



DECISION OF THE THIRD-PARTY DECIDER
Complainant / Domain name holder
Case no. 444218 / domain name observo.be

1. The Parties

1.1 Complainant:

FOPAS

De Meeûssquare 35

1000 BRUSSELS

BELGIUM

1.2 Domain name holder:

Mr. Jurij KACANOV

Bangu g. 6 ap.2,.

LT-91251 KLAIPEDA

LITHUANIA

2. Domain name

Domain name: < observo.be >

Registered on: June 28, 2024

Hereafter referred to as "the domain name".



3. Procedure

1. On 21 March 2023, the Complainant submitted a complaint (hereafter referred to as the "Complaint") to CEPANI under Article 10 of the General Terms and Conditions of Domain Name Registration within the ".be" domain, governed by DNS.be (hereafter referred to as the "Policy"), and in accordance with the CEPANI Rules for Domain Name Dispute Resolution (hereafter referred to as the "Rules").
2. The Domain Name Holder did not submit a formal response as required under Article 6 of the Rules.
3. On 31 July 2024, CEPANI appointed Mrs. Shchichka Alissia as the Third-Party Decider pursuant to the Rules (hereafter referred to as the "Third-Party Decider"). The Third-Party Decider accepted the appointment and provided CEPANI with a declaration of independence, in accordance with Article 7 of the Rules. Pursuant to Article 10 of the Rules, CEPANI provided the Third-Party Decider with an electronic copy of the case file, including the completed Complaint.
4. On 1 August 2024, CEPANI informed both the Complainant and the Domain Name Holder of the appointment of the Third-Party Decider and notified them that deliberations would close on 8 August 2024, with the final decision due on 22 August 2024.
5. On 5 August 2024, the Third-Party Decider emailed CEPANI, requesting that the Complainant provide evidence of their rights to the term "Observo." Specifically, the Third-Party Decider asked the Complainant to clarify their connection with the "Observatory of Competency Evolution" and to specify whether, and to what extent, the name "Observo" is used as a trade name by the Complainant or any related entity.
6. On 6 August 2024, CEPANI forwarded the Third-Party Decider's request to the parties. The Complainant responded on 7 August 2024, providing the following information:
 - Internal email exchanges regarding the launch of the observo.be website in 2016;
 - Email exchanges with the IT provider concerning services related to the content of the observo.be website;
 - An email from the Complainant to AXA, soliciting video testimonials from AXA employees for the website associated with the domain name < observo.be >, relating to their roles and competencies in the insurance sector;
 - An excerpt from the fopas.be webpage;
 - An Outlook email extract showing emails with the word "observo" in the subject lines. The content of these emails is not detailed but appears to relate to the development and maintenance of the observo.be website.
7. On 8 August 2024, the Complainant also provided the following documents:
 - Email exchanges between Fopas and the IT provider regarding the creation of the < observo.be > domain name in 2016.

4. Factual Background information

8. The Complainant, FOPAS, is the Fund for Training and Skills Development in the Insurance Sector for employees in the insurance sector, whether they are entering, advancing in, or leaving the industry. It is jointly managed by representatives of both employers and workers. On May 18, 2016, FOPAS registered the domain name < observo.be >, which has been used continuously since that time. However, according to the Complainant, the domain name was not erroneously renewed by its IT provider and was subsequently taken over by the Domain Name Holder. At the time of filing the Complaint, the domain name was used for a dating site with pornographic content. Currently, the domain name redirects to a parking page with the message, "*Access Denied. This website is not available in your country.*"

5. Position of the parties

5.1 Position of the Complainant

9. According to the Complainant, FOPAS, the Fund for Training and Skills Development in the Insurance Sector, had been using the domain name < observo.be > since its registration in 2016 as the address for its platform dedicated to expertise in evolving skills and functions in the insurance sector. However, the domain name was not renewed due to an error by its IT provider, which led to its acquisition by the current Domain Name Holder. The Complainant asserts that this situation is unacceptable as < observo.be > now redirects to a dating website with pornographic content.
10. The Complainant argues that there is a clear likelihood of confusion because the current domain name is identical to the one previously owned by the Complainant. Visitors intending to access the Observatory for the Development of Skills are misled to a site with inappropriate content.
11. According to the Complainant, the current Domain Name Holder has no rights or legitimate interest in < observo.be >. The domain name was exclusively used by FOPAS to provide access to its Observatory for the Development of Skills platform.
12. Regarding bad faith, the Complainant contends that the attempt to take over the domain name immediately after the protection period expired indicates the Domain Name Owner's bad faith. His



actions contradict the values associated with < observo.be > and appear aimed at damaging FOPAS's reputation and potentially extracting a ransom. However, the Complainant has not provided evidence that the Domain Name Holder has explicitly demanded payment.

13. Given the circumstances, the Complainant seeks the transfer of < observo.be > back to FOPAS to restore its original use and halt the ongoing misuse. According to the Complainant, this transfer is necessary to prevent further damage to FOPAS's reputation and to ensure that the domain name is used for its originally intended purpose.

5.2 Position of the Domain name holder

The Domain Name Holder has not submitted any response.

6. Discussion and findings

14. Pursuant to Article 16.1 of the Rules, 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 Policy, the Complainant must provide evidence of the following:

- *"the Domain name holder is identical or confusingly similar to a trademark, a trade name, 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 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."*

15. The domain name transfer can be ordered only if the Complainant provides evidence they have satisfied each of the elements required under the Policy and the CEPANI rules for a transfer of the domain name.



6.1 The Domain Name is identical or confusingly similar to trademarks in which the Complainant has rights

16. Under Article 10b (1) (i) of the Policy, the Complainant carries the burden of proving that the domain name is identical or sufficiently similar to a prior sign on which they hold rights, creating a risk of confusion. In this context, the Complainant has not sufficiently demonstrated that they hold any of the eligible rights to the sign "observo" as exhaustively listed in Article 10b (1) (i) of the Policy.
17. The Complainant references the prior registration of the domain name < observo.be > , which was created and continuously used since 2016 in connection with the observatory for functions, skills, and their evolution in the insurance sector. The Complainant asserts that they failed to renew the domain due to an IT partner's error.
18. However, prior possession of the domain name < observo.be > does not automatically establish an eligible right under Article 10b (1) (i) of the Policy.
19. According to the Policy, the Complainant may rely on a trade name or company name. The Complainant's prior use of the domain name could be indicative of a broader use of the term "Observo" as a trade name. However, the Complainant does not explicitly refer to any use of the term "Observo" as a trade name in their observations, nor do they provide any evidence of such use.
20. A trade name is the sign under which a business is known or operates (D. Dessard and J. Ligot, «*Nom commercial et enseigne belge*», in D. Kaesmacher (coord.), *Les droits intellectuels*, 2nd ed., Brussels, Larcier, 2013, no. 95). As a right of occupancy, it is not acquired by registration but by first use (ibid., no. 98; Th. Van Innis, «*Les signes distinctifs* », Brussels, Larcier, 1997, p. 32, nos. 42 and 43). This use must be public, visible, and consistent (D. Dessard and J. Ligot, op. cit., no. 98). Furthermore, according to Article 8 of the Paris Convention for the Protection of Industrial Property, a trade name is protected in Belgium without the need for filing or registration.
21. In response to the Third-Party Decider's request to clarify the connection with the Observatory of Skills Development and the extent to which the name "Observo" may be used as a trade name by the Complainant or a related entity, the Complainant provided documentation regarding the creation and prior use of the domain name < observo.be > before its non-renewal and subsequent registration by the Domain Name Holder. The Complainant also invited the Third-Party Decider to



consult their website, www.fopas.be, for “*evidence of content published over the years by FOPAS to support the Observatory of Skills Development.*”

22. It should be emphasized that it is not the Third-Party Decider's role to conduct additional or independent research. The Third-Party Decider must decide a case based on the evidence presented by the parties, not on independently uncovered evidence that is not part of the record. The Third-Party Decider should not build a party's case where evidence is lacking.

Furthermore, in accordance with well-established jurisprudence, it is not the responsibility of the decision-making bodies to verify or clarify the information submitted by accessing the respective websites to substantiate claims made by the parties (04/10/2018, T 820/17, *Alfrisa (fig.) / Frinsa F (fig.)*, EU:T:2018:647, §§ 61-63).

Websites are easily updated, often without archival records of previously published content, which compromises the authenticity, reliability, and stability of evidence presented solely through websites.

23. For the sake of completeness, the Third-Party Decider notes that clicking on the “Observe by Fopas” logo on the Complainant’s website, www.fopas.be, leads to the page <observoo.be>. In the ‘Fopas About Us’ section, it states: “*ABOUT OBSERVO. Observe is the expertise platform on skills and evolving roles in the insurance sector of tomorrow. To this end, we present the most sought-after roles with their opportunities for growth. Employees from various insurance companies share their experiences about their jobs and the underlying changes. You will also find a series of trends. We select these for you, relying on knowledge, experience, lessons learned, co-creation, and networking both within and outside the insurance sector.*” In the next tab, titled ‘Vision,’ it is mentioned: “*Observe scans the horizon, digs deep, and focuses on the world of work and the changes emerging there, particularly within insurance companies. It zooms in on developments and their impact on the skills of employees in the sector. The Observe telescope adjusts its lens to focus on the people who work there, who will work there, or who have worked there. This tool allows you to become more aware of the changes surrounding us. Learn about them, broaden, and renew your perceptions.*” Finally, in the ‘Organization’ section, it is noted that “*Observe stands for “Observatory of functions, skills, and their evolution in the insurance sector,” and falls within the objectives of Fopas.*”



Therefore, the term “Observo” appears to be used in connection with the tool or platform, and services offered by the Complainant to indicate their source in the market, rather than as a trade name to identify a business or commercial establishment. In this context, 'Observo' would function more as a trademark, which requires registration to assert rights over it.

In any case, neither the evidence provided by the Complainant nor the information available on the Complainant’s website sufficiently clarifies the nature of the use of the term “Observo”.

24. Given the above, the Third-Party Decider concludes that the Complainant has not claimed a trade name, nor provided sufficient evidence of the public and continuous use of the sign "Observo" as a trade name in Belgium (CEPANI, 44169, tektvshop.be). Since the Complainant has not demonstrated exclusive rights in Belgium to the sign "Observo" prior to the registration of the domain name, the first condition is not met.

25. Consequently, the Complaint must be rejected without the need to examine whether the other two conditions are fulfilled. However, the Third-Party Decider leaves open the possibility for the Complainant to refile the Complaint should they gather further evidence regarding prior rights to the term "Observo" and the nature of these prior rights.

6.2 The Domain name holder has no right or legitimate interests in the Domain Name

It refers to points 24 and 25 above.

6.3 The Domain name holder’s Domain Name has been registered or is being used in bad faith

It refers to points 24 and 25 above.

7. Decision

Consequently, for the foregoing reasons, pursuant to Article 10(e) of the Policy, the Complaint is denied.



Brussels, August 20, 2024

A handwritten signature in black ink, appearing to read 'Alissia SHCHICHKA'.

Alissia SHCHICHKA

The Third-party Decider