

DECISION OF THE THIRD-PARTY DECIDER

Slechtzienden en Blinden Platform Vlaanderen VZW / Blindenzorg Licht en Liefde VZW

Case no. 44464 / zoc-sbpv.be

1. Parties

1.1. Complainant: **Slechtzienden en Blinden Platform Vlaanderen,
afgekort: SBPV VZW**
Kortrijksesteenweg 304
9000 Ghent

Represented by Mr. Manuel Delaere

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

1.2. Domain name holder: **Blindenzorg Licht en Liefde VZW**
Oudenburgweg 40
8490 Varsenare

Represented by Mr. Jan De Smedt

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

2. Domain name

Domain name: zoc-sbpv.be
Registered on: 9 December 2015

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

3. Procedure

On 10 February 2019, the Complainant submitted its complaint to CEPINA, requesting the transfer of the Domain Name to the Complainant.

On 10 March 2019, the Respondent submitted a response to CEPINA.

On 14 March 2019, the undersigned, hereinafter referred to as the “**Third Party Decider**”, executed the Declaration of Acceptance, Availability and Independence and submitted this declaration to CEPINA. On the same day, CEPINA appointed the Third Party Decider in accordance with article 7.2 of the CEPANI Rules for domain name dispute resolution to settle the dispute involving the Domain Name.

On 20 March 2019, the Complainant submitted a reply to the response of the Respondent to CEPINA.

On 22 March 2019, the deliberations were closed.

4. Factual Background information

Both the Complainant and the Respondent are not-for-profit organisations providing aid to blind and visually impaired persons.

On 24 December 2010 both parties entered into a settlement agreement (hereinafter referred to as the "**Settlement Agreement**"). In the Settlement Agreement, the Respondent transferred its rights to funding from the Flemish Government as a recognised socio-cultural movement, under the project name "*Zicht op Cultuur*", to the Complainant.

On 1 January 2014 the Complainant and Koninklijke Maatschappij voor Blinden en Slechtzienenden VZW (KMBS VZW) entered into an agreement (hereinafter referred to as the "**KMBS Agreement**") through which Complainant became a member of the "*Vlaamsoogpunt*" platform which implied that Complainant would receive ICT-support (among other types of support).

On 9 December 2015 the Respondent *registered* the Domain Name, but the Domain Name has always been *used* in relation to the Complainant's website.

From the evidence submitted by the Complainant, it appears that KMBS VZW unilaterally terminated the KMBS Agreement on 31 December 2018. On 3 January 2019 the Complainant was apparently cut off from all access to the website that was accessible through the Domain Name.

In several documents submitted by the Complainant and on several websites (e.g. <zichtopcultuur.be> and <sbpv.be>) the Complainant identifies and presents itself as ZOC-SBPV VZW or in full text as Zicht op Cultuur – Slechtzienenden en Blinden Platform Vlaanderen VZW.

The Complainant also uses the following logo in its brochures and on its websites:



On 23 November 2018, i.e. about one month before the KMBS Agreement was terminated, the Respondent filed the Complainant's logo as a Benelux trademark (hereinafter referred to as the "**Trademark**"). The Complainant submitted evidence that shows that it has used this logo before 23 November 2018.

5. Position of the parties

5.1. Position of the Complainant

The Complainant submitted various documents as evidence to support its statements, which can be summarized as follows:

- The Complainant states that before mid-2015, it used the name "*Slechtzienden en Blinden Platform Vlaanderen*" or the abbreviation SBPV, for one part of its activities and the name "*Zicht op Cultuur*" for another part. It states that there were complaints about this communication strategy and that it therefore decided to start using one name: "*Zicht Op Cultuur op het Slechtzienden en Blindenplatform Vlaanderen*", abbreviated ZOC-SBPV. The Complainant states that "*from then on we are deploying all our activities around the domain name zoc-sbpv.be*".
- The Complainant contends that the Respondent has no "*affinity*" (sic) to the Domain Name. It mentions that the Domain Name is not being used at the time of preparing the Complaint and that apparently somebody has cut off the link between the Domain Name and the Complainant's website.
- The Complainant mentions that it is the owner of the domain names <zichtopcultuur.be> and <sbpv.be> which are actively used by the Complainant.
- The Complainant states that up to 2018 it was a member of the network "*Vlaams oogpunt*" and that since one of their services is ICT support, "*we ordered them to register and manage our domain name zoc-sbpv.be*".
- The Complainant states: "*Due to a governmental change of sponsoring strategy, some of Vlaams oogpunt's members decided to compete us on our sponsoring. Therefore they expelled us from their network, stopped all servicing and try to prevent us continuing our activities. One of their actions was to abuse their IT admin rights for taking over the control of our domain name zoc-sbpv.be and shutting down the dns forwarding to our website and mailboxes*".
- The Complainant argues that the Respondent has registered the trademark "*zicht op cultuur*" on 5 March 2019 "*so clearly after the discussion has arisen about cancelation of our cooperation, and clearly whilst the domain name zoc-sbpv.be is being used actively by us since several years*". The Complainant states that the ownership of a trademark is not relevant since an entity can be owner of a domain name, without being owner of a trademark. It says that it "*gave the order to register the domain name in the complainants name years before the counter party registered the trademark, in bad faith and after the occurrence of the current dispute*".
- The Complainant contends that "*in the hands of the counterparty (...) (the Domain Name) can only serve to cause name confusing to our partners and target group*".
- The Complainant states that in a settlement agreement the Respondent transferred "*Zicht op Cultuur*" and its fundings" to the Complainant.

- The Complainant also states that it recruited a professional negotiator to get to a settlement with the Respondent but without any result and that also a letter of its lawyer gave the Respondent sufficient time to transfer the Domain Name.

The Complainant requests the transfer of the Domain Name.

5.2. Position of the Domain name holder

The Respondent submits no evidence of any kind and states the following:

- “ 1. There is no question of registration in bad faith since:
- Blindenzorg Licht en Liefde is founder of the project “zicht op cultuur” (shortend in ZOC as use in de domianname) as registrated and as such recognized by the government of the Flemmish community in 2005. After five years the project was outsourced to an extra “vzw” on strategic grounds, with holding all rights by Blindenzorg Licht en Liefde vzw. There was no exolicit nore implicit transmission of these existing rights, mainly to ensure a structural partnership of Blindenzorg Licht en Liefde vzw in this joint venture.
 - The vzw Complainant is no owner of the trademark, on the contrary the current domain name holder is.
 - The domain name was registered with the purpose of assure the rights of using the name (and abbreviations as ZOC) to Blindenzorg Licht en Liefde vzw, founder on the one hand and trademark – owner on the other hand of “Zicht op Cultuur”. Complainant is as such turn around the reality by claiming anykind of bad faith as nor founder of the project, nore owner of de trademark.
There as such no way that there would be question of a registration primarily for the purpose of disrupting the business of a competitor. We claim here on the contrary that the complainant is complaining, even without leaving a possibility to make an amicable settlement, is doing this with the primarily purpose to disrupt Blindenzorg Licht en Liefde of continuing to achieve their goals (we have since 1924) v-by this project
 - Prior to any notice of the dispute the registrant used since 2005 this name and divers names/abbreviations corresponding to the domain name in connection with a bona fide offering of services were used continuously by Blindenzorg Licht en Liefde.
 - Widely the registrant is commonly known as owner of the projectname / trademark. Even several efforts by SBPV vzw to change this perception did not change this situation.
 - The vzw complainant is as legal entity (and not by her name) the owner of recognition by the flemmish government and lined subsidy with rights and obligations. As such there is no question that Blindenzorg Licht en Liefde is causing damage by holding all rights on the trademark / domain name.
 - Blindenzorg Licht en Liefde is free to bringing in use the trademark / domain name in use by another legal entity. Since the contained partnership with SBPV vzw is ended 31/12/2018 and Blindenzorg Licht en Liefde has the explicit goal to continue the project by herself and in partnership with partners other than SBPV vzw.
 - CONCLUSION** We consider the complaint as an attempt in bad faith by the complainant to disrupt Blindenzorg Licht en Liefde in the continuing of this project. ”

6. Discussion and findings

Pursuant to Article 16.1 of the *CEPANI rules for domain name dispute resolution*, 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.

Pursuant to Article 10b (1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, the Complainant must provide evidence of the following:

- *"the Domain name 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."*

6.1 The Domain Name is confusingly similar to a social name in which the Complainant has rights

The Complainant is the holder of the social name "*Slechtzienden en Blinden Platform Vlaanderen, abbreviated: SBPV*". The letters "**SBPV**" are a part of this name and the Complainant therefore has rights in this (part of the) name.

