

**DECISION OF THE THIRD-PARTY DECIDER**

**COYOTE SYSTEM / Sergi Avaliani**

**Case no. 444175 / coyotesystem.be**

**1. The Parties**

1.1. Complainant:

**COYOTE SYSTEM**

Quai Gallieni 25  
92150 SURESNES  
FRANCE

hereinafter referred to as the "**Complainant**"

*Represented by:*

IN CONCRETO – FRANCK CASO  
European Trademark Attorneys  
Rue De L'Isly 9  
75008 PARIS  
FRANCE

1.2. Domain name holder:

Mr. **Sergi AVALIANI**  
Nutsbidze Street 203  
0186 TBILISI  
GEORGIA

hereinafter referred to as the "**Domain name holder**"

*Not represented*

**2. Domain name**

Domain name: **coyotesystem.be**  
Registered on: **23 august 2022**

Hereafter referred to as the "**Domain Name**".

### 3. Procedure

On 24 October 2022, the Complainant filed a complaint with CEPANI according to the CEPANI Rules for Domain Name Dispute Resolution (the "Rules") and the Dispute Resolution Policy of DNS Belgium, incorporated in its Terms and conditions for .be domain name registrations (the "Policy"). In its complaint, the Complainant requested the transfer of the Domain Name to the Complainant. The complaint was notified to the Domain name holder and the latter was invited to reply. No response was submitted by the Domain name holder.

On 23 November 2022 and pursuant to Article 7.2 of the CEPANI Rules, CEPANI appointed the Third-Party Decider to settle the dispute involving the aforementioned Domain Name. CEPANI duly received the declaration of independence of the Third-Party Decider. By e-mail dated 23 November 2022, CEPANI informed the Complainant and the Domain name holder of the appointment of the Third-Party Decider. According to art. 10 of the CEPANI Rules, CEPANI transferred on 23 November 2022 the file concerning the Complaint to the Third-Party Decider, including the complaint form. On Third-Party Decider's request, CEPANI sent again to the Third-Party Decider and to the parties the 6 annexes that were initially attached to the Complainant's complaint.

CEPANI stated in this e-mail of 23 November 2022 that the deliberations should be concluded by 30 November 2022 and that the Third-Party Decider must inform the CEPANI Secretariat of his decision by 14 December 2022 at the latest.

On 30 November 2021, conforming to Article 13 of the CEPANI Rules, the deliberations were closed.

As the Domain name holder did not submit a response, no additional extension of the deadline was granted.

### 4. Factual Background information

The Complainant COYOTE SYSTEM is an important actor of geolocation and driving assistance solutions, notably in the European Union territory. According to the Complainant, Belgium is its second territory of business after France. The Complainant offers products and services under the trademarks COYOTE for which the Complainant owns several registered trademarks including:



- European Union registered trademark **COYOTE** N.004853453 filed and renewed since 24/01/2006 in classes 9, 38 and 42;

- European Union registered trademark **"COYOTE C"** N. 012779153 filed and renewed since 09/04/2014 in classes 9, 38 and 42 ;

- European Union registered trademark "**COYOTE MINI**" N.013845391 filed and renewed since 17/03/2015 in classes 9, 35, 38, 39 and 42 ;

- European Union registered trademark "**COYOTE GROUP**" N. 017928178 filed and renewed since 06/07/2018 in classes 9, 35, 38, 39 and 42 ;

- European Union registered trademark  N.012029989 filed and renewed since 31/07/2013 in classes 9, 35, 38 and 42 ;

- European Union registered trademark **APP COYOTE** N. 018622861 filed and duly renewed since 15/12/2021 in classes 9, 35, 38, 39 and 42.

The Complainant also holds a broad portfolio of domain names including COYOTE such as "coyotesystems.be" reserved on 06/08/2008 and active at least since 2009, "moncoyote.com" reserved on 19/01/2005 and active at least since 2006 or also "coyotesystems.com" reserved on 15/12/2003 and duly at least since 2008.

Those domain names are active for the activity of the Complainant.

A Belgium entity has been incorporated under the company name COYOTE SYSTEMS BENELUX, company for which the Complainant owns 51 % of the shares.

The Domain Name coyotesystem.be has been registered by the Domain name holder on 23/08/2022.

Conforming to the evidences provided by the Claimant, the domain name was active for a website proposing sponsored links mainly dedicated to the business activity of the Complainant (making direct references to the Claimant's products and services, including explicit references to "GPS navigation systems").

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

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

The Complainant argues as follows:

«

- (i) *The Domain Name is confusingly similar at least to the Complainant's trademarks cited above.*

*The Domain Name reproduces the distinctive sequence COYOTE in combination with the generic term "SYSTEM" while (a) the trademarks of the Complainant are composed of the only term COYOTE or with generic terms such as APP, GROUP, MINI... and (b) the Belgium entity owned by the Complainant has for legal name COYOTE SYSTEMS BENELUX.*

*It is recognized that a domain name is to be considered as confusingly similar when it includes a trademark in its entirety, regardless of other terms in the domain name (WIPO D2020-2923; WIPO D2013-0150).*

*As the Domain Name coyotesystem.be includes the prior European Union registered trademark N.004853453 in its entirety, it is therefore demonstrated that it is confusingly similar. We can also remind that the Complainant has a subsidiary in Belgium COYOTE SYSTEMS BENELUX which therefore includes the same elements COYOTE/SYSTEMS(S)/ BE(NELUX).*

*It is clear and obvious that the Domain Name creates a likelihood of confusion with Complainant's trademarks and other prior rights (domain names, corporate names), as Internet users could associate the Domain Name with the Complainant.*

*It is moreover reinforced by the fact that the Complainant uses its trademarks notably in the domain name "coyotesystems.be" which is the main website for Belgium territory, and which only differs with the Domain Name "coyotesystem.be" by the adjunction of a last letter S, not enough to avoid a risk of confusion.*

*(ii) The Domain Name Holder has no legitimate interests in respect of the Domain Name.*

*The Complainant's trademarks are registered and exploited in Belgium since several years while the registration of the Domain Name was only made in August 2022.*

*The Domain Name Holder is not commonly known by the name "COYOTE", is not affiliated with the Complainant and not authorized or licensed to use the trademark "COYOTE".*

*In this sense, Google research "Sergi Avaliani COYOTE SