

DECISION OF THE THIRD-PARTY DECIDER

Supervizome srl & KOURAMI Anas / BEN MILOUD Az-Eddine

Case no. 444137 / sddebouchage.be

1. The Parties

- 1.1. Complainant: Supervizome srl
KOURAMI Anas (Director)
Avenue Louise 207 box 4
1050 Brussels
Belgium
- Represented by:*
- CHEVEREAU Odile
Attorney at Law
Boulevard Saint-Michel 65/6
1040 Brussels
Belgium
- 1.2. Domain Name Holder: BEN MILOUD Az-Eddine
Rue Stephenson
1000 Brussels

2. Domain name

Domain name: sddebouchage.be
Registered on: 23 May 2021

Hereafter "the Disputed Domain Name".

3. Procedure

On 12 July 2021, the Complainant filed a complaint with CEPANI. The Complainant requests that the Disputed Domain Name be transferred pursuant to Article 10 of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE (hereafter the "Policy") and in accordance with the CEPANI rules for domain name dispute resolution (hereafter the "Rules").

In accordance with Article 5.1 of the Rules, CEPANI notified the Domain Name Holder of the Complaint, and the proceedings commenced on 16 July 2021. In accordance with Article 6.1 of the Rules, the due date for the Response was 6 August 2021.

On 16 July 2021, the Domain Name Holder notified CEPANI that he refused to voluntarily transfer the Disputed Domain Name and that he was prepared to negotiate a price for the transfer.

On 19 July 2021, CEPANI notified the Parties that pursuant to Article 12 of the Rules the language of the proceeding shall be English, but that the Parties are free to agree on French. CEPANI also notified the Parties that the due date for the Response was extended to 9 August 2021. The Parties did not reply to this communication.

On 9 August 2021, the Domain Name Holder sent an informal Response to CEPANI accompanied by three exhibits.

On 9 August 2021, CEPANI appointed Dieter Delarue as Third-Party Decider.

Between 9 August and 16 August 2021, the Parties sent several additional communications to CEPANI, containing arguments and exhibits.

On 16 August 2021, the deliberations were closed.

4. Factual Background information

The First Complainant, Supervizome srl, offers plumbing (unclogging) services in Belgium under the trade name "SD Débouchage". The Second Complainant is the director of the First Complainant.

The Complainant offers its services using the following logo:



The Complainant is the holder of the domain name <sd-debouchage.be>, which it registered on 3 April 2020. This domain name currently resolves to a website advertising plumbing (unclogging) services in Belgium.

The Complainant is also the holder of the Benelux word mark SD DÉBOUCHAGE, registered with the Benelux Office for Intellectual Property (BOIP) on 22 June 2021 for services in classes 37 and 39. The Complainant applied for this trade mark on 21 June 2021 via the accelerated registration procedure.

The Domain Name Holder is the director of the company 1000T Services srl, which appears to offer similar services as the Complainant.

On 1 October 2020, the Complainant sent an e-mail to the Domain Name Holder, demanding that he deletes content copied from the Complainant from another website

operated by the Domain Name Holder via the domain name <plomberie-pro.be>. On 15 April 2021, the Domain Name Holder sent an e-mail to the Complainant, informing the Complainant that the Complainant violates the law by not disclosing its company registration number and address on its website.

On 23 May 2021, the Domain Name Holder registered the Disputed Domain Name. The Disputed Domain Name resolves to a website which is very similar to and reproduces text from the Complainant's website. The website also displays the following logo:



5. Position of the parties

5.1. Position of the Complainant

The Complainant considers the disputed domain name to be identical to its “SD DÉBOUCHAGE” trade mark. The Complainant claims that its trade mark is well-known in Belgium. According to the Complainant, the Domain Name Holder's sole aim is to mislead the Complainant's customers by copying content from the Complainant's genuine website. The Complainant argues that the Disputed Domain Name was thus registered with a view to disrupting the Complainant's commercial operations, and to attempt to attract, for commercial gain, internet users to the Domain Name Holder's website.