In assessing whether or not a Domain Name is confusingly similar to a social name, "*the overall facts and circumstances of a case (including relevant website content)*" may be taken into account (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, p. 17 and the WIPO panellist decisions mentioned there).

Moreover, in previous cases it has been decided that there is confusing similarity "*as soon as there exists a considerable risk that the ordinary Internet user familiar with the Complainant's services will start a search on the Internet for the Complainant by entering the domain name at stake into his/her browser followed by a very common top generic top level domain*" (see WIPO Case N° D2002-0015 and WIPO Case N° D2000-1575).

In the case at hand, it is clear that the Complainant identifies and presents itself in several documents and on several websites (e.g. <zichtopcultuur.be> and <sbpv.be>) as **ZOC-SBPV VZW**.

Given the fact that **i)** the Domain Name incorporates the entirety of the registered abbreviated social name of the Complainant, **ii)** the Domain Name is identical to the name used by the Complainant to identify itself on various websites and **iii)** it is very likely that the ordinary internet user familiar with the Complainant's services will enter the Domain Name in his/her browser when searching for the Complainant, the Third Party Decider considers the Domain Name to be confusingly similar to the social name of the Complainant.

6.2 The Domain name holder has no rights or legitimate interest in the Domain Name

The Respondent argues that it holds all the rights on the project "*zicht op cultuur*", that no rights on this project were transferred and that the project was (only) outsourced.

- First of all, the Settlement Agreement clearly refers in article 2 to a *transfer* of certain rights from Respondent to Complainant.
- Secondly, the domain name at stake in the current proceedings is ZOC-SBPV.BE. Even if the Respondent would have any rights or legitimate interest in the project "*zicht op cultuur*" or in the name "*zicht op cultuur*" or in the letters "ZOC", this in itself does not give it any rights in the Domain Name since this name also contains the letters "SBPV".

The Respondent refers to the fact that it is the owner of the Trademark. The Trademark consist of the words "*zicht op cultuur*", the letters "SBPV" and a number of images. On the basis of the evidence available to the Third Party Decider it appears that the Respondent has filed the Trademark in bad faith. The Respondent did not submit any evidence that it has ever used the Trademark, while the documents submitted by the Complainant demonstrate that the Complainant was using a logo that is identical to the Trademark before the Respondent filed the application for the Trademark. The Third Party Decider therefore holds that the ownership of the Trademark does not imply that the Respondent demonstrates that it has any rights or legitimate interest in the Domain Name.

The Respondent alleges that "*prior to any notice of the dispute*" it used "*since 2005 this name and divers names/abbreviations corresponding to the domain name with a bona fide offering of services*" and that "*widely the (Respondent) is commonly known as owner of the projectname/trademark. Even several efforts by SBPV VZW to change this perception did not change this situation*".

- The Respondent did not file any evidence to support any of these allegations.
- The Complainant on the other hand, submitted several documents (published brochures and reports) in which it uses the name ZOC-SBPV and a logo that is identical to the Trademark.
- In this respect, the Third Party Decider cannot accept any of the allegations of the Respondent.

In sum, the Third Party Decider holds that the Respondent has no rights or legitimate interests in the Domain Name.

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

The Domain Name is currently not being used. It was previously used to access the website of the Complainant.

The non-use of a domain name can constitute use in bad faith under the doctrine of "*passive holding*". One of the factors that is taken into account to accept use in bad faith is "*the implausibility of any good faith use to which the domain name may be put*" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, <https://www.wipo.int/export/sites/www/amc/en/docs/overview3.pdf>, pages 59-60).

The Respondent argues that it is free to grant usage rights on the Trademark and the Domain Name to another legal entity since it wants to continue the project itself or with another partner. This demonstrates that the Respondent intends to start using the Domain Name to provide access to its own website or the website of another legal entity

(which will also use the Trademark). On the basis of the evidence available to the Third Party Decider, the Third Party Decider holds that such use would not constitute any good faith use.

7. Decision

Consequently, pursuant to Article 10(e) of the *Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE*, the Third-Party Decider hereby rules that the domain name registration for the "**zoc-sbpv**" domain name is to be transferred to the complainant.

Ghent, 4 April 2019



Hans Dhondt
The Third-party Decider