



THE BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

ORDRE DES BARREAUX FRANCOPHONES ET GERMANOPHONE/Technachos Media, LLC

Case no. 44466: jechoisismonavocat.be

1. The Parties

1.1. Complainant: ORDRE DES BARREAUX FRANCOPHONES ET
GERMANOPHONE
68 avenue de la Toison d'Or
1060 Brussels
Belgium

Represented by:

Etienne Wery, attorney at law,
with office at 224 avenue de la Couronne
1050 Brussels
Belgium

1.2. Domain name holder: According to the WHOIS Database:
Technachos Media, LLC
112 West 34th Street
10120 New York
New York
United States

Identifying itself as:
RAS PARBAT CAPITAL S.A.
244 Madison Avenue
New York
United States
Incorporation number: 7287756

2. Domain name

Domain name: "jechoisismonavocat.be"
Registered on: July 10, 2016

hereafter referred to as "the domain name".

3. Procedure

On March 21, 2019 the Complainant filed a Complaint with CEPANI according to the CEPANI Rules for Domain Name Dispute Resolution ("the Rules") and the Dispute Resolution Policy of DNS BE (Article 10 of the Terms and conditions for .be domain name registrations).

The Complaint was filed in English pursuant to Article 12.1 of the Rules.

The Complainant requests that the domain name shall be transferred to the Complainant.

The Domain name holder was notified of the Complaint and was invited to submit a response. On April 21, 2019 the Domain name holder submitted a response to CEPANI.

On April 23, 2019 CEPANI informed Cedric Vanleenhove that it had the intention to propose Cedric Vanleenhove as Third Party Decider.

On April 24, 2019 CEPANI received the declaration of independence of Cedric Vanleenhove.

By registered letter dated April 24, 2019 Cedric Vanleenhove was appointed by CEPANA as Third-Party Decider to settle the dispute pursuant to Article 7.2 of the Rules.

In the aforementioned letter CEPANI stated that the deliberations would be closed by May 2, 2019 pursuant to Article 13 of the Rules and that the Third Party Decider should forward his decision to CEPANI on May 16, 2019 at the latest pursuant to Article 16.2 of the Rules.

On April 26, 2019 the Complainant requested that the Domain name holder provides a full identification.

On April 29, 2019 the Third-Party Decider invited the Domain name holder on the basis of Article 13 of the Rules to give further information regarding its identity, in particular by providing its certificate of incorporation and any other documents that might allow its identification, as soon as possible.

On April 30, 2019 the Domain name holder replied and provided a screenshot from a database on a Delaware database. The link to the database in questions is as follows: <http://icis.corp.delaware.org/Ecorp/EntitySearch/NameSearch.aspx>.

On May 2, 2019 the deliberations were closed.

4. Factual background information

The Complainant is a legal person governed by public law and created by the Belgian Act of July 4, 2001. It is an overarching association that brings together 11 French-speaking bar associations and one German-speaking bar association in Belgium. According to Article 495 of the Belgian Judicial Code its task consists of

protecting the honour, rights and collective professional interests of its members. It also takes initiatives that are useful for furthering the interests of the lawyers and the litigants. It operates the website avocats.be and owns the EU trademark AVOCATS.BE (a figurative mark consisting of a combination of verbal and figurative elements) no. 011414604 registered on May 13, 2013 in Classes 16, 38, 41 and 45. The trademark consists of a figurative element (the stylised letter “a”) with the words “avocats.be” underneath.

The Domain name holder is Technachos Media, LLC, located in the United States. The Domain name holder identifies itself as RAS PARBAT CAPITAL S.A., located in the United States. The contact person is Vanessa Payet, Country Manager Europe. The e-mail address for the Domain name holder is investments@rasparbatcapital.com. The Third-Party Decider has no information as to what exactly these companies do. What is known is that the Domain name holder uses the website jechoisismonavocat.be, which automatically redirects visitors to www.jechoisismonavocat.com. The Domain name holder describes its website as “*an online media about law, divorce, finance, real estate, legal forms available, etc.*” It also mentions it provides “*a TripAdvisor-like platform to rate experts*”.

The Domain name holder registered the domain name on July 10, 2016.

5. Position of the parties

5.1. Position of the Complainant

The Complainant requests the Third Party Decider to order the transfer of the domain name to the Complainant since all conditions of the Dispute Resolution Policy of DNS BE (Article 10 of the Terms and conditions for .be domain name registrations) are fulfilled.

The Complainant asserts that the domain name is confusingly similar to its EU trademark AVOCATS.BE and its trade name AVOCATS.BE.

The Complainant asserts that the Domain name holder has no rights or legitimate interests in the domain name as the latter does not own any trademark rights in the EU that correspond to the disputed domain name, is not known as a company or other organisation under the name jechoisismonavocat.be, has never been granted a license by the Complainant to use its trademark and has no specific relationship with the Complainant. It further states, in subsidiary order, that even if a right or interest would exist, such right or interest is not legitimate.

