CEPANI

BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Jay Jopling/ YR ART

Case no. 44248:whitecu.be

1. The parties

1.1. Complainant: Mister Jay Jopling
residing at 25-26 Mason's Yard,
SW1Y 6BU LONDON.

Represented by:

Mister Daniel McClean
Attorney at law,
with office at Finers Stephens Innocent LLP,
179 Great Portland Street
W1W 5LS London.

1.2. Licensee: YR ART
residing at 208 Provencher Blvd
R2H OGO Winnipeg
MB CANADA.

2. Domain name

Domain name: **"whitecu.be "**
Registered on: January 15, 2011

hereafter referred to as "the domain name ".

3. Background to the case

On November 21, 2011, the Complainant filed his complaint. Pursuant to the CEPANI rules for domain name dispute resolution, the CEPANI appointed the Third party decider on January 6, 2012.

On January 13, 2012, the deliberations were closed.

4. Factual information

The Complainant is the owner and the director of an international contemporary art gallery named White Cube.

The Complainant is the owner of the international trademark registration number 990015 for the word mark "WHITE CUBE", registered for goods and services of classes 16, 35 and 41.

According to the certificate of registration accompanying the complaint, this registration is valid until December 12, 2018.

The Complainant sets out to be a leading international contemporary art gallery with various branches in London, active since 1993, representing over 70 contemporary artists and employing over 80 people.

The Licensee did not respond to the complaint and did not file any observations or documents.

5. Position of the parties

5.1. Position of the Complainant

The Complainant argues that the domain name is either identical or confusingly similar with his trademark and tradename, that the Licensee has no legitimate interests in the domain name since it is infringing upon his aforementioned rights and it has been registered in bad faith, and that it was registered or used primarily with the intent of commercial gain and pursuit of a commercial benefit from creating a likelihood of confusion with the Complainant's trademark or tradename as to the source, affiliation or endorsement of the website.

5.2. Position of the Licensee

The Licensee did not submit any observations.

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

Within the framework of the DNS.be terms and conditions (i.e., the rules for the domain name dispute resolution) it suffices for the Complainant to establish the existence of his prior trademark right, as evidenced by the record, in order to prove the existence of a prior right.

The alleged likelihood of confusion needs not be assessed in accordance with the applicable rules of trademark law, but according to the DNS.be terms and conditions, thus from the point of view of the formal comparison between the signs at stake only.

The domain name [whitecu.be] is not purely identical to the trademark of the complainant "WHITE CUBE", because the signs corresponding to the communication protocol or the top level domain must be excluded from the comparison of the signs at stake.

However, the Third party decider finds that the domain name is clearly confusingly similar to the trademark of the Complainant.

The mere fact that the Licensee inserted a full stop between the letters "cu" and "be" is not likely to outweigh the massive similarities and the replications of all of the letters contained in the Complainant's trademark, in the same order, with the same meaning.

The first condition is therefore met.

6.2.   Rights and legitimate interests

The Licensee does not allege to have any right in the domain name or in an earlier sign.

The existence of legitimate interests in the litigious domain name appears quite dubious, in view of the record, which evidences that the Licensee registered the domain name with the aim of "*creating a free web space for artists and art galleries to share their work*", and speaks of itself as an "*extra venue to help promote your gallery space*", with explicit reference to artists being already with the gallery of the Complainant "in real life".

This in no way amounts to a bona fide offering of goods or services, but constitutes a commercial use of the domain name with the intent for commercial gain to misleadingly divert consumers and to free-ride on the trademark of the Complainant.

The second condition is therefore met as well.

6.3.   Registration or use in bad faith

It is obvious from the record that the intention of the Licensee was to divert internet users to the domain name by creating a likelihood of confusion with the Complainant's trademark.

It is the opinion of the Third party decider that this clearly constitutes a case of typo squatting, with the intent of commercial gain and a potential damage for the distinctive character or the reputation of the Complainant's trademark.

Therefore, the third condition is met as well.

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 "**whitecu.be**" domain name is to be cancelled.

Brussels, January 26, 2012.

Benjamin Docquir
The Third-party decider
(signature)