

Decision of the third-party decider

Thierry Jardon / Go Premium

Case n° 444190 Cepani: jardon.be

I. The Parties

Complainant: Thierry Jardon, Rue du Canari 22, 5310 Waret-la-Chaussée, Belgium,
represented by Mr. Pierre-Yves Thoumsin, Attorney-at-law, Avenue
Louise 326, 1050 Brussels, Belgium,

Domain name holder: Go Premium, represented by M. Soetens, Gorterplaats 26a, 6531hz
Nijmegen, The Netherlands,

II. The domain name

The domain name, **jardon.be** (hereafter “*the Domain Name*”), was registered on 21 January 2023.

III. Procedural background

Complainant filed its complaint on 23 March 2023.

The Third-Party Decider was appointed on 21 April 2023. The deliberations were closed on 28 April 2023.

Domain name holder has not filed a response, save a mention (via an email address domain-admin@serviceunit.net) of 3 April 2023 refusing voluntary execution of the relief sought by Complainant; Domain name holder mentioned that it did “*not see why a domain that is not-for-sale should be transferred*”, with reference to an email of 16 March 2023 from Domain name holder to Complainant whereby Domain name holder mentioned that “*the domain is not for sale anymore*”.

IV. Factual background

Complainant refers to Domain name holder's website on which Domain name holder had offered the Domain Name for sale.

Complainant contacted Domain name holder via the website on 16 March 2023, and was offered the Domain name for sale, for a price of 4.450 EUR. Complainant apparently immediately has contested this practice by email, to which Domain name holder has responded, on the same day: *"No problem. The domain is not for sale anymore."*

V. The claim

Complainant requests the transfer of the Domain Name.

VI. As to the facts and the merits

1. Requirements for Complainant

Following Article 10, b, 1) of the terms and conditions for .be Domain Name registrations, complainant must assert and evidence that:

- *"the registrant's domain name is identical or confusingly similar to a trademark, a tradename, 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*
- *the registrant has no rights or legitimate interests in the domain name; and*
- *the registrant's domain name has been registered or is being used in bad faith".*

2. Regarding the first requirement

The Domain Name is identical or confusingly similar to a trademark, a tradename, 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 Complainant has rights.

a) Complainant

Complainant's surname is 'Jardon'. The Domain Name is identical to Complainant's surname.

Complainant mentions that his personal name is 'a personality right'. He refers to the Cepani case law in similar matters.

Complainant uses the name 'Jardon' in his personal life, but also in his professional life – with Complainant's commercial enterprise- and in communications with the press.

b) Domain name holder

Domain name holder has not responded to this.

c) Assessment

The Domain Name indeed is identical to Complainant's surname, hence to Complainant's personal name as referred to in the first point of Article 10, b, 1) of the terms and conditions for .be Domain Name registrations.

The suffix ".be" is not relevant for the assessment of this similarity.

3. Regarding the second requirement

The registrant has no rights or legitimate interests in the Domain Name.

a) Complainant

It appears from the file that Complainant never has given any permission to Domain name holder to use his personal name. There is no link between Domain name holder and Complainant.

The Domain name is used by Domain name holder only for the purpose of selling it, according to the file. This is not a right or legitimate interest in the Domain Name.

b) Domain name holder

Domain name holder has not filed any response.

c) Assessment

The Domain Name does not appear to be used by the Domain name holder in connection to a bona fide offering of goods or services. The Domain name holder is not known under the Domain Name. The Domain name holder, according to the documents filed, uses the Domain name only for offering it for sale. There is no evidence whatsoever that the Domain name holder would do any business under the Domain Name.

The Domain name holder failed to respond. No elements that would evidence its rights or legitimate interests on the Domain Name were brought forward by it.

In absence of a shown *bona fide* offering of goods or services or other legitimate of fair use of the Domain Name by the Domain name holder, it must be concluded that the Domain name holder has no rights or legitimate interests in the Domain Name.

4. Regarding the third requirement

The Domain Name has been registered or is being used in bad faith.

a) Complainant

According to Complainant, the Domain Name was registered in bad faith. Complainant refers to Article 10, b, 2) of the terms and conditions for .be Domain Name registrations, which lists circumstances that can evidence bad faith registration or use, a.o. "*circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the Domain Name to the Complainant who is the owner of (...) a personal name, for a price that exceeds the costs directly related to the acquisition of the domain name.*"

Complainant refers to the Domain name holder's offer of 16 March 2023 to sell the Domain Name for 4.450 EUR, which price *'is well in excess of the costs directly related to the registration'* of the Domain Name. Reference is thereby made to Cepani matters where amounts of 750 EUR and 2000 EUR were considered as being excessive in this sense. The costs *'related to the registration of the Domain Name'* are between 5 EUR and 50 EUR per year.

The Domain Name is used in bad faith, since the sale of it is the only use made by the Domain name holder.

b) Domain name holder

Domain name holder has not filed any response, except that in the email to Cepani of 3 April 2023 whereby voluntary transfer has been refused, it *"wonders what value is excessive (this is an open question) (...) while there are a lot more sales based on first and last names that show a different kind of value"*. Examples were given with amounts up to 15.896 USD.

c) Assessment

It appears from the file that the Domain Name is used for commercial gain. The amount of 4.450 EUR indeed exceeds by far *"the costs directly related to the acquisition"* of the Domain Name.

The examples given by the Domain name holder of personal names for sale at even higher amounts cannot be taken into account. It may concern domain names used in different circumstances (e.g with the agreement of the holder of the personal name), or may concern also offers for sale that go against the terms and conditions for .be Domain Name registrations.

The fact that the Domain name holder has refused to voluntarily transfer the Domain Name to a person who clearly has a personality right on the Domain Name, while not invoking any other purpose of registration or any other use by the Domain name holder of the Domain Name, confirms the absence of good faith.

According to Article 10, b, 2) of the terms and conditions for .be Domain Name registrations, the evidence of the *'in bad faith registration'* or use of a domain name can indeed inter alia be demonstrated by circumstances indicating *"that the domain name was registered or acquired primarily for the purpose of selling (...) the Domain Name to the complainant who is the owner of (...) a personal name (...), for a price that exceeds the costs that the registrant can show are directly related to the acquisition of the domain name"*, but also circumstances indicating that *"the registrant has registered one or more personal names without the existence of a demonstrable link between the registrant and the registered domain names."*

The Domain Name is being used in bad faith, and from the file it seems that it also has been registered in bad faith.

VII. Decision

The Third-Party Decider holds that the three cumulative conditions of Article 10 b) 1. of the DNS terms and conditions for .be Domain Name registrations, are met.

Therefore, the Third-Party Decider orders that, pursuant to Article 10 e) of the DNS terms and conditions for .be Domain Name registrations, the Domain Name be transferred from the Domain name holder to Complainant.

Brussels, 10 May 2023, 

Catherine Erkelens, Third-Party Decider.