant is so well-known that it cannot reasonable be doubted that the Licensee knew – or ought to have known – of this trademark (see CEPANI case nr. 44060: vincotte.be). In the Third-party decider's view the Ryanair trademarks are well-known in Belgium.

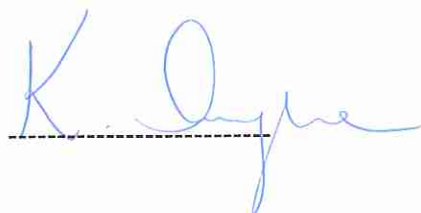
Licensee did not submit an answer to the Complaint in order to explain her choice for the Domain name in question. Although one must not deduce bad faith from the mere fact that Licensee did not file a response (see CEPANI case nr. 44067: rembostyling.be), it is the Third-party decider's view that if there would be any circumstances that would plead to her advantage or that could demonstrate Licensee's good faith, or if the facts as described by Complainant would be erroneous, Licensee would have submitted a defence.

Hence, on the basis of 6.3.(i) and (iii) 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 "ryanair.be" domain name is to be cancelled.

Ghent, 24 March 2010.



Karen ONGENA
The Third-party decider
(signature)