The Complainant further maintains that it has (i) issued a complaint with the registrar (ii) filed a criminal complaint with the Belgian authorities and (iii) plans to initiate legal proceedings against the Domain Name Holder. However, the Complainant provides no evidence to support these claims.

5.2. Position of the Domain Name Holder

The Domain Name Holder did not file a formal Response corresponding to the requirements of Article 6.2 of the Rules. However, the Domain Name Holder did submit an informal response to CEPANI on 9 August 2021 containing arguments and exhibits relevant to the case. In accordance with articles 11.1 and 11.4 of the Rules, the Third-Party Decider shall take this Response into consideration for the Decision.

The Domain Name Holder claims to be active in the plumbing and unclogging business since 2015 and to be the holder of several domain names related thereto. According to the Domain Name Holder, the Complainant is a fraudulent business that (i) copied its logo from another company, (ii) posts false or misleading information on its website; and (iii) violates company and tax law.

According to the Domain Name Holder, “SD débouchage” is a descriptive term, in which the acronym “SD” stands for “Service Débouchage”. Accordingly, the Domain Name Holder should be free to use this term as a domain name, especially considering that the Complainant's trade mark was only registered after the Disputed Domain Name.

6. Discussion and findings

6.1. Consideration of supplemental filings

The Rules only provide for the submission of the Complaint by the Complainant (Articles 3 and 4) and the Response by the Domain Name Holder (Article 6). In accordance with Article 13 of the Rules, further statements may only be submitted if requested by a Party and subsequently allowed by the Third-Party Decider.

In the proceedings at hand, both Parties have submitted several informal communications after the appointment of the Third-Party Decider. Neither Party has requested permission to file such further statements. Therefore, the Third-Party Decider shall not take these unsolicited informal communications into consideration.

The Third-Party Decider shall thus issue a decision based on (i) the Complaint and supporting exhibits filed by the Complainant on 12 July 2021; (ii) the Response and supporting exhibits filed by the Domain Name Holder on 9 August 2021; (iii) The Policy and (iv) the Rules.

6.2. Substantive issues

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 Rules.

Pursuant to Article 10.b(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 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 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."*

6.2.1. The Disputed Domain Name is identical or confusingly similar to trade marks in which the Complainant has rights

The Complainant has established that it is the owner of the Benelux word mark "DS DÉBOUCHAGE", registered with the BOIP on 22 June 2021 for services related to plumbing and unclogging.

The Third-Party Decider notes that this trade mark was applied for and registered after the registration of the Disputed Domain Name. However, the fact that a domain name may have been registered before a complainant has acquired trade mark rights does not by itself preclude a complainant's standing to file a domain name complaint, nor a Third-Party Decider's finding of identity or confusing similarity under the first element of Article 10b(1)(i) of the Policy (See *Stoneygate 48 Limited and Wayne Mark Rooney v. Huw Marshall*, WIPO Case No. D2006-0916)¹.

Furthermore, the Third-Party Decider notes that the Complainant has been using the name "SD Débouchage" as a trade name since at least April 2020. The right to a trade name does not require any formalities. The first use of a name as a commercial denominator is sufficient to merit protection, provided that this use is visible, public and continuous. The Third-Party Decider is of the opinion that the Complainant's use of "SD Débouchage" fulfils these conditions.

Considering the general powers of a Third-Party Decider articulated in Article 11 of the Rules, a Third-Party Decider may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.

The Complainant referred to several articles in the Belgian press in its Complaint mentioning the Complainant's trade name and services. The Third-Party Decider found these articles online, published by e.g. Sudinfo and La Libre. The earliest of these articles dates from 29 May 2020. The Third-Party Decider also found various client reviews on Google and "the Golden Pages" dating from 2020 and 2021 about the Complainant's services. Lastly, the Complainant has consistently operated a website via the domain name <sd-debouchage.be> since 3 April 2020 on which it advertised its plumbing services. The Third-Party Decider therefore finds that the Complainant holds trade name rights in the name "SD Débouchage".

The Disputed Domain Name <sddebouchage.be> is identical to the Complainant's "SD DÉBOUCHAGE" trade mark and trade name.

Therefore, the Third-Party Decider finds that the conditions of the first element of Article 10.b(1) of the Policy are met.

