



**DECISION OF THE THIRD-PARTY DECIDER**  
**TOUCH BV / IDENTITYBUILDING BV**  
**Case no. 444219 / touchlebbeke.be**

**1. The Parties**

**1.1 Complainant**

TOUCH BV

Stationsstraat 15, 9280 Lebbeke

Represented by: Sara Caudron

Residing at Beukenstraat 38, 9255 Buggenhout

Hereafter referred to as the "Complainant"

**1.2 Domain Name Holder**

IDENTITYBUILDING BV

Kuilestraat 1, 9420 Erondegem

Represented by: Erik Vercruysse

Residing at Kuilestraat 1/b2, 9420 Erondegem

Hereafter referred to as the "Domain Name Holder"

**2. Domain name**

www.touchlebbeke.be

Registered on: 2 January 2020

Hereafter referred to as the "Domain Name"



### 3. Procedure

On 23 July 2024, the Complainant filed a complaint (hereafter referred to as “the Complaint”) with CEPANI in accordance with the DNS dispute resolution policy described in Article 10 of the terms and conditions for .be domain name registrations (hereafter referred to as the “Policy”) and with the CEPANI rules for domain name dispute resolution (hereafter referred to as the “Rules”).

On 25 July 2024, CEPANI provided the Complaint to the Domain Name Holder and invited the Domain Name Holder to respond to the Complaint. CEPANI received a response in Dutch on 26 July 2024. This response was filed again in English on 2 August 2024.

On 5 August 2024, CEPANI informed Mr. Philippe Campolini of its intention to appoint him as third-party decider pursuant to the Rules. Mr. Philippe Campolini accepted this appointment and provided CEPANI with his declaration of independence in accordance with Article 8 of the Rules.

On 6 August 2024, CEPANI formally appointed Mr. Philippe Campolini as the Third-Party Decider and provided him with an electronic copy of the case file.

On the same day, CEPANI informed the Complainant and the Domain Name Holder of the appointment of the Third-Party Decider and notified them that the deliberations would be closed on 13 August 2024, with the final decision being due on 27 August 2024.

On 13 August 2024, the Third-Party Decider requested additional information from the Parties. Both Parties provided additional information to the Third-Party Decider on the same day.

On 20 August 2024, CEPANI forwarded to the Parties and to the Third-Party Decider an email received from DNS Belgium containing the history of the Domain Name.

Further exchanges took place between the Parties and CEPANI regarding a possible settlement of the case, but these exchanges did not ultimately lead to a settlement.

On 23 August 2024, the Third-Party Decider informed the Parties that the debates were closed and that a decision would be rendered no later than 27 August.

### 4. Factual Background information

It appears from the history of the Domain Name provided by DNS Belgium that the Domain Name was registered for the first time on 9 March 2016 in the Complainant’s name by an external service provider. This service provider went bankrupt in 2017 and the Domain Name was deleted on 11 October 2018.



In 2019, the Complainant was approached by the Domain Name Holder, which offered to design a new website and online shop for the Complainant. In this context, the Domain Name was registered again, but this time not in the Complainant's name, but in the name of the Domain Name Holder.

The relationship between the Parties deteriorated and a dispute arose over invoices issued by the Domain Name Holder. In this context, the Complainant requested the transfer of the Domain Name. The Domain Name Holder refused to transfer the Domain Name to the Complainant. This refusal was based on alleged outstanding payments by the Complainant for website services it had provided.

This refusal led the Complainant to file the Complaint that led to the present procedure.

## **5. Position of the parties**

### **5.1 Position of the Complainant**

The Complainant asserts that:

- The Domain Name has been owned by the Complainant for many years.
- In 2019, the complainant entered into an agreement with the current domain owner to design a site and an online shop.
- The Domain Name Holder placed the Domain Name in its name without the Complainant's consent.
- The Complainant's business has existed for years under the name TOUCH (since 1996) and has always been located in Lebbeke.

Based on these facts, the Complainant claims ownership and transfer of the Domain Name and seeks reimbursement of the costs when the Third-Party Decider decides that ownership of the domain belongs to Complainant.

### **5.2 Position of the Domain Name Holder**

The Domain Name Holder asserts that:

- On 8 July 2024, its lawyer sent a registered letter to the Complainant, demanding the payment by 25 July 2024 of an outstanding debt of 8,721.99 euros for services it provided.
- In the absence of payment, its lawyer was instructed to initiate legal proceedings against Complainant without further notice.
- In accordance with the contractual provisions between the Domain Name Holder and the Complainant, the general terms and conditions version 1.4 of 2022 apply.
- The Domain Name Holder's lawyer received a response from the Complainant and invited the Domain Name Holder to discuss this response after August 5.



- Until this matter is resolved and the Complainant has fulfilled its payment obligations, Domain Name Holder maintains its position that the Domain Name will not be transferred.

## 6. Discussion and findings

Pursuant to Article 16.1 of the Rules, the Third-Party Decider shall rule on domain name disputes with due regard for the views of the Parties and in accordance with the Policy, the Registration Agreement and the Rules.

Pursuant to Article 10(b)(1) of the Policy, the Complainant has to assert and to prove, in compliance with the Rules, that :

- the Domain Name is identical or confusingly similar to a trademark, a trade name, a registered name or 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
- the Domain Name Holder has no rights or legitimate interests in the domain name; and
- the Domain Name Holder's domain name has been registered or is being used in bad faith.

### 6.1 The Domain Name is identical or confusingly similar to a trademark, a trade name, a registered name or 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

The Complainant asserts that its business has existed for years under the name TOUCH (since 1996) and has always been located in Lebbeke. The Complainant also asserts that it owned the Domain Name before it was placed under the Domain Name Holder's name. These facts are not disputed by the Domain Name Holder. The Domain Name's history provided by DNS confirms that the Domain Name was initially registered on 9 March 2016 by Complainant, then deleted on 11 October 2018, and then registered again, this time by the Domain Name Holder, on 2 January 2020.

"Touch" is therefore both the trade name and the company name of the Complainant. The Domain Name includes the term "Touch", which is identical to the Complainant's trade name and company name. The Domain Name also includes the term "Lebbeke", which refers to the municipality in which the Complainant is registered and from which it has been operating its business since many years.

It follows from the above that the Domain Name is confusingly similar to a trade name and a company name in which the Complainant has rights, so that the first condition of Article 10(b)(1) of the Policy is fulfilled.



## 6.2 The Domain Name Holder has no right or legitimate interests in the Domain Name

Pursuant to Article 10(b)(3) of the Policy, the Domain Name Holder's rights or legitimate interests to the Domain Name can appear from the following circumstances:

- (i) prior to any notice of the dispute, the Domain Name Holder 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
- (ii) the Domain Name Holder (as an individual, business or other organisation) has been commonly known by the domain name, even if he has no trademark; or
- (iii) the Domain Name Holder 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.

In the present case, the Domain Name Holder has not asserted that it would satisfy any of these criteria and there is no indication on file that this would be the case.

It is not disputed that the Parties concluded an agreement in 2019 under which the Domain Name Holder committed to design a new website and online shop for the Complainant, and that the Domain Name was registered by the Domain Name Holder in that context. The Domain Name's history provided by DNS indicates that the Domain Name was registered on 2 January 2020 by the Domain Name Holder under its own name. Complainant asserts that this registration happened without its consent. This fact is not disputed by the Domain Name Holder and there is no indication on file that such a consent would have been given.

In addition, the Domain Name Holder states that the Domain Name Holder's general terms and conditions, version 1.4 of 2022, apply to the Parties relationship in accordance with the contractual provisions between the Domain Name Holder and the Complainant. The Domain Name Holder provided these general terms and conditions to CEPANI on 26 July 2024.

Article 1 of these general terms and conditions reads as follows:

**“ARTIKEL 1 : ONDERWERP VAN DE OVEREENKOMST**

*Naargelang de opties gekozen door de abonnee, betreft elke onderschreven overeenkomst verschillende Informaticaprestaties zoals het huren van materiaal, de technische bijstand via de telefoon, de herstelling ter plaatse, de aanmaak, de hosting en het updaten van de websites, de opmaak*



van reclame advertenties, het leveren van Internetdiensten, het beheren van de e-mailadressen en de domeinnamen, de beveiliging van informaticagegevens, met als tegenprestatie de betaling van de maandelijkse uitkering ten laste van de abonnee.” (emphasis added)

This can be freely translated in English as follows<sup>1</sup>:

*“ARTICLE 1 : SUBJECT MATTER OF THE AGREEMENT*

*Depending on the options chosen by the subscriber, each subscribed agreement covers various IT services such as equipment rental, technical assistance by telephone, on-site repairs, creation, hosting and updating of websites, creation of advertising ads, provision of Internet services, management of e-mail addresses and domain names, IT data security, in return for payment of the monthly fee charged to the subscriber.”*

Article 4.7.3 of these general terms and conditions reads as follows:

*“4.7.3 - Domeinnaam: In opdracht van de abonnee neemt identityBuilding BV alle formaliteiten voor het registreren van een door de abonnee gekozen domeinnaam op zich. Met het oog hierop dient de abonnee op eenvoudig verzoek van identityBuilding BV alle documenten en informatie te leveren die hiervoor nodig zijn. In ieder geval verbindt identityBuilding BV zich niet tot het effectief toewijzen van de gekozen domeinnaam aan de abonnee, aangezien die beslissing toekomt aan de daarvoor bevoegde instanties. De abonnee is alleen verantwoordelijk voor de keuze van de domeinnaam en dient te bevestigen dat deze keuze geen afbreuk doet aan de rechten van derden. De aanvraag door identityBuilding BV gebeurt voor rekening van de abonnee. Daaruit volgt dat de abonnee de eigenaar is van de domeinnaam in kwestie.” (emphasis added)*

This can be freely translated in English as follows:

*“4.7.3 - Domain name: On behalf of the subscriber, identityBuilding BV shall undertake all formalities for the registration of a domain name chosen by the subscriber. For this purpose, the subscriber shall, upon simple request from identityBuilding BV, provide all required documents and information. In any event, identityBuilding BV does not undertake to actually assign the chosen domain name to the subscriber, as that decision belongs to the appropriate authorities. The subscriber is solely responsible for the choice of the domain name and must confirm that this choice does not infringe the rights of third parties. The application by identityBuilding BV is made on behalf of the subscriber. It follows that the subscriber is the owner of the domain name in question.”*

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<sup>1</sup> Neither party has provided an English translation of these general terms and conditions.



In its letter of 13 August 2024 in response to the Third-Party Decider's request for additional information, the Domain Name Holder referred to a new version of its terms and conditions (version 1.4.1) published on its website, in which the last sentence of Art. 4.7.3 was replaced by the following sentence:

*“Overdracht van de domeinnaam is uitsluitend mogelijk na betaling van alle ontvangen facturen.”*

This can be freely translated in English as follows:

*“Transfer of the domain name is only possible after payment of all invoices received.”*

However, the Domain Name Holder does not provide evidence that this amended version of its terms and conditions would be binding upon the Complainant. On the contrary, as indicated above, the Domain Name Holder previously indicated that the terms and conditions applicable to its relationship with the Complainant was the version 1.4, and not the version 1.4.1.

The only argument raised by the Domain Name Holder to justify its refusal to transfer the Domain Name to the Complainant is the allegation that the Complainant would owe certain amounts to the Domain Name Holder. However, even if this allegation were to be well-founded (which the Third-Party Decider did not verify), it would not give the Domain Name Holder any right or legitimate interest in the Domain Name itself, not least because the registration of the Domain Name in the Domain Name Holder's name was done without the Complainant's consent and in violation of the Domain Name Holder's own general terms and conditions.

It follows from the above that the Domain Name Holder has no right or legitimate interests in the Domain Name, so that the second condition of Article 10(b)(1) of the Policy is fulfilled.

### **6.3 The Domain Name Holder's Domain Name has been registered or is being used in bad faith**

As indicated above, the registration of the Domain Name under the Domain Name Holder's name happened without the Complainant's consent and in violation of the Domain Name Holder's general terms and conditions.

In addition, it is not disputed that the Domain Name Holder was hired by the Complainant to design the Complainant's website and online shop. In the absence of indications or allegations to the contrary, there is no reason why the Domain Name Holder needed to register the domain name chosen by its client under its own name without its client's consent. On the contrary, a service provider hired to design a website and/or-shop would be expected to act in its client's interest and request the registration of the domain name chosen by its client on behalf of its client and not on its own behalf.

The Domain Name was thus registered in bad faith by the Domain Name Holder.



In addition, the Domain Name Holder's refusal to transfer the Domain Name is exclusively based on the allegation that the Complainant would owe certain amounts to the Domain Name Holder. The refusal to transfer the Domain Name is thus used as a means to exercise pressure on the Complainant and to obtain the payment of the claimed amounts. However, regardless of whether the claimed amounts are due or not (again, which the Third-Party Decider did not verify), it is clear that the Domain Name Holder would not be in a position to exert such pressure if the Domain Name had not been improperly registered in the Domain Name Holder's name instead of the Complainant's name.

The Domain Name is therefore also used in bad faith by the Domain Name Holder.

It follows from the above that the Domain Name has been registered in bad faith and is currently used in bad faith by the Domain Name Holder, so that the third condition of Article 10(b)(1) of the Policy is fulfilled.

## 7. Decision

Consequently, pursuant to Article 10(e) of the Policy, the Third-Party Decider hereby rules that the Domain Name is to be transferred to the Complainant.

Brussels, 27 August 2024

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Philippe Campolini

The Third-party Decider