

**DECISION OF THE THIRD-PARTY**

**DECIDER Tug of War Club / Ms. Jennifer**

**Catherine Rene**

**Case no. 44481: [ttv-versieck.be](http://ttv-versieck.be)**

**1. The Parties**

1.1. Complainant: Tug of War Club Versieck (TTV Versieck)  
Legeweg 17  
8340 Damme  
Belgium

Represented by:

Hans Snauwaert  
Board Member of TTV Versieck  
Leentjesstraat 11  
9990 Maldegem  
Belgium

Hereafter referred to as “**the Complainant**”

1.2. Domain name holder:

Ms. Jennifer Catherine Rene  
33 Sicilian Avenue  
WC1A 1QS London  
United Kingdom

Hereafter referred to as “**the Respondent**”

**2. Domain name**

Domain name: “ttv-versieck.be”  
Registered on: September 20, 2019

Hereafter referred to as “**the Domain Name**”.

### 3. Background

On 11 October 2019, the Complainant filed a Complaint concerning the Domain Name with CEPANI, the Belgian Centre for Arbitration and Mediation, under article 10 of the Dispute Resolution Policy of DNS, incorporated in its General terms and conditions for .be domain name registration (hereafter referred to as the “Policy”) and in accordance with the CEPANI Rules for Domain Name Dispute Resolution (hereafter referred to as the “Rules”).

On 25 November 2019, CEPANI appointed Mr. Patrick Van Eecke to act as a third party decider pursuant to the Rules (hereafter referred to as the “Third-Party Decider”) to settle the dispute concerning the Domain Name. The Third Party Decider accepted this instruction and provided CEPANI with the declaration of independence in accordance with article 8 of the Rules.

On the same day, CEPANI informed the Complainant and the Respondent of the appointment of the Third Party Decider and notified them that deliberations would be closed on 2 December 2019, with the final decision being due on 16 December 2019.

The deliberations were closed on 2 December 2019.

The Respondent responded to the Complaint on 25 November 2019 with the following e-mail:

*“Hello*

*The domain name was legally purchased.*

*I'm sorry that you did not extend the use of the domain on time*

*I understand that it is important for you to restore your site and I don't mind passing you this domain*

*Thx”*

However, as this e-mail was sent later than 21 calendar days of the date of commencement of the proceedings and does not respect the requirements set out in article 6 of the Rules, this e-mail cannot be considered a Response in the sense of the Rules. Therefore, it should be considered that the Respondent did not file a response to the Complaint conform article 6 of the Rules.

In accordance with article 6.4. of the Rules, this decision is thus based solely on the Complaint and the Complainant's exhibits.

### 4. Factual information

The Complainant, TouwTrekVereniging Versieck - Tug of War Club Versieck (TTV Versieck), is a sports club active in Belgium, taking part in Tug of War competitions.

The sports club TouwTrekVereniging Versieck was founded on the 1<sup>st</sup> of May 2001 and is an accredited member of the recognized Flemish Tug of War sports federation “Sportiv vzw” and of the “Vlaamse Traditionele Sporten vzw (VLAS)”. It results from the Sports Flanders website that the TTV Versieck sports club is a de facto association (association de fait/feitelijke vereniging).<sup>1</sup>

---

<sup>1</sup> <https://www.sport.vlaanderen/sportorganisatie?OrgId=00000000-0000-0000-0000-000000029174#>.

According to the DNS Belgium WHOIS record, the Respondent, who is based in the UK, has registered the Domain Name on 20 September 2019. The Domain Name gives access to a website displaying highly suggestive and pornographic content.

## 5. Position of the parties

### 5.1. Position of the Complainant

According to the Complainant, it had been using the Domain Name for several years as the address for the website of its sports club, before registration by the Respondent. Indeed, the Complainant states that, for unclear reasons, it was not informed of the expiration of its Domain Name registration, which was then registered by the Respondent upon availability. This is not contested by the Respondent

The Complainant also states that Versieck is the surname of three of the founding members of the sports club (one of them being the first sponsor of the club), thus explaining the choice of the name TTV Versieck for this sports club. Furthermore, the Complainant claims that this Domain Name is known to many other Tug of War clubs, their members, families, sympathizers and the Belgian Tug of War federation.

According to the Complainant, nor the Respondent, nor the profane content currently displayed on the Domain Name bear any resemblance to the name Versieck. Complainant further adds that the Respondent can in no way show, let alone prove, any claim to the name "ttv-versieck". Lastly, the Complainant alleges that the Respondent is using the popularity of the Domain Name to attract customers for its own profit, thereby clearly causing an inconvenience to the club TTV Versieck, and real harm to the family-friendly nature of TTV Versieck.

The Complainant requests the cancellation of the Domain Name registration and the immediate transfer thereof to the Complainant.

### 5.2. Position of the Respondent

The Respondent did not file any response or observations.

## 6. Discussion and findings

According 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.

According to Article 10, b), 1) of the [DNS.be](#) "Terms and conditions for .be Domain Name registrations – version 6.1", the Complainant has to assert and prove that:

- i) *"the registrant's domain name is identical or confusingly similar to 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 name of a geographical entity in which the complainant has rights; and*
- ii) *the registrant has no rights or legitimate interests in the domain name; and*
- iii) *the registrant's domain name has been registered or is being used in bad faith."*

6.1. The Domain Name is identical or confusingly similar to one of the exhaustively listed signs, names or designations in which the Complainant has rights

The Complainant is a sports club with the name “TouwTrekVereniging Versieck”, commonly shortened as “TTV Versieck”, as is apparent from the Sports Flanders website<sup>2</sup> and the website of the Belgian Tug of War federation<sup>3</sup>. Complainant further states that Versieck is the surname of three of its founding members, thereby explaining Complainant’s choice of the name “TTV Versieck”.

Since 2004 (i.e. 15 years before the registration of the Domain Name by the Respondent), the Complainant is known in Belgium, in particular in the Tug of War sports world, under the name “TouwTrekVereniging Versieck” and/or its abbreviation, “TTV Versieck”.

The evidence for this includes: the use of the name “TTV Versieck” on the websites of Sports Flanders, the Flanders Flemish Tug of War sports federation “Sportiv vzw” and the “Vlaamse Traditionele Sporten vzw (VLAS)”<sup>4</sup>, as well in traditional media<sup>5</sup>.

However, as it also results from the Sports Flanders website that the TTV Versieck sports club is a de facto association (“*association de fait/feitelijke vereniging*”)<sup>6</sup>, it should therefore be assessed whether the name “TTV Versieck” can be considered as a name in the sense of article 10, b), 1) of the Policy in which the Complainant has rights.

The Complainant refers to the “*name of [its] sports club, i.e. TTV Versieck (TouwTrekVereniging or Tug of War Club Versieck)*”, but does not specify whether this name qualifies as one of the types of names listed in article 10, b), 1) of the Policy. Indeed, this article only lists the following signs, names and designations: 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 name of a geographical entity. This list is in principle exhaustive<sup>7</sup> (see also: CEPANI Case 44382, acvcultuur.be), so that all (other) signs, names or designations, which are not listed in this article 10, b), 1) of the Policy, can in principle not be taken into account for the assessment of similarity of the Domain Name. However, the intention of the alternative domain name dispute name resolution procedure was to have a broad scope, as results from DNS’s press release of 30 October 2001 and as confirmed by CEPANI case-law.<sup>8</sup>

---

<sup>2</sup> <https://www.sport.vlaanderen/waar-sporten/vind-een-sportorganisatie/>.

<sup>3</sup> <http://www.touwtrekken.be/versieck.htm>.

<sup>4</sup> See supra notes 2, 3 and 4: <https://www.sport.vlaanderen/waar-sporten/vind-een-sportorganisatie/>, <http://www.touwtrekken.be/versieck.htm>, and <https://www.sport.vlaanderen/sportorganisatie?OrgId=00000000-0000-0000-0000-000000029174#>.

<sup>5</sup> See inter alia: <https://www.nieuwsblad.be/cnt/gnn9ii6b>, <https://www.hln.be/in-de-buurt/damme/start-werken-jeugdcentrum~a0b990e7/>.

<sup>6</sup> <https://www.sport.vlaanderen/sportorganisatie?OrgId=00000000-0000-0000-0000-000000029174#>.

<sup>7</sup> B. DOCQUIR and O. DE PRELLE, “L’enregistrement abusif des noms de domaine; aperçu de la jurisprudence des Tiers-décideurs du CEPANI”, in *.be domeinnamen, 10 jaar bestaan van het reglement ter beslechting van de geschillen in deze materie* », Brussels, Bruylant, 2013, p. 42.

<sup>8</sup> Press release of 30 October 2001 (Leuven) “*Alternatieve geschillenregeling voor .BE domeinnamen wordt gevoelig uitgebreid - België zorgt voor primeur binnen de gemeenschap van Top Level Domeinen Leuven, 30 oktober 2001. DNS pakt uit met een nieuwe versie van de algemene voorwaarden voor domeinnaam registratie. Deze voorwaarden zijn van toepassing voor iedereen die houder is van een .BE domeinnaam. De belangrijkste wijziging betreft de uitbreiding van de bestaande alternatieve geschillenbeslechtingsprocedure. Bij sommige juridische conflicten omtrent .BE domeinnamen hoefde men reeds niet noodzakelijk beroep te doen op de gewone rechtscolleges. DNS BE heeft bij de liberalisering eind vorig jaar voorzien in een alternatieve procedure voor de regeling van domeinnaamgeschillen. Deze procedure is uitgewerkt door Cepani (het Belgisch Centrum voor Arbitrage en Mediatie) dat zich hierbij heeft gebaseerd op de aanbevelingen van het WIPO (World Intellectual Property Organisation) en bestaande procedures voor .com. Zoals in al deze voorbeelden, was het tot nog toe ook voor het .be domein enkel mogelijk op deze procedure een beroep te doen indien het conflict handelde over een merknaam. Binnenkort zal het voor een gedupeerde dus ook mogelijk zijn om gebruik te maken van deze procedure in tal van andere gevallen. Voorzien zijn onder meer : conflicten over persoonsnamen, handels- en vennootschapsnamen, geografische omschrijvingen en andere. Deze uitbreiding is een primeur van formaat. Alhoewel ook op*

In this regard, it should first be concluded that the Complainant does not prove any rights in a trademark, geographical designation, a name of origin, a designation of source or a name of a geographical entity.

However, it might be argued that the name “TTV Versieck” can be considered a trade name, a company name, a registered name or a personal name in the sense of article 10, b), 1) of the Policy.

- Registered name or company name

According to article 2:3 of the Belgian Companies and Associations Code, “*each legal person must have a different name from any other legal person*”. Hence, this article obliges every legal person to have a name, commonly referred to as that entity’s “company name”. *In casu*, however, the Complainant is a de facto association and can therefore not be considered to have a legal personality.

Similarly, it appears that the Complainant cannot be considered an undertaking. Indeed, conform article I.1 of the Belgian Code of Economic Law (BCEL), the following organizations are considered an “undertaking”: “(a) any natural person who independently carries out a professional activity; (b) any legal person; (c) any other organization without legal personality.” However, the same article adds that the following organizations are not considered undertakings: “any organization without legal personality (*feitelijke vereniging/association non constituée en société*) which does not have a profit-making purpose

---

*internationaal vlak wordt gewerkt aan een uitbreiding, is België het eerste land dat voor zijn nationaal Top Level Domein een zo ruim dekkende alternatieve geschillenregeling heeft uitgewerkt. Guy Keutgen, voorzitter van Cepani stelt : “Het was voor ons belangrijk in een eerste fase ervaring te kunnen opdoen met domeinnaam conflicten in een domein dat vrij goed gekend is, namelijk dat van de merknamen. Door deze uitbreiding zal het beslissingstraject ongetwijfeld complexer worden. Wij zijn echter klaar voor deze nieuwe uitdaging.”. Marc Van Wesemael, algemeen directeur van DNS : “De meeste conflicten waren tot nog toe niet echt gekoppeld aan een gedeponeerd merk. Al deze mensen zullen nu ook binnenkort beroep kunnen doen op deze snelle procedure met competente beslissers. Wij zijn steeds voorstander geweest van een zo breed mogelijk toepassingsgebied van de alternatieve procedure en zijn bijgevolg zeer verheugd dat Cepani samen met ons deze belangrijke stap heeft genomen. Hierdoor zijn wij het eerste Top Level Domain registratiekantoor om een dusdanig ruime procedure aan te bieden.” (emphasis added)*  
Own translation: “Alternative dispute resolution for .BE domain names is significantly extended - Belgium is the first in the community of Top Level Domains.

*DNS is introducing a new version of its general terms and conditions for .be domain name registrations. These terms and conditions apply to everyone who owns a .BE domain name. The most important change concerns the extension of the existing alternative dispute resolution procedure. For some legal disputes concerning .BE domain names, it already was not necessary to resort to the ordinary courts. With the liberalisation at the end of last year, DNS BE provided for an alternative procedure for the settlement of domain name disputes. This procedure has been developed by Cepani (the Belgian Centre for Arbitration and Mediation), which has based itself on the recommendations of WIPO (World Intellectual Property Organisation) and existing procedures for .com domain names. As in all these examples, until now it was only possible to invoke this procedure for the .be domain name if the conflict concerned a trademark. Soon it will also be possible for the victim to use this procedure in many other cases. Among other things: conflicts concerning personal names, trade and company names, geographical designations and others. This extension is a first of its kind. Although an expansion is also being worked on at international level, Belgium is the first country that has developed an alternative dispute resolution system for its national Top Level Domain with such a broad scope. Guy Keutgen, President of Cepani, states: “It was important for us to be able to gain experience in the first phase with domain name conflicts in a domain that is fairly well known, namely that of brand names. With this extension, the decision process will undoubtedly become more complex. However, we are ready for this new challenge”. Marc Van Wesemael, Managing Director of DNS: “Most of the conflicts so far have not really been linked to a registered trademark. All these people will now soon be able to rely on this fast procedure with competent decision makers. We have always been in favour of the widest possible scope of the alternative procedure and are therefore very pleased that Cepani has taken this important step together with us. This makes us the first Top Level Domain registration office to offer such a wide range of proceedings.” (emphasis added)*

See also in this regard, CEPANI cases nr. 44152 – zilverfonds.be and nr. 44337 – mediaaan.be.

*and which does not pay any dividends to its members or to persons exercising decisive influence over the organization's policies; (...)*".

A de facto association thus does not qualify as an undertaking, except if it would have a profit-making purpose or would pay dividends to its members or to persons exercising decisive influence over the organization's policies. *In casu*, the Complainant does not prove that it has a profit-making purpose, nor that it pays any dividends to its members or to persons exercising decisive influence over the organization's policies. It therefore appears that the Complainant does not constitute an undertaking in the sense of the BCEL.

Hence, it must be concluded that the name "TTV Versieck" cannot be considered to constitute a "company name" or a "registered name" in the sense of article 10, b), 1) of the Policy.

- Personal name

The name "TTV Versieck" might be argued to constitute a personal name in the sense of article 10, b), 1) of the Policy. The Complainant states that Versieck is the surname of three of the founding members of TTV Versieck. However, the complaint has not been introduced by one of these founding members, so that their personal names cannot be taken into account in this assessment. Furthermore, the name "TTV Versieck" cannot constitute a personal name of Complainant, as – as explained *supra* – Complainant does not constitute a legal person (see also, in this sense: CEPANI Case nr. 44211 – [cadastre.be/kadaster.be](http://cadastre.be/kadaster.be)).

Hence, it must be concluded that the Complainant fails to prove that the name "TTV Versieck" constitutes a personal name in the sense of article 10, b), 1) of the Policy.

- Trade name

On the basis of article 8 of the Paris Convention for the Protection of Industrial Property, which provides that "*a trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark*", which has direct effect, trade names are protected in Belgium. Read in conjunction with article VI.98 of the Belgian Code of Economic Law (BCEL), holders of a trade name can therefore contest a domain name registration which creates confusion with this trade name.

Hence, it should be assessed whether a de facto association can be considered to have such a trade name. In principle, a literal reading might imply that only undertakings could be deemed to have such a trade name. As explained *supra*, however, the Complainant fails to prove that it constitutes an undertaking in the sense of the BCEL.

Nevertheless, certain legal scholars consider that de facto associations can have a trade name.<sup>9</sup> In the same vein, a decision from the Belgian Court of Cassation seems to (implicitly) admit that de facto associations

---

<sup>9</sup> See in this sense, J. VYNCKIER, "Naamgevingsrechten en hun toepassing bij sponsoring", NJW 2015, afl. 325, p. 474-489 (479): "*Niet enkel rechtspersonen, maar ook vennootschappen en verenigingen zonder rechtspersoonlijkheid kunnen een naam voeren en komen dus voor benoeming in aanmerking. Hoe - wel zij strikt genomen geen rechtspersoonlijkheid bezitten (en een juridische algemeenheid vormen) staan zij toch op de drempel van de rechtspersonenconstructie. Een bepaald deel van de rechtsleer beschouwt hen dan ook (terecht) als 'fictieve personen'. Zo is volgens Vananroye het maatschapsvermogen een afgescheiden boedel die onderworpen is aan nettovereffening bij ontbinding. Dit impliceert dat de maatschap (of de feitelijke vereniging) als het ware een fictief persoon is met een materieelrechtelijke inhoud, zonder dat aan hem weliswaar een formele juridische persoonlijkheid wordt toegedicht. Net als rechtspersonen kunnen fictieve personen dan ook een naam toebedeeld krijgen en zich op de hieruit voortvloeiende persoonlijkheidsrechtelijke of handelsnaambescherming beroepen.*"

can have a trade name.<sup>10</sup> Hence, it would suffice that the name “TTV Versieck” is being used in the course of trade. The right to a trade name is created by the first public use thereof.

As evidence that the name “TTV Versieck” is being used in the course of trade, regard can be had to the abovementioned references in the media<sup>11</sup> and on the Tag of War federation websites<sup>12</sup>. Moreover, it is not contested that the Complainant has made the first public use of this name. The Complainant is known under this name with the Tug of War public and is registered under this name with the relevant federations and associations.

Moreover, as explained *supra* and as confirmed by CEPANI case-law, the DNS alternative domain name dispute name resolution procedure was intended to have a broad scope.<sup>13</sup> In that vein, it has for instance already been decided that the *ratio legis* of the dispute resolution procedure allows a public institution to rely on its name for the purpose of this alternative dispute resolution procedure (see in this sense, CEPANI cases nr. 44152 – zilverfonds.be).

---

*Vanzelfsprekend veronderstelt dit alles wederom dat deze fictieve personen aan benoeming onderhevig kunnen zijn.*” (emphasis added)

Own translation: “*Not only legal persons, but also companies and associations without legal personality can use a name and are therefore eligible for naming. Although, strictly speaking, they do not have a legal personality (and constitute a legal generality), they are on the verge of the construction of legal entities. A certain part of the legal doctrine therefore considers them (and rightly so) to be 'fictitious persons'. According to Vananroye, for example, the company's assets are a separate estate that is subject to net liquidation upon dissolution. This implies that the partnership (or de facto association) is, as it were, a fictitious person with a substantive law content, without being attributed a formal legal personality. Just like legal persons, fictitious persons can therefore be assigned a name and invoke the resulting protection of personal or trade names. Of course, all this again assumes that these fictitious persons may be subject to appointment*”.

A similar reading is adopted in the Netherlands. See for instance: <http://www.ie-onderwijs.nl/nl/rechten/handelsnaamrecht/onderneming/>: “*Voldoende is dat er in georganiseerd verband wordt gewerkt met het oogmerk om materieel voordeel te behalen. Denk aan allerlei meer of minder losvaste, samenwerkingsverbanden, zoals vakbonden, VVV's, organisaties van werkgevers, buurtverenigingen, sportclubs, actiegroepen en dergelijke. Allemaal handelsnamen.*” (emphasis added)

Own translation: “*It is sufficient to work in an organised manner with a view to obtaining a material benefit. Think of all kinds of more or less loose partnerships, such as trade unions, VVVs, employers' organisations, neighbourhood associations, sports clubs, action groups and the like. All trade names.*” (emphasis added)

<sup>10</sup> Cass. 22 October 1999, arrest nr. N-19991022-5 (C.98.0305.F): “*(...) Overwegende dat het arrest erop wijst dat 'er voldoende gewichtige, bepaalde en met elkaar overeenstemmende vermoedens bestaan waaruit blijkt dat de (verweerders) in hun eigen naam hebben willen handelen en dat (eiser) met hen in die hoedanigheid heeft gecontracteerd; zo bijvoorbeeld - zijn de schuldbekentenissen van 25 januari 1992 niet opgemaakt ten name van een vereniging maar wel ten name van iedere (verweerder) afzonderlijk en persoonlijk; - bevatten de facturen - waarvan alleen de afschriften zijn overgelegd- geen enkele vermelding waaruit blijkt dat ze niet afkomstig zijn van de (verweerders), handelend in eigen naam, maar van een feitelijke vereniging die tandtechnisch werk uitvoerde onder een welbepaalde handelsnaam maar van een feitelijke vereniging die tandtechnisch werk uitvoerde onder een welbepaalde handelsnaam.*” (emphasis added)

