

DECISION OF THE THIRD-PARTY DECIDER

Supervizome srl & KOURAMI Anas / ESNOUSSI Az-Eddine

Case no. 444147: sd-debouchages.be and sddebouchages.be

1. The Parties

1.1. Complainant:

Supervizome srl
KOURAMI Anas (Director)
Avenue Louise 207 box 4
1050 Ixelles
Belgium

Represented by

CHEVEREAU Odile
Attorney at law
Boulevard Saint-Michel 65/6
1040 Brussels
Belgium

1.2. Domain Name Holder:

ESNOUSSI Az-Eddine (Multi-Services)
Rue Locquenghien 4-12
1000 Brussels
Belgium

2. Domain name

Domain name: "sd-debouchages.be"
Registered on: 7 July 2021

and

Domain name: "sddebouchages.be"
Registered on: 16 August 2021

Hereafter referred to as "the Disputed Domain names".

3. Procedure

On 19 September 2021, the Complainant filed a complaint with the Belgian Center for Arbitration and Mediation (hereinafter referred to as the "CEPANI"). The Complainant requests that the Disputed Domain names 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 who was invited to reply.

On 18 October 2021, in accordance with Article 7.2 of the Rules, CEPANI appointed undersigned as Third-party Decider in the above referenced matter.

On 25 October 2021, pursuant to Article 13 of the Rules, the deliberations were closed.

4. Factual Background information

4.1. The Complainant offers plumbing (unclogging) services in Belgium under the trade name "SD Débouchage".

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 also owns a Benelux word mark SD DÉBOUCHAGE, registered on 22 June 2021 for services in classes 37 and 39, registered following accelerated procedure of BOIP.

4.2. Based on the Crossroads bank for enterprises records, the Domain Name Holder is registered as natural person for similar services under the name "Multi-Services" (see Public Search results available at <https://kbopub.economie.fgov.be/kbopub/toonvestigings.html?ondernemingsnummer=501677169>).

On 23 May 2021, the Domain Name Holder registered the domain name "sddebouchage.be".

On 12 July 2021, the Complainant filed a first complaint with CEPANI against the Domain Name Holder regarding this domain name "sddebouchage.be". On 9 August 2021, CEPANI appointed Dieter Delarue as third-party decider in this case. On 30 August 2021, the third-party decider Dieter Delarue ruled that the domain name "sddebouchage.be" was to be transferred to the Complainant.

On 7 July 2021, the Domain Name Holder registered the domain name "sd-debouchages.be".

On 16 August 2021, the Domain Name Holder registered the domain name "sddebouchages.be".

The Third-party Decider notes that the Disputed Domain name "sddebouchages.be" redirects to another domain name "sd-deboucheur.be". The interface of this website is quite similar to the website of the Complainant. The website also displays the following logo:



5. Position of the Parties

5.1. Position of the Complainant

The Complainant asserts that all the conditions of Article 10.b.1 of the Policy are fulfilled since:

- The Disputed Domain names are confusingly similar to trademark and trade name in which the Complainant has rights ;
- The Domain Name Holder has no rights or legitimate interests in the Disputed Domain names ; and
- The Disputed Domain names were registered or are being used in bad faith.

Consequently, the Complainant requests the transfer of the Disputed Domain names to the Complainant.

In addition, the Complainant points out that this is the second case with CEPANI (with the same person). The first case concerned the domain name "sddebouchage.be" (case number 444137 - sddebouchage.be) and the third party decider (Mr. DELARUE) decided that the domain name "sddebouchage.be" is to be transferred to the Complainant.

5.2. Position of the Domain Name Holder

The Domain Name Holder did not submit any formal response in accordance with Article 6.2 of the Rules.

The Domain Name Holder provided an informal response to the CEPANI by an email dated 22 October 2021. The Domain Name Holder claims that, contrary to the Complainant's statement, it has never used the domain name "sd-debouchages.be" either to publish content or to redirect to another website.

6. Discussion and findings

Pursuant to Article 16.1 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:

- (i) *"the Domain name holder's 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*
- (ii) *the Domain name holder has no rights or legitimate interests in the domain name; and*
- (iii) *the Domain name holder's domain name has been registered or is being used in bad faith."*

6.1. Identical or confusingly similar to

6.1.1. With reference to Article 10. b.1, i) of the Policy, the Complainant alleges to be the owner of the Benelux word mark "DS DÉBOUCHAGE", registered with the BOIP on 22 June 2021. That trademark is registered to designate services in classes 37 and 39.

Furthermore, the Complainant is the owner of the domain name "sd-debouchage.be" (registered on 3 April 2020).

Finally, the Complainant considers that it is also known under the trade name "SD Débouchage" since at least April 2020.

Based on the factual background, the Complainant can therefore rely on trademark rights and trade name rights.

6.1.2. The Third-party Decider notes that the Disputed Domain names "sd-debouchages.be" and "sddebouchages.be" are identical or at least confusingly similar (the only difference is the addition of a "S" in the Disputed Domain names) to the above-mentioned Complainant's trade mark, domain name and trade name. The first condition is therefore met.

6.2. Right or legitimate interests

6.2.1. According to article 10.b.1, ii) of the Policy, the Complainant has to assert and to prove, in compliance with the rules of procedure, that the Domain Name Holder has no rights or legitimate interests in the Disputed Domain names.

6.2.2. Considering the difficulty of proving a negative fact, it is commonly accepted that a complainant need only to establish a *prima facie* case that the domain name holder has no 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 (see CEPANI, case no. 44082, "touringassurance.be").