6.2.2. The Domain Name Holder has no right or legitimate interests in the Disputed Domain Name

It is commonly accepted that, for the purpose of Article 10.b(1)(ii) of the Policy, a complainant must only make out a *prima facie* case that the domain name holder lacks rights or legitimate interests. The burden of proof then shifts to the domain name holder to provide relevant evidence demonstrating rights or legitimate interests in the domain name.

¹ Given the similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy (UDRP), the Third-Party Decider finds UDRP precedent to be relevant to the proceedings.

In the case at hand, the Domain Name Holder is not commonly known by the Disputed Domain Name, nor was he authorised by the Complainant to register and use the Disputed Domain Name. The Domain Name Holder claims to operate a genuine plumbing business via the website attached to the Disputed Domain Name. However, it appears that the Domain Name Holder does business under the trade name "1000T Services" and not under "SD Débouchage". The Domain Name Holder also provides no evidence to suggest the contrary.

The Domain Name Holder also makes no legitimate and non-commercial or otherwise fair use of the Disputed Domain Name. The evidence provided by the Complainant shows that text and content on the Domain Name Holder's website attached to the Disputed Domain Name have been copied from the Complainant's website. The Third-Party Decider finds that by using the Complainant's trade name and copying the Complainant's website, the Domain Name Holder has intended to misleadingly divert consumers for commercial gain to its own website.

The Domain Name Holder's argument that the term "SD" is a descriptive term that stands for "Service Débouchage" is not convincing and irrelevant considering the circumstances of the case.

Considering the above, the Third-Party Decider determines that the Complainant has sufficiently established, and the Domain Name Holder has not rebutted, that the Domain Name Holder has no right or legitimate interests in the Disputed Domain Name.

Therefore, the Third-Party Decider finds that the conditions of the second element of Article 10.b(1) of the Policy are met.

6.2.3. The Disputed Domain Name has been registered or is being used in bad faith

Article 10.b(2) of the Policy provides a non-exclusive list of circumstances that can demonstrate bad faith. Among these circumstances are (i) the registration of a domain name to disrupt the business of a competitor; and (ii) 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 trade mark, 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.

Generally, bad faith will be found if a complainant proves that the domain name holder has targeted the complainant in some way, or at least had the complainant or its trade mark in mind, when he registered or used the domain name.

In the present case, the Domain Name Holder was clearly aware of the Complainant and its trade name when it registered the Disputed Domain Name. Indeed, the Domain Name Holder was already contacted by the Complainant in relation to a similar dispute before the registration of the Disputed Domain Name. The Complainant and the Respondent are also competitors in the same geographic region. As a result, it is

undisputable that the Domain Name Holder had the Complainant in mind when registering the Disputed Domain Name.

The Domain Name Holder also copied the Complainant's trade name, logo and large portions of the Complainant's website. Such use is clearly intended to attempt to attract, for commercial gain, Internet users to the Domain Name Holder's website, by creating a likelihood of confusion with the Complainant's trade mark and trade name.

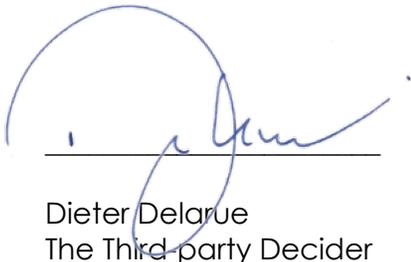
The Domain Name Holder's allegations that the Complainant has itself copied its logo from another company, posts false or misleading information on its website, or has violated company and tax law is not only unsubstantiated, but also has no impact on the finding that the Domain Name Holder has registered and used the Disputed Domain Name in bad faith.

Therefore, the Third-Party Decider finds that the conditions of the third element of Article 10.b(1) of the Policy are also met.

7. Decision

Consequently, pursuant to Article 10(e) of the Policy, the Third-Party Decider hereby rules that the domain name registration for the Disputed Domain Name <**sddebouchage.be**> is to be transferred to the Complainant.

Antwerp, 30 August 2021.



Dieter Delgrue
The Third-party Decider