

DECISION OF THE THIRD-PARTY DECIDER

Tender Experts BV / Government Exchange

Case No. 444191 CEPANI: tender-experts.be

1. Parties

1.1. Complainant:

TENDER EXPERTS BV
Oud Korenhuis 3/2
1000 BRUSSELS

Represented by:

Mr. Stijn CLAEYS
Mr. Bert DEHANDSCHUTTER
Mr. Arne BAERT
Attorneys at law – Racine
Keizer Karellaan 586/9
1082 BRUSSELS

1.2. Domain name holder:

GOVERNMENT EXCHANGE BVBA (GOVEX)
Esplanade 1/71
1020 Brussels

Represented by:

Mr. Sébastien MELARDY
Attorney at law – UGGC Avocats
Chaussée de la Hulpe 177/8
1170 BRUSSELS

Also referred to as the “Respondent”

2. Domain Name

Domain Name: "tender-experts.be"
Registered on: 3 December 2020

3. Procedural history

On 13 June 2023, the Complainant filed a Complaint with CEPANI requesting that the Domain Name be transferred.

On 14 July 2023, the Respondent filed a Response with CEPANI contesting the Complainant's arguments.

On 19 July 2023, CEPANI appointed Flip Petillion as Third-Party Decider.

On 26 July 2023, the Complainant requested an additional term to submit a reply to the Respondent's Response and offered the Respondent an opportunity to reply as well. On 27 July 2023, the Respondent agreed on the proposed additional terms. On the same day, the Third-Party Decider confirmed the deadlines for the additional submissions: 26 August 2023 for the Complainant and 26 September 2023 for the Respondent. The Complainant sent an additional submission on 25 August 2023. The Respondent did not reply. On 29 September 2023, the deliberations have been closed.

The Third-Party Decider renders his decision based on the Complaint, the Response, the Complainant's additional submission of 25 August 2023, Article 10 of the "Terms and conditions for .be domain name registrations" of DNS Belgium, entitled "Dispute resolution policy" (the "Policy"), and the Rules for Domain Name Dispute Resolution of CEPANI (the "Rules").

4. Elements of fact

Both parties appear to provide services in the field of public procurement.

The Complainant, TENDER EXPERTS BV, was legally founded on 26 October 2020 and its incorporation was published in the Belgian Official Gazette on 28 October 2020. Prior to and in the context of the pending incorporation, a company related to the Complainant appears to have registered a domain name <tenderexperts.be> on 11 March 2020.

The Respondent, Government Exchange BVBA (Govex), registered the Domain Name <tender-experts.be> on 3 December 2020. The Domain Name redirects to the domain name <govex.be>, which resolves to a website operated by the Respondent and offering services in the field of public procurement.

5. Parties' contentions

5.1. Complainant

In summary, the Complainant requests the transfer of the Domain Name. The Complainant argues that the Domain Name is identical to its company name and trade name, and nearly identical to its domain name <tenderexperts.be>. The Complainant further claims that the Respondent never had and never will have legitimate interests in the Domain Name. According to the Complainant, the Respondent is/was fully aware of the existence of the (newly established) company of the Complainant and the only interest of the Respondent is to mislead Internet users and divert (potential) customers to its own website, using a domain name almost identical to a domain name used by the Complainant. The Complainant claims that the Respondent does not even (actively) uses the Domain Name as it automatically redirects to another domain name. Finally, the Complainant argues that the Respondent registered or used the Domain Name in bad faith for the reasons set out above.

5.2. Respondent

In summary, the Respondent claims that it has rights and legitimate interests in the Domain Name as it is composed of generic terms. The Respondent does not dispute the fact that in choosing the Domain Name, the Respondent intended to attract customers. However, according to the Respondent, this circumstance alone is not sufficient to demonstrate the absence of rights and legitimate interests on its part.

The Respondent further claims that the Complainant has not demonstrated that the Respondent is knowingly attempting to divert Internet users to its own site by creating a risk of confusion with its corporate name. According to the Respondent, there is nothing in the file to suggest that use of the Domain Name would give rise to a risk of confusion in the eyes of consumers or Internet users. The Respondent claims that there is no bad faith on its part as the renamed nature of the company name TENDER EXPERTS has not been sufficiently proven.

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 rule on the Complaint with due regard for the views of the Parties and in accordance with the Policy of DNS Belgium, the Registration Agreement and these 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

The Complainant must prove that the Domain Name is identical or confusingly similar to a name or sign in which it has rights.

As a preliminary note, the Third-Party Decider observes that the Complainant did not clearly identify the rights on which it based its Complaint. It is only after the Respondent's Response that the Complainant provided further clarification.

In summary, the Complainant invokes rights in a trade name, a company name and a domain name.

First, regarding the domain name <tenderexperts.be>, the Third-Party Decider observes that although it was not registered by the Complainant, the Respondent does not seem to dispute the link between this domain name and the Complainant. The Third-Party Decider therefore accepts to consider this domain name as if the Complainant was the holder.

The rights to a sign that can be taken into consideration in the context of the present proceedings are listed, in a limitative way, in article 10(b)(1)(i) of the Policy: 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.

The Third-Party Decider finds that the Domain Name <tender-experts.be> and the domain name <tenderexperts.be> used by the Complainant are confusingly similar.

