



CEPANI
THE BELGIAN CENTER FOR ARBITRATION AND MEDIATION
ARBITRATION N°44496 – ZIPRECRUITER.BE

ZIPRECRUITER INC.

VS.

MR. KAK GAO

DECISION OF THE THIRD-PARTY DECIDER

19 MAY 2020

1. The parties

1.1 Complainant :

ZIPRECRUITER INC.

with registered offices at 604 Arizona Avenue, 90401 California, Santa Monica, United States of America

hereinafter referred to as "*the complainant*"

Represented by

SAFENAMES LTD.

with registered offices at Safenames House, Sunrise Parkway, Linford Wood, Milton Keynes, MK14 6LS, United Kingdom

1.2 Domain name holder, Respondent :

Mr. Kak GAO

Zhongshan lu 18 hao, 310000 Hangzhou, Zhejiang, China

hereinafter referred to as "*the domain name holder*"

2. Domain name

Domain name: **ZIPRECRUITER.BE**

Registered on: 18 February 2016

hereinafter referred to as "*the domain name*".

3. Background of the case

The complainant filed a complaint with CEPANI on 1st April 2020 in view of a decision of a Third-Party Decider, according to the CEPANI Rules for domain name dispute resolution ("the Rules") and the dispute resolution policy of DNS.be, incorporated in its general conditions ("the Policy").

The complainant requests that the domain name be transferred in his favor.

The complaint was notified by CEPANI to the domain name holder who was invited to submit a response .

The domain name holder did not submit a response to the CEPANI.

Mr. Emmanuel Cornu was appointed on April 30, 2020 by the CEPANI as the Third-Party Decider to settle the dispute pursuant to Article 7.2. of the CEPANI Rules for domain name dispute resolution.

The CEPANI also informed the Third-Party Decider that the deliberation would be closed by May 7, 2020 and that its decision needed to be filed by May 21, 2020. Both the Complainant and the domain name holder were informed of the aforementioned appointment and deadlines.

On April 28, 2020, the Third-Party Decider sent the statement of independence to the CEPANI.

On May 21, 2020 pursuant to Article 13 of the CEPANI Rules for domain name dispute resolution, the deliberations were closed.

The Third-Party Decider's decision is issued according to:

- the Complaint dated April 1st, 2020 and annexed documents;
- the Rules of the Belgian Centre for Arbitration and Mediation for domain name dispute resolution (hereafter "CEPANI Rules");
- the "Terms and conditions of domain name registrations under the ".be" domain operated by DNS", entitled "Dispute Resolution Policy" (hereafter "the Policy").

4. Factual information : summary

4.1. The complainant sets out it is a well-known American online recruitment company, Ziprecruiter Inc. initially founded in 2010. The complainant attracts over 7 million active job seekers, over 40 million job alert email subscribers and over 10,000 new companies every month. The complainant segments its business into two main categories, providing its services to individuals and services for commercial entities. The complainant currently has marketing operations in the United States, Canada and the United Kingdom.

The complainant sets out it has substantive rights and interests in the term “ZIPRECRUITER”.

4.2. The domain name holder did not submit any response.

5. Position of the parties

5.1. Position of the complainant

The complainant argues in its complaint that the conditions of Art. 10.b.1 of the Policy are met since:

- the 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 geographical entity in which the complainant has rights;
- the domain name holder has no rights or legitimate interests in the domain name; and
- the domain name was registered or is being used in bad faith.

As a result, the complainant requests that the domain name ZIPRECRUITER.be be transferred to the complainant.

5.2. Position of the domain name holder

The domain name holder did not submit any response in the course of the proceedings.

6. Discussion and findings

6.1 Pursuant to Art. 10.b.1. of the Policy, the complainant has to assert and to 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."

(i) "Is identical or confusingly similar to ..."

6.2.1. According to Article 10.b.1., i) of the Policy, the complainant has to prove that the contested 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.

6.2.2. The complainant alleges to be the owner of a portfolio of very similar or identical trademarks to the domain name ZIPRECRUITER.be, and alleges that it also uses the term "ZIPRECRUITER" consistently within the global marketplace, for instance, within the form of a logo as part of the promotion of its web-based platform, in multiple country-code top-level domains ("ccTLDs"), and on various social medias.

6.2.3. The domain name holder did not submit any answers.

6.2.4. The complainant is the owner of the European Union trademark registration n° 015070898 of the word mark **ZIPRECRUITER** (filed on 3 February 2016 and registered on 13 June 2016 – annex 2 of the Complaint). That trademark is registered to designate goods and services in classes 9, 36, 41 and 42.

The rights granted by a registered trademark date back to the date of application, that is, 3 February 2016. It is therefore a prior right to the domain name which was registered on 18 February 2016.

The complainant also submits a United States trademark registration for the word mark **ZIPRECRUITER** (registration No. 3934310, filed on 19 July 2010 and registered on 22 March 2011 – annex 2 of the Complaint). That trademark is registered to designate services in class 42.

The complainant also alleges to have a Canadian trademark for **ZIPRECRUITER** in classes 9, 41 and 42, but did not submit any certificate in that regard. That trademark having been registered on 28 August 2017, that is, after the registration on the domain name, it will in any case not be taken into consideration.

The complainant also demonstrates that it commercializes its services under the trade name **ZIPRECRUITER**, notably as a logo as part of the promotion of its web-based platform but also as country-code top-level domains (“ccTLDs”) and on social medias (Twitter, Instagram, Youtube and Facebook – see annexes 2, 3, 4 and 5 of the Complaint).

6.2.5. The country-code top-level domain “.be” has to be disregarded in assessing the identity or similarity between the earlier rights of the complainant and the domain name (CEPANI, 44292, “moneygram.be”).

6.2.6. The domain name is therefore identical to the above-mentioned complainant’s relevant earlier rights.

The first requirement is therefore met.

(ii) Rights and legitimate interests of the domain name holder

6.3.1. According to Article 10.b.1., ii) of the Policy, the complainant has to prove that the contested domain name holder has no rights or legitimate interests in the domain name.

6.3.2. The complainant states that the domain name holder has no rights or legitimate interests in the domain name (either in the form of a registered trademark or any unregistered rights, or in the form of a license from the complainant).

Moreover, the complainant states that none of the circumstances of Article 10.b.3 that could demonstrate the rights or legitimate interests of the domain name holder to the domain name are met.

6.2.7. The domain name holder did not submit any answers and therefore did not allege having any rights or legitimate interests in the domain name.

6.3.3. Considering the difficulty of proving such a negative fact (“*negativa non sunt probanda*”), the burden of proof that the domain name holder has no rights or legitimate interests to the domain name is considered to be satisfied when, taking into account all the facts of the case, the complainant can credibly state that he is unaware of any reason or circumstance which could be indicative of such a right or legitimate interest (W.I.P.O., D2001-1020, “pokemonplanet.com”; CEPANI, 44071, “hrs.be”; 44059, “brabant-wallon.be”; 44013, “smirnoff.be”; see also CEPANI, 4038, 4064, 4030, 4013, 44334, 44387 and 44419).

In that regard, the complainant underlines that the domain name has never been used in connection with a *bona fide* offering of goods and services as it was used to host a Pay-Per-Click (PPC) page containing links directing to third-party websites relating to the complainant's expertise (see CEPANI, 44292, "moneygram.be" in that sense). The complainant adds that the domain name holder is not known and has never been known under the term "ZIPRECRUITER". Moreover, the domain name holder is not making a legitimate and non-commercial fair use of the domain name.

Taking into account the above, it is credible to consider that there are no reasons or circumstances that are indicative of any rights or legitimate interest in the domain name by the domain name holder.

Therefore, the burden to prove that there is a right or legitimate interest in the domain name shifts to the domain name holder. The domain name holder has failed to demonstrate such right or legitimate interest. Therefore, the statement of the complainant is deemed to be sufficient to determine the lack of rights and legitimate interests (CEPANI, 44068, "vueling.be"; 44056, "idealstandard.be"; W.I.P.O., D2000-0270, "htmllease"; D2002-0503, "arroyocraftsman.com").

6.3.4. It results from the above that the contested domain name holder had no rights or legitimate interests in the contested domain name.

The second requirement is therefore met.

(iii) Registered or used in bad faith

6.4.1. According to Article 10.b.1., iii) of the Policy, the complainant has to prove that the domain name has been registered or is being used in bad faith.

Article 10.b.2. of the Policy enunciates some circumstances allowing to demonstrate bad faith registration or use of a domain name.

6.4.2. The complainant alleges that the domain name was registered but is also being used in bad faith.

The complainant alleges that its trademark has become well-known in the online recruitment services and that any search of the term "ZIPRECRUITER" on popular search engines and shows that it is the case on *Google* and *Baidu*.