The Complainant asserts that the domain name has been used in bad faith. To that end it inter alia refers to a judgment of January 23, 2019 of the Brussels Court of First Instance, to the fact that the website under the disputed domain name operates as a click farm, to the fact that lawyers featured on the website have to pay to take back possession of their personal page and to the Domain name holder’s non-transparent structure which makes prosecution difficult.

5.2. Position of the Domain name holder

The Domain name holder states that its country manager for Belgium is still building their local team and that the domain name is, therefore, not yet in use. The URL jechoisismonavocat.be redirects to jechoisismonavocat.com automatically. Visitors do not see the words “jechoisismonavocat.be” in their browser. The Domain name

holder rejects the links to four profiles of lawyers, given by the Complainant as examples, as fabricated and false. The Domain name holder further asserts that it is not trying to impersonate the Complainant or steal any of its clients as the Complainant does not provide an online medium and tools to rate experts.

The Domain name holder also expresses the hope that rating experts like hotels and restaurants is not illegal and that its use of jechoisismonavocat.be is, therefore, not in bad faith. It underlines that jechoisismonavocat.be is not for sale and has never been for sale. It emphasises that its use of metatags is not evidence of bad faith and refers to having better computer scientists as the cause of their websites performing better on Google.

6. Discussion and findings

Pursuant to Article 16.1 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 domain name holder'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 Domain name holder 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. Identical or confusingly similar to

Based on the evidence submitted by the Complainant it is clear that the Complainant is the owner of the following trademark:

- EU trademark 011414604 for the figurative mark AVOCATS.BE for the classes 16, 38, 41 and 45, registered on May 13, 2013 (more than three years before the Domain name holder's registration of the disputed domain name)



AVOCATS.BE

Based on the evidence brought forward by the Complainant the Third-Party Decider furthermore accepts that the Complainant's trade name is AVOCATS.BE. At least since 2001 (around fifteen years before the Domain name holder's registration of the disputed domain name) the Complainant has become commonly known within the legal profession as well as vis-à-vis the public under the name AVOCATS.BE.

This evidence includes: the use of the name AVOCATS.BE in the press and media to refer to the Complainant; the Complainant's use of the domain names `avocats.be` and `avocat.be` (which redirects to `avocats.be`); the extensive use of AVOCATS.BE on the Complainant's website; the Complainant's e-mail address `info@avocats.be`; the fact that all lawyers who are registered with one of the bar associations falling under the *Ordre des barreaux francophones et germanophone de Belgique* have access to their own `@avocat.be` e-mail address as a reference address and an authentic contact point for colleagues, citizens and the judicial authorities.

The complainant's trademark and its trade name subsequently need to be compared to the domain name under dispute to verify whether they are identical to or at least similar enough to create confusion. From the outset it is clear that the trademark and the trade name are not identical to the disputed domain name. It should, therefore, be assessed whether the trademark and the trade name, on the one hand, and the domain name, on the other hand, are confusingly similar.

The assessment of similarity needs to be effected in abstracto (see e.g. CEPANI case no. 4015 "filipdewinter.be" and "fdw.be", May 2, 2002; CEPANI case no. 44043 "mitsubishi.be", December 31, 2003; CEPANI case no. 44352 "benor.be", August 9, 2006; CEPANI case no. 44352 "michelinrestaurant.be" and "michelinrestaurants.be", October 3, 2014), therefore only the similarity of the signs needs to be examined, without reference to the content of the website using the disputed domain name.

The invoked trademark is a figurative trademark. The domain name should be compared to the verbal elements of said trademark (CEPANI case no. 44398 "sla.be", May 13, 2016), *i.e.* "AVOCATS.BE".

According to established CEPANI case law the suffix `.be` is irrelevant when assessing the similarity between the disputed domain name and the name on which the Complainant claims a right (see e.g. CEPANI case no. 4004 "ricard.be", April 13, 2001 and CEPANI case no. 44021 "napster.be", November 12, 2001).

In this case the situation is special because the trademark as well as the trade name actually contain the suffix `.be`. This finding weighs in favour of establishing confusion.

A letter-by-letter comparison of the trademark (and trade name) and the disputed domain name leads to the conclusion that the disputed domain name contains the whole trademark (and trade name), with the exception of the letter "s". The word "avocat" is the dominant part of the verbal elements of the trademark (and of the trade name) and the letter 's' is less important.

In section 1.7 of the third edition of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions it is stated that "*in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing*" (supported, for instance, recently in WIPO D-2018-2102 and WIPO D-2018-2828).

The words “je choisis mon” are indeed generic, do not distract from the dominant word “avocat” and, on the contrary, only emphasise the latter. The Third-Party Decider, therefore, finds that the trademark and the trade name, on the one hand, and the disputed domain name, on the other hand, are confusingly similar.

As a result, the Third Party Decider concludes that the first condition is met.

6.2. Rights and legitimate interests

The Complainant needs to prove that the Domain name holder does not hold any rights or legitimate interests in the domain name. This requires a negative proof which is impossible: “*negativa non sunt probanda*” (CEPANI case no. 44013 “smirnoff.be”, February 7, 2002). Prima facie evidence by the Complainant suffices, in the sense that it must prove that there are serious grounds to consider that the Domain name holder does not have rights or legitimate interests in the domain name, taking all the circumstances of the case into account (CEPANI case no. 44019 “verfaillie.be”, October 29, 2002).