However, in the Third-Party Decider's view, it is not sufficient to demonstrate that the domain name <tenderexperts.be> was registered prior to the Domain Name to establish the existence of a protected earlier right that can justify the transfer of the Domain Name. The registration of a domain name as such does not confer any exclusive right that warrants the transfer of the Domain Name (see CEPANI Case No. 444108, 1 March 2021 (comparateurenergie.be)).

Second, the Third-Party Decider observes that the Complainant also invokes rights in the name TENDER EXPERTS as a trade name and company name.

Given the descriptive nature of the terms “tender” and “experts” for the type of services offered by the Complainant (and the Respondent), the Third-Party Decider would have expected the Complainant to provide concrete arguments and evidence showing that the combination of these terms can be, and is, protected as a trade name under national or international law, as well as the extent of the protection.

That being said, it is undisputed that the name TENDER EXPERTS corresponds to the Complainant’s company name. The Domain Name incorporates the Complainant’s company name, simply adding a hyphen between the two words.

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 at least confusingly similar to the Complainant’s TENDER EXPERTS 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.

According to the Complainant, the Respondent was fully aware of the existence of the (newly established) company of the Complainant and the only interest of the Respondent is to mislead Internet users and divert (potential) customers to its own website, using a domain name almost identical to a domain name used by the Complainant. The Complainant claims that the Respondent does not even (actively) uses the Domain Name as it automatically redirects to another domain name.

However, as mentioned by the Respondent, the Third-Party Decider finds that the descriptive nature of the Domain Name is decisive in this case for the reasons set out below.

It is undisputed that the parties offer competing services in the field of public procurement. The Third-Party Decider finds that both parties have valid reasons to describe themselves as “tender experts”.

In the Third-Party Decider’s view, the Complainant does not show that its invoked rights are sufficient to prevent the Respondent active in the same field from using the term “tender experts” in the Domain Name.

The Complainant was founded in October 2020. The Complainant provides evidence of use of the term TENDER EXPERTS in invoices and emails dating from November 2020 or after. The Domain Name was registered less than two months later, on 3 December 2020. In these circumstances, the Third-Party Decider does not find that

the Complainant can rely on sufficient use to justify some type of acquired distinctiveness of the name TENDER EXPERTS in relation to its business.

Although the Complainant does not expressly invoke trademark rights, it provides a copy of a collaboration agreement with a third party who appears to hold a figurative Benelux trademark including the term TENDER EXPERT. This agreement provides that the Complainant is granted a right to use the registered trademark. According to the Third-Party Decider, two provisions of the agreement are particularly relevant to this case:

- Article B of the agreement provides that the parties (including the Complainant) expressly acknowledge that the name “Tender Expert” as part of the figurative mark must be qualified as a mark with sufficient distinctive character by the combination of the signs used, the color, the graphical design and the font. In the Third-Party Decider’s view, the Complainant thereby implicitly admits that the term “Tender Expert” does not have sufficient distinctive character on its own;
- Article D provides that upon termination of the agreement, the Complainant will use the domain name <tenderexperts.be> and the third party will use the domain name <tenderexpert.be>. Both domain names differ by only one letter. According to the Third-Party Decider, this indicates that domain names which are very similar to the domain name used by the Complainant, such as the Domain Name, do not meaningfully prevent the Complainant from exercising its activities.

The offering of competing services under a name that is descriptive for the type of services offered is not prohibited as such. It is admitted that the Complainant is affected by the use of the Domain Name by the Respondent, a competitor of Complainant, but such impact does not amount to an absence of right or legitimate interest for the Respondent *per se* (see CEPANI Case No. 444108, 1 March 2021 (comparateurenergie.be)).

It must therefore be concluded that the second element under Article 10, b, 1 of the Policy is not fulfilled.

6.3. Registration or use in bad faith

As the Complainant must show that all three elements under Article 10, b, 1 of the Policy are fulfilled, it is not necessary to address the last element.

However, the Third-Party Decider wishes to add the following:

- the Third-Party Decider acknowledges the fact that there are indications that the Respondent knew of the Complainant when registering the Domain Name. This may suggest bad faith registration but as mentioned above, the Third-Party Decider finds that in the circumstances of this case, the

Respondent has rights and legitimate interests in the Domain Name given its descriptive nature;

- taking into account the descriptive nature of the Domain Name, the Third-Party Decider does not find that the current use of the Domain Name as described by the Complainant is likely to mislead Internet users. The web page to which the Domain Name redirects immediately mentions the company name of the Respondent and does not appear to target the Complainant.

The present extra-judicial procedure for the resolution of disputes concerning “.be” domain names is exceptional in nature and the Third-Party Decider's competence is confined to the assessment of the three conditions of article 10, b, 1 of the Policy.

The decision is without prejudice to the right of the parties to bring proceedings before the courts (see CEPANI Case No. 444108, 1 March 2021 (comparateurenergie.be); CEPANI Case No. 44211, 24 January 2012 (cadastre.be-kadaster.be)).

7. Decision

Pursuant to Article 10, e, of the Policy, the Third-Party Decider denies the request of the Complainant that the Domain Name “**tender-experts.be**” be transferred to the Complainant.

Brussels, 13 October 2023.

A handwritten signature in blue ink that reads "Flip Petillion". The signature is written in a cursive style and is positioned above a horizontal line.

Flip Petillion
Third-Party Decider