Own translation: “*(...) Whereas the judgment points out that 'there are sufficient weighty, definite and consistent presumptions which show that the (defendants) wished to act in their own name and that (plaintiff) has contracted with them as such'. For instance: -the debt recognition of 25 January 1992 are not in the name of an association but in the name of each (defendant) personally and separately - the invoices, of which only the copies have been handed over, do not contain any indication that they do not come from the (defendants), acting in their own name, but from a de facto association which carried out dental work under a specific trade name.*” (emphasis added)

<sup>11</sup> <https://www.nieuwsblad.be/cnt/gnn9ii6b>.

<sup>12</sup> <https://www.sport.vlaanderen/waar-sporten/vind-een-sportorganisatie/>, <http://www.touwtrekken.be/versieck.htm>, and <https://www.sport.vlaanderen/sportorganisatie?OrgId=00000000-0000-0000-0000-0000000029174#>.

<sup>13</sup> See note 8.

Lastly, it should be noted that the Belgian legislator has adopted a judicial procedure regarding domain names, similar to this alternative dispute resolution procedure, which explicitly allows associations to rely on their association name in such domain name disputes.<sup>14</sup>

As such, it could reasonably be concluded that the name “TTV Versieck” can be considered a trade name in the sense of article 10, b), 1) of the Policy in which the Complainant has rights.

The Third-Party Decider thus concludes that the Complainant has rights in the name “TTV Versieck” on which it can rely for the purpose of this alternative dispute resolution procedure.

Hence, the similarity of the Domain Name to the Complainant’s trade name should be assessed. This assessment has to be conducted *in abstracto* in CEPANI domain name disputes (see CEPANI Case nr. 44352, michelinrestaurant.be / michelinrestaurants.be).

According to well-established case-law of CEPANI, the “.be” extension should not be taken into account for the purpose of assessing the similarity of a domain name, so that the relevant part of the Domain Name is “ttv-versieck” (see e.g. in this sense, CEPANI cases nr. 44441 – joandjoe.be, nr. 44021 – napster.be, nr. 44030 – chopard.be, nr. 44034 – Monsanto.be).

It is thus obvious that the Respondent’s Domain Name is identical to the Complainant’s trade name “TTV Versieck”.

The Respondent does not dispute this.

Consequently, the first condition under article 10, b), 1) i of the Policy is fulfilled.

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

The Complainant submits that the Respondent cannot show or prove any rights to the Domain Name.

Conform article 10, b), 3) of the Policy, the Domain Name holder can demonstrate his rights or legitimate interests to the Domain Name by a number of (non-exhaustively listed) circumstances:

- *“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 acquired no trademark; or*

---

<sup>14</sup> See article XII.22 of the BCEL, which is non-exhaustive and explicitly provides for the possibility for associations to rely on their association name: *“Het is verboden om, met het doel een derde te schaden of er een ongerechtvaardigd voordeel uit te halen, een domeinnaam, waarop men geen enkel recht of legitiem belang kan laten gelden, te laten registreren door een hiertoe officieel erkende instantie, al dan niet via een tussenpersoon, wanneer die domeinnaam identiek is of dusdanig overeenstemt dat hij verwarring kan scheppen met, onder meer, een merk, een geografische aanduiding of een benaming van oorsprong, een handelsnaam, een origineel werk, een naam van een vennootschap of van een vereniging, een geslachtsnaam of de naam van een geografische entiteit, die aan iemand anders toebehoort”.*

Own translation: *“It is prohibited, for the purpose of damaging a third party or taking unfair advantage of it, to have a domain name, to which no right or legitimate interest can be asserted, by an officially recognized body for that purpose, whether or not through an intermediary, if that domain name is identical or similar in such a way that it could create confusion with, among other things, a trade mark, a geographical indication or a designation of origin, a trade name, an original work, a name of a company or association, a family name or the name of a geographical entity belonging to another person”.*



- *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.”*

Hence, according to this article 10, b), 3) of the Policy, it is for the Domain Name holder to demonstrate its rights or legitimate interests to the Domain Name.

*In casu*, the Respondent does not appear to have been using 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 prior to the notice of the dispute. Second, there is no evidence available showing that the Respondent would have been commonly known by the Domain Name. Lastly, there are no indications that the Respondent is making a legitimate and non-commercial or fair use of the Domain Name. Indeed, it appears that the disputed Domain Name leads to a website linking to pornographic and/or explicit content. In view of the above, the Panel finds that the use made by the Respondent of the Domain Name indicates that the Respondent's intention is to unfairly exploit the goodwill of the Complainant's trade name, and that such use cannot be considered to be a “*legitimate and non-commercial or fair use of the domain name*” in accordance with Article 10, b), 3).

Moreover, according to CEPANI case-law, the absence of any link between the Domain Name and the activity of the Domain Name holder can indicate the absence of legitimate interests (see in this sense, CEPANI case nr. 44285 – ccv-vzw.be). *In casu*, it can be observed together with Complainant that there is no demonstrable link between the Domain Name and the activity of the Domain Name holder. At the very least, the Domain Name holder does not prove such link.

Hence, and as the Respondent did not file any response to the Complaint in the sense of article 6 of the Rules, the Third Party Decider considers that the Respondent did not demonstrate his rights or legitimate interests to the Domain Name, nor by any of the circumstances listed in article 10, b), 3), nor by any other circumstance. The Complainant's assertions thus remain uncontradicted, and the Respondent has failed to prove any rights or legitimate interests to the Domain Name.

It must therefore be concluded that the second condition under article 10, b), 1), ii of the Policy is also fulfilled.

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

The Complainant asserts that it has used the domain name for years as the address for the website of the TTV Versieck sports club. Furthermore, the Complainant states that the Domain Name holder preyed on the expiration of the Complainant's registration in order to claim it as his own, and uses it to host a pornographic site. According to the Complainant, the Respondent is using the popularity of the Complainant's website to attract customers for his own profit, thereby clearly causing an inconvenience to the Complainant and to its family-friendly nature.

Conform CEPANI case-law, bad faith registration or use of a Domain Name must be reasonably proven and may be demonstrated by any means, including presumptions and circumstances that indicate with a reasonable degree of certainty the existence of bad faith (see e.g. CEPANI cases nr. 44171 - fulltiltpoker.be and 44441 – joandjoe.be).

According to article 10, b) 2) of the Policy, the evidence of such bad faith registration or use of the Domain Name can *inter alia* be demonstrated by the following circumstances:

- *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.*

*In casu*, the Complainant claims that the Domain Name holder has registered the Domain Name in order to attract, for commercial gain, internet users to the registrant's web site by creating confusion with the Complainant's trade name 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, and without having a demonstrable link with the registered Domain Name.

As concerns the existence of a demonstrable link between the Respondent and the registered Domain Name, it should be noted that the Complainant fails to demonstrate that the name "TTV Versieck" is a personal name in which it has rights (cf. *supra*). Hence, this is not relevant *in casu*.

However, concerning the use and/or registration of the website for commercial gain, the Third-Party Decider considers that the Domain Name has a relatively high degree of distinctiveness. It is thus unlikely that the Respondent would have independently, without deliberately seeking a business opportunity, chosen and registered the name "TTV Versieck" (see e.g. in the same sense: CEPANI case nr. 44171 - fulltiltpoker.be and nr. 44013 - Guinness UDV North America Inc/Mr. O. Noël). Without the use of the name "TTV Versieck", it is likely that the Respondent's website would attract significantly less visitors. Hence, it is likely that the Respondent registered this Domain Name in order to profit from the internet users of this Domain Name by creating confusion 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. (see also in this sense, CEPANI case nr. 44285 – ccv-vzw.be)

As there has not been any response from the Respondent, the overall circumstances seem to indicate with a reasonable degree of certainty the existence of bad faith concerning the registration and/or the use of the Domain Name.

Consequently, the last condition set out in Article 10, b), 1, iii of the Policy is also considered to be fulfilled.

## 7. Decision

As a result, in accordance with article 10, e) of the Policy, the Third-Party Decider hereby orders that the Domain Name “ttv-versieck.be” is to be transferred to the Complainant.

Brussels, 16 December 2019.



Patrick Van Eecke

The Third-Party Decider