

DECISION OF THE THIRD-PARTY DECIDER

Accenture Global Services Limited / Xinhaimining - turbo liuu

Case No. 444132 CEPANI: accenture-insights.be

1. Parties

1.1. **Complainant:** Accenture Global Services Limited
3 Grand Canal Plaza, Upper Grand Canal Street
Dublin 4
IRELAND

Represented by:

Mr. Jens De Maere
IP Attorney – Gevers Legal NV
Esplanade Oscar van de Voorde 1
9000 Ghent
BELGIUM

1.2. **Domain name holder:** Xinhaimining
turbo liuu
188 Xinhai Street, 100000 Yantai, Shandong,
CHINA

2. Domain name

Domain name: **"accenture-insights.be"**
Registered on: 27 August 2020

Hereafter the "Domain Name".

3. Procedural history

On 30 April 2021, Complainant filed a Complaint with CEPANI requesting that the Domain Name be transferred.

On 1 June 2021, CEPANI appointed Flip Petillion as Third-Party Decider. On 8 June 2021, the deliberations have been closed. No response was received.

In the absence of a Response, the Third-Party Decider renders his decision based on the Complaint, Article 10 of the "Terms and conditions for .be domain name registrations" of DNS.be, entitled "Dispute resolution policy" (the "Policy"), and the Rules for Domain Name Dispute Resolution of CEPANI (the "Rules").

4. Elements of fact

The Complainant, Accenture Global Services Limited, is an international business firm which provides a broad range of services and solutions in strategy, consulting, digital, technology and operations under the name ACCENTURE since 2001. The Complainant's group has become one of the leading global consulting firms with revenues over 44 billion US dollar and with activities in numerous countries, including in China where the Respondent is located.

The Complainant holds numerous ACCENTURE trademarks, including the following:

- EU trademark ACCENTURE No. 001925650, registered on 9 October 2002 in classes 9, 16, 35, 36, 37, 39, 41 and 42;
- International trademark  No. 828118, *inter alia* designating the Benelux and China, registered on 24 February 2004, in classes 9, 16, 18, 25, 28, 35, 36, 37, 41, 42 and 45;
- Chinese trademark ACCENTURE No. 1951607, registered on 28 August 2002 in class 35.

The Domain Name has been registered on 27 August 2020. Based on the evidence provided by the Complainant, the Domain Name used to resolve to a website promoting mineral processing and mining services, including information on products labeled "Xinhai". According to the Complainant, the Xinhai Group is a Chinese company active in the mineral processing and mining sector. Limited additional research conducted by the Third-Party Decider shows that several pictures of products included on the website linked to the Domain Name are identical to the pictures used on the website <https://www.xinhaimining.com/>, operated by a company called Shandong Xinhai Mining Technology & Equipment Inc. The Domain Name is currently inactive.

5. Parties contentions

5.1. Complainant

In summary, the Complainant requests that the Domain Name be transferred. The Complainant argues that the Domain Name is confusingly similar to its ACCENTURE trademarks, trade name and company name. The Complainant further claims that the Respondent has no rights or legitimate interests in the Domain Name. Finally, the Complainant argues that the Respondent registered and used the Domain Name in bad faith. According to the Complainant, the Domain Name has been registered with the Complainant and its trademarks in mind. The Complainant claims that the Domain Name was intentionally used to attract, for commercial gain, Internet users to the Respondent's website by creating confusion with the Complainant's trademark, trade name, registered name or company name as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on his website. In the Complainant's view, the Respondent also shows a pattern of registering domain names including the trademark of a third party. The Domain Name also prevents the Complainant to reflect its rights in a corresponding domain name.

5.2. Respondent

The Respondent did not reply.

6. Discussion and findings

Article 16.1 of the Rules instructs the Third-Party Decider as to the principles the Third-Party Decider must use in determining the dispute: "*The Third-Party Decider shall decide following the Parties views and in accordance with dispute resolution policy of DNS.be, the registration agreement and following the provisions of the present Rules.*"

By virtue of Article 10, b, 1 of the Policy, the Complainant must prove each of the following:

- the Respondent'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
- the Respondent has no rights or legitimate interests in the Domain Name; and
- the Respondent's Domain Name has been registered or is being used in bad faith.

6.1. Identity or confusing similarity

It is undisputed that the Complainant has rights in the trademark, trade name and company name ACCENTURE.

The Domain Name incorporates the Complainant's ACCENTURE trademark in its entirety, simply adding a hyphen and the descriptive term "insights". According to the Third-Party Decider, the Complainant's trademark is easily recognizable within the Domain Name and the added elements do not prevent a finding of confusing similarity.

Additionally, it is well established that the domain name extension ".be" can be disregarded in determining identity or confusing similarity.

Therefore, the Third-Party Decider finds that the Domain Name is confusingly similar to the Complainant's ACCENTURE trademarks, trade name and company name.

It follows that the first element of the Policy has been met.

6.2. Rights or legitimate interests

Pursuant to Article 10, b, 1, ii of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Name. It is established case law that it is sufficient for the Complainant to make it plausible that the Respondent has no rights or legitimate interests in the Domain Name to shift the burden of proof to the Respondent.

There is no evidence available showing that the Respondent would have been commonly known by the Domain Name and the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "turbo liuu" from the organization "Xinhaimining". The Respondent's use and registration of the Domain Name was not authorized by the Complainant.

Where a domain name consists of a trademark plus an additional term, the Third-Party Decider finds that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. In this case, the Domain Name incorporates the Complainant's ACCENTURE trademark and adds the descriptive term "insights". As evidenced by the Complainant, this term can be easily linked to the Complainant as it directly refers to a platform operated by the Complainant under the name "ACCENTURE INSIGHTS PLATFORM". Therefore, the Third-Party Decider finds that the Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

The Complainant provides screen prints of a website linked to the Domain Name promoting mineral processing and mining services of a third party. In the circumstances of this case, the Third-Party Decider finds that such commercial use of the Domain Name, which includes the Complainant's trademark, does not amount to a *bona fide* offering of goods or services.

In view of the above, the Third-Party Decider finds that the Complainant makes it plausible that the Respondent has no rights or legitimate interests in the Domain Name. The burden of proof on this element thus shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name.

As the Respondent did not file any response to the Complaint, the Complainant's assertions remain undisputed and the Third-Party Decider considers that the Respondent did not demonstrate any rights or legitimate interests in the Domain Name.

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

6.3. Registration or use in bad faith

The third element of Article 10, b, 1 of the Policy, requires that the Complainant proves that the Respondent registered or used the Domain Name in bad faith.

Bad faith must be proven but may also be derived from reasonable assumptions in certain circumstances, for example when the domain name consists of a well-known trademark. See e.g. CEPANI Case No. 44233, 5 July 2011 (piperheidsieck.be); CEPANI Case No. 44080, 31 March 2006 (skype.be).

Article 10, b, 2 of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration or use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of 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 website or location or of a product or service on the website or location.

In the present case, the Third-Party Decider finds it very unlikely that the Respondent was unaware of the Complainant and its trademark rights when it registered the Domain Name. The Complainant provides ample evidence of the worldwide reputation of its ACCENTURE trademarks, including in China where the Respondent is located. The Domain Name includes the Complainant's distinctive and well-known trademark in its entirety and adds the descriptive term "insights" which is extensively used by the Complainant, including through the Complainant's "ACCENTURE INSIGHTS PLATFORM". Moreover, a simple Internet search would have revealed the Complainant's trademark rights. In the Third-Party Decider's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith.

The Domain Name has been used to promote third-party products and services. In the circumstances of this case, the Third-Party Decider finds that this use of the Domain Name indicates an intention to take advantage of the reputation of the Complainant and its trademarks to attract, for commercial gain, Internet users to the Respondent's website by creating confusion with the Complainant's trademark. Given the Third-Party Decider's above findings, it is unnecessary to address the other bad faith arguments made by the Complainant.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing.

Therefore, the Third-Party Decider finds that the third element under Article 10, b, 1, iii of the Policy is also fulfilled.

7. Decision

Pursuant to Article 10, e, of the Policy, the Third-Party Decider grants the request of the Complainant that the Domain Name "**accenture-insights.be**" be transferred to the Complainant.

Brussels, 21 June 2021.



Flip Petillion
Third-party decider