6.2.3. The Domain Name Holder is not commonly known under the Disputed Domain Names. On the contrary, it appears that the Domain Name Holder does business under the trade name "Multi-Services" (by the way, it seems that the Domain Name Holder is doing business by using this trade name "Multi-Services" via other websites, such as: "msbxl.be", "sddebouchage.eu", "sosdebouche.be", "debouchage-efficace.be", "sosdeboucheur.be", "plombierdaba.be"...).

6.2.4. Furthermore, in its informal response to the CEPANI, the Domain Name Holder recognised the lack of use of the Disputed Domain Name "sd-debouchages.be" in connection with the offering of goods and services: "*I should like to correct something : I have never used domain name sd-debouchages.be neither to publish any content nor for redirection*" (see email of 22 October 2021 of the Domain Name Holder addressed to the CEPANI).

This Domain Name Holder statement confirms the lack of use in connection with a *bona fide* offering of goods or services, as referred to in article 10. b. 3 of the Policy.

6.2.5. Finally, the Domain Name Holder has not been granted, assigned, licensed or transferred any kind of rights relating to the Complainant's trademarks, domain names or trade name on SD Débouchage.

6.2.6. In the light of the above-mentioned circumstances, there is no evidence against the above reported elements which lead to *prima facie* conclusion that the Disputed Domain names were purchased by the Domain Name Holder for the sole purpose of creating confusion with the Complainant's activities, or to try to take advantage of the Complainant's reputation, or to disrupt Complainant's business.

6.2.7. It results from the above that the Domain Name Holder has no rights or legitimate interests in Disputed Domain names. The second condition is therefore met.

6.3. Registration or use in bad faith

6.3.1. According to Article 10. b. 1, iii) of the Policy, the Complainant must demonstrate that the Disputed Domain name has been registered or are being used in bad faith.

6.3.2. The registration or use of the Disputed Domain name in bad faith are alternative conditions (see CEPANI, case nr. 44208, "lookhatme.be").

6.3.3. Bad faith may not be presumed but must be reasonably proven by the Complainant (see CEPANI, case nr. 44387, "eiffage-benelux.be").

Bad faith is a legal fact that can be demonstrated by any legal means, including presumptions and circumstances that indicate, with a reasonable

degree of certainty, that the Domain Name Holder knew, or should have known, the Complainant's trade name and trademark and nevertheless registered the Disputed Domain Name (see CEPANI, case no. 44150, « produo.be », as referred to by B. DOCQUIR et O. DE PRELLE, « L'enregistrement abusif des noms de domaine : aperçu de la jurisprudence des Tiers-décideurs du CEPANI », in X. *Les noms de domaine.be 10 ans d'existence du règlement pour la résolution des litiges en la matière*, Bruxelles, Bruylant, 2013, p. 53 and CEPANI, case nr. 44387, "eiffage-benelux.be").

The Article 10. b. 2 of the Policy mentions several circumstances to prove that the Disputed Domain name has been registered in bad faith. The list contained in this article is merely illustrative and not exhaustive (see CEPANI, case no. 44125, "mariott.be").

6.3.4. In the Third-party Decider's view, there is sufficient evidence that the registration of the Disputed Domains names were made in bad faith, since:

- the Domain Name Holder was clearly aware of the existence the Complainant prior rights on the terms "SD Débouchage". Indeed, both Parties are direct competitors in the same sector (plumbing) and geographic region.

Furthermore, the Domain Name Holder had already been the subject of a previous CEPANI Third-party decision concerning the same rights of the Complainant (*i.e.* on "SD Débouchage"). As a reminder, in such decision, the Third-party Decider ruled that the disputed domain name ("sddebouchage.be") was registered in bad faith and therefore to be transferred to the Complainant.

- regarding the Disputed Domain name "sd-debouchages.be", it appears from the statement of the Domain Name Holder itself that its conduct may be qualified at least as passive holding since the Disputed Domain name had never been used in relation with the *bona fide* offering of goods or services (see email of 22 October 2021 of the Domain Name Holder addressed to the CEPANI). Although CEPANI case law shows diverging opinions on this issue, the mere passive holding of a domain name can be sufficient to establish bad faith (see e.g. CEPANI, case nr. 44233, "piperheidsieck.be").
- through certain abovementioned behaviours (such as the use of very similar Complainant's trade name, domain names and logo), it seems that the Domain Name Holder tries (i) to attract, for commercial gain, Internet users to the Domain Name Holder's web site, by creating confusion with the Complainant's trademark and trade name, (ii) to mislead the end users on the origin of the services, or (iii) at least to unduly benefit from the Complainant's goodwill and reputation.
- the registration of multiple similar domain names, which differences may result from a typo is usually considered as a bad faith practice (about typosquatting, see CEPANI, case nr. 44185, "rockwechter.be").

6.3.5. Finally, considering that bad faith can also be proved on the basis of simple presumption and in the light of the above developments, it leaves little doubt as to the intention of the Domain Name Holder to disturb the business of the Complainant, who is active in the same sector (*i.e.* plumbing), by registering the Disputed Domain names.

6.3.6. As a result, the Third-party Decider considers that the registration and/ or use of the Disputed Domain names are made in bad faith.

The third condition of the Article 10. b. 1 of the Policy is therefore met.

7. Decision

Consequently, pursuant to Article 10. e of the Policy, the Third-party Decider hereby rules that the domain name registrations for the Disputed Domain Names "sd-debouchages.be" and sddebouchages.be are to be transferred to the Complainant.

Namur, 8 November 2021.

Alexandre CRUQUENAIRE
The Third-party Decider