The Third-Party Decider finds that the Complainant has reached this evidentiary threshold. In particular, it can be accepted that the Domain name holder does not hold any rights or legitimate interests in the disputed domain name because it does not own any trademark rights in the EU that correspond to the domain name, it is not known as a company or other organisation under the name jechoisismonavocat.be, it has never been granted a license by the Complainant to use the latter’s trademark and it has no specific relationship with the Complainant.

A Domain name holder can demonstrate its rights or legitimate interests to the domain name inter alia by invoking the circumstances enumerated in Article 10b(3). However, the Domain name holder has not submitted any relevant arguments in that regard.

Furthermore, none of the criteria of Article 10b(3) of the DNS BE Terms and conditions for .be domain name registrations have actually been met. These circumstances read:

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

The second point has already been dismissed above. As to the first point, it is clear that the Domain name holder’s offering of services is not bona fide (see in that regard the discussion of the bad faith requirement). As to the third point, it should be remarked that the Domain name holder’s use is neither non-commercial nor fair and it is misleading internet users, which prevents its reliance on this point.

In absence of any valid counter-arguments from and/or proof to the contrary (for instance by invoking any of the criteria of Article 10b(3)) by the Domain name holder,

it has been established that the Domain name holder cannot show any rights or legitimate interests in the domain name (CEPANI case no. 44021 "napster.be", November 12, 2001; Cass. 24 March 1947, *Pas.* 1947, I, 123).

As a result, the Third Party Decider concludes that the second condition is met.

6.3. Registration or use in bad faith

The Complainant needs to prove either registration in bad faith or use in bad faith. Registration and use in bad faith are alternative conditions (CEPANI case no. 44158 "denazalee.be", June 12, 2009; CEPANI case no. 44269 "sydec.be", September 6, 2012).

Bad faith may be deduced from a set of circumstances on the basis of which one can only conclude that the Domain name holder was aware, or should have been aware, that the registration or the use of the domain name constituted a violation of the rights of the Complainant (CEPANI case no. 4013 "smirnoff.be", February 7, 2002; CEPANI case no. 44252 "airco.be", March 12, 2012).

The Complainant asserts that the website available under the disputed domain name is a directory of lawyers in which each lawyer has a personal mini-page which contains his or her name, knowledge of languages, payment methods, address, rating (satisfaction score) and an option to display the telephone number (which seems to be a paying service). The lawyers featured on the directory have been included without their knowledge or consent. Moreover, the information contained on the profiles is not reliable (opening hours, accepted payment methods, languages spoken and preferred areas of practice are incorrect). The profiles also create the impression that the lawyers (who are part of the Complainant's association) featured on the website are actually linked to the site because the site identifies them as "our experts" and offers the visitor the option to be called by them. Finally, the possibility for the lawyers to change the information on their profiles is in effect non-existent. In that regard the Brussels Court of First Instance in a judgment of January 23, 2019 has already determined that the Domain name holder's practices infringe the applicable privacy rules (GDPR).

At the time of the issuance of the Third-Party Decider's decision the Third-Party Decider could not retrieve the personal pages to which the Complainant has provided links. It is likely that the Domain name holder has removed them following the judgment of the Brussels Court of First Instance. The Third-Party Decider did however find equivalent mini-pages for lawyers in other countries (most notably for the city of Paris, France).

In order to prove bad faith registration or use the Complainant can inter alia rely on the circumstances enumerated in Article 10b(2) of the DNS BE Terms and conditions for .be domain name registrations. These circumstances read:

- *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 the trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity, or to a competitor of the complainant, for a price that exceeds the costs that the registrant can show are directly related to the acquisition of the domain name; or*

- *the domain name was registered in order to prevent the owner of a trademark, a trade name, a registered name or a company name, a geographical designation, a name of origin, a designation of source, a personal name or a name of a geographical entity to use the domain name and that the registrant has engaged in a pattern of such conduct; or*
- *the domain name was registered primarily for the purpose of disrupting the business of a competitor; or*
- *the domain name was intentionally used to attract, for commercial gain, Internet users to the registrant's web site or other on-line location, by creating confusion with the complainant's trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the registrant's web site or location or of a product or service on his web site or location.*
- *the registrant has registered one or more personal names without the existence of a demonstrable link between the registrant and the registered domain names.*

Point 4 is relevant in the case at hand. There is a serious risk that internet users who are looking for information about the Complainant may think that the disputed domain name is owned by, controlled by or approved by it. By creating confusion with the Complainant's trademark and trade name the Domain name holder is in essence trying, in order to generate profit, to attract internet users who are searching on names of lawyers (see e.g. CEPANI case no. 44203 "cybermut.be", July 30, 2010).

The Third-Party Decider finds that the Domain name holder has used the domain name in bad faith.

As a result, the Third Party Decider concludes that the third condition is met.

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 "**jechoisismonavocat.be**" domain name is to be transferred to the Complainant.

Ghent, May 9, 2019



Cedric VANLEENHOVE
The Third-Party Decider