

**DECISION OF THE THIRD-PARTY DECIDER**

**BESIX GROUP SA / Mr. Laurent Peters**

**Case no. 44478: besix-group.be**

**1. The Parties**

1.1. Complainant: BESIX GROUP SA  
Avenue des Communautés 100  
1200 Woluwe-Saint-Lambert  
Belgium

Represented by:

Etienne Wéry  
Attorney at law – Ulys  
Avenue de la Couronne 224  
1050 Brussels  
Belgium

Hereafter referred to as “the Complainant”

1.2. Domain name holder:

Mr. Laurent PETERS  
Rue Fabrey  
4000 Liège  
Belgium

Hereafter referred to as “the Respondent”

**2. Domain name**

Domain name: “**besix-group.be**”  
Registered on: July 24, 2018

Hereafter referred to as “the Domain Name”.

### **3. Procedure**

On 9 September 2019, the Complainant filed a Complaint concerning the Domain Name with Cepani, the Belgian Centre for Arbitration and Mediation, in accordance with the Cepani Rules for Domain Name Dispute Resolution (hereafter referred to as the “Rules”) and the Dispute Resolution Policy of DNS, incorporated in its General terms and conditions for .be domain name registration (hereafter referred to as the “Policy”).

On 8 October 2019, Cepani appointed the undersigned, Mr. Tom Heremans, as a Third Party Decider (hereafter referred to as the “Third-Party Decider”) to settle the dispute involving the Domain Name.

The deliberations were closed on 15 October 2019.

The Respondent did not file a response to the Complaint.

In accordance with article 6.4. of the Rules, this decision is based solely on the Complaint and the Complainant’s exhibits.

### **4. Factual Background information**

The Complainant is a leading construction company in Belgium, with the company name “BESIX GROUP”.

The Complainant registered the BESIX trademark in numerous countries around the world including the Benelux and also holds several domain names including the BESIX trademark, such as “besixgroup.be”, “besixgroup.com”, “besix.com”, “besix.be” etc.

According to the Complainant, from June 2018 onwards, an undefined number of companies (business relations of the Complainant) have been contacted by email from *inter alia* the account [XX@besix-group.be](mailto:XX@besix-group.be) (i.e. the Domain Name at stake) to place an order. The Complainant states that in the email messages the BESIX trademarks are used and that the emails are drafted in such a way that they aim to mislead and to convince the recipients that the order originates from the Complainant, in an attempt to fraudulently obtain the delivery of goods.

In addition to filing the present Complaint on 9 September 2019, the Complainant has also contacted the police as regards the registration of the Domain Name, in order to stop further fraud by means of the Domain Name.

### **5. Position of the parties**

#### **5.1. Position of the Complainant**

The Complainant requests the transfer of the Domain Name and submits that the three cumulative conditions for such transfer are met: (i) the Complainant owns various prior BESIX trademarks, (ii) the Respondent has no rights or legitimate interests in the Domain Name and (iii) the Domain Name was registered in bad faith as follows from the historical background information given above.

## 5.2. Position of the Respondent

The Respondent did not file any response or observations.

## 6. Discussion and findings

According 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 CEPANI Rules for Domain Name dispute resolution.

According to Article 10, b) 1) of the DNS.be “Terms and conditions for .be Domain Name registrations – version 6.1”, the Complainant must provide evidence of the following:

- 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."*

### 6.1. The Domain Name is identical or confusingly similar to trademarks in which the Complainant has rights

The Complainant has established the existence of several BESIX trademarks in which it has rights.

Moreover, the company name of the Complainant is “BESIX GROUP”.

It is obvious that the Respondent's Domain Name is confusingly similar to the BESIX trademarks and identical to the BESIX GROUP company name of the Complainant. The relevant part of the Domain Name is “besix-group” as the “.be” extension shall not be taken into account, pursuant to the well-established case law of CEPANI.

The Respondent does not dispute this.

As a consequence, the first condition under article 10, b) 1) i of the Policy is fulfilled.

### 6.2. The Domain name holder has no right or legitimate interests in the Domain Name

According to article 10, b) 3 of the Policy, the Domain Name holder's rights or legitimate interests to the Domain Name can be demonstrated by certain circumstances. Article 10 b) 3 of the Policy gives a non-exhaustive list of such circumstances:

- *“prior to any notice of the dispute, the registrant used the domain name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use; or*
- *the registrant (as an individual, business, or other organisation) has been commonly known by the Domain Name, even if he has acquired no trademark; or*
- *the registrant is making a legitimate and non-commercial or fair use of the Domain Name, without intent to misleadingly divert consumers, for commercial gain or to tarnish the trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity at issue.”*

Since the Complainant reasonably asserts that the Respondent does not have any rights or legitimate interests, the burden of proof lies on the Respondent, who has to prove that he actually does have rights or legitimate interests in the Domain Name.

The Respondent did not demonstrate his rights or legitimate interests to the Domain Name by any of the abovementioned elements. The Respondent has indeed not filed any Response and has therefore not provided any explanation or evidence to establish his rights and/or legitimate interests in the Domain Name, so that Complainant’s contentions in this respect are not contradicted.

Therefore, it must be concluded that the second condition under article 10, b) 1) ii of the Policy is also fulfilled.

### 6.3. The Domain Name holder’s Domain Name has been registered or is being used in bad faith

Bad faith must be reasonably proven and may be demonstrated by any means, including presumptions and circumstances that indicate with a reasonable degree of certainty the existence of bad faith (see e.g. CEPANI cases No. 44171 and 44441).

According to article 10, b) 2) of the Policy, the evidence of such bad faith registration or use of the Domain Name can *inter alia* be demonstrated by the following circumstances:

- *the Domain Name was registered primarily for the purpose of disrupting the business of a competitor;*
- *the Domain Name was intentionally used to attract, for commercial gain, Internet users to the registrant’s web site or other on-line location, by creating 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 registrant’s web site or location or of a product or service on his web site or location.*
- *the registrant has registered one or more personal names without the existence of a demonstrable link between the registrant and the registered Domain Names.*

The Complainant argues that the Domain Name was registered to disrupt the business of the Complainant, since the Domain Name was used to contact its co-contractors under the identity of the Complainant. According to the Complainant, the Domain Name was used to place fraudulent orders and to knowingly create a likelihood of confusion between the Respondent and the Complainant. The Complainant submits that these circumstances, together with the use

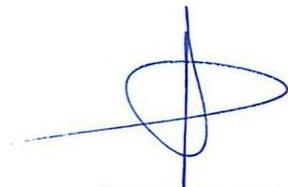
of the Domain Name without the Complainant's consent and the use of e-mail addresses similar to those of the Complainant supports the evidence of the bad faith use (see e.g. CEPANI case No. 44231).

Without any response from the Respondent, it is sufficiently evidenced that the Domain Name was registered and is being used in bad faith. As a consequence, also the condition stated in Article 10, b) 1 iii of the Policy is fulfilled.

## 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 "**besix-group.be**" Domain Name is to be transferred to the Complainant.

Brussels, 25 October 2019.

A handwritten signature in blue ink, consisting of a vertical line on the right, a horizontal line on the left, and a large loop in the center.

-----  
Tom Heremans  
The Third-party Decider