Moreover the complainant has sent a cease and desist letter to the domain name holder through the online form of its website.

The website hosted on the domain name is thematically the same as the goods and services that the complainant offers within the ZIPRECRUITER trademark. It is indeed used to host Pay-Per-Click (PPC) advertising links, some of which relating to the expertise of the complainant. The complainant alleges that the domain name holder's website contains some links directly referring to the complainant's website but does not show any evidence demonstrating this and it will therefore not be taken into account.

The complainant also alleges that the use of its trademark by the domain name holder to host PPC links is intended to commercially gain Internet users by creating confusion with the complainant's trademark.

Moreover, the complainant indicates that the domain name is advertised for sale, which shows that the domain name holder registered the domain name to exploit the commercial value of the complainant's trademark.

6.4.3. The domain name holder did not submit any response.

6.4.4. It should first be noted that the notion of bad faith is a broad notion and that in CEPANI case law, it is sufficient that the domain name has been registered in bad faith or is being used in bad faith, these two criteria being non-cumulative (CEPANI, 44046, "zodiac.be").

6.4.5. Case law also reiterated the principle that one may not deduce bad faith from the mere fact that a domain name holder does not file a response (see CEPANI 4045, 4053, 44309, 44387 and 44419). However, although not being in itself a sufficient evidence for bad faith, the absence of a response, in combination with other elements, may nevertheless serve as a circumstantial evidence for establishing a domain name holder's bad faith.

6.4.6. Bad faith can be proven by any means, including presumptions and circumstances that indicate, with a reasonable degree of certainty, that the domain name holder knew, or ought to know, the Complainant's trade name, as well as its trademark and nevertheless registered the Domain name.

6.4.7. It must also be stressed that under DNS.be terms and conditions, bad faith may be established at the registration or during the use of the Domain name.

6.4.8. Bad faith can be determined by any legal means (CEPANI, 44068, “vueling.be”) and the list of circumstances demonstrating bad faith registration or use of a domain name of Art. 10.b.2., of the Policy is merely illustrative and should therefore not be regarded as exclusive (CEPANI, 44010, “redbulls.be”).

6.4.9. The mere fact that the domain name is advertised for sale does not evidence bad faith and that circumstance will therefore be disregarded.

6.4.10. Bad faith is to be construed as the knowledge (proven as having been actual or having taken place with a reasonable certainty of evidence in the circumstances) by the domain name holder that a third party (the complainant) enjoyed a factual or legal situation previous to, and conflicting with, the litigious registration or use (CEPANI, 44436, “bollre-logistics.be”).

The domain name holder could not reasonably ignore that the complainant was at least using the term “ZIPRECRUITER” as a trade name. In fact, a simple research of the term on popular search engines directly refers to the website of the complainant.

Moreover, the complainant addressed a cease and desist letter to the domain name holder whom was therefore made aware of the complainant’s earlier rights in the term “ZIPRECRUITER”. Nevertheless, the domain name holder continued to use the domain name for hosting a website containing Pay-Per-Click (PPC) advertising links relating to the activity of the complainant, which is online recruiting services, even though the domain name holder could have limited the PPC advertising links to goods or services differing from those of the complainant.

6.4.11. Considering that bad faith can be established on the basis of simple presumptions (CEPANI, 44067, “rembostyling.be”), it makes little doubt that the domain name holder registered the domain name in bad faith, that is, with the knowledge of the existence of the use of the term “ZIPRECRUITER” by the complainant in the field of recruitment services.

Moreover, it makes little doubt that the domain name was used in bad faith by the domain name holder to attract, for commercial use, Internet users to its website, by creating confusion with the complainant’s trademark and tradename. The use of a domain name to host a website containing links to webpages offering goods and services directly or indirectly related to the complainant’s goods or services can be reasonably assumed to be a use in bad faith of the domain name to obtain financial gain by unduly profiting from the complainant’s goodwill and reputation (CEPANI, 44383, “instagram.be”).

6.4.12. It results from the above that the domain name has been registered in bad faith.

The third requirement is therefore met.

7. Decision

Consequently, the Third-Party Decider hereby:

- rules that the complaint is founded;
- orders the domain name “ZIPRECRUITER.be” to be transferred from the contested domain name holder to the complainant pursuant to Art. 10.e of the Policy.

Brussels, 19 May 2020.



Emmanuel CORNU
Third-Party Decider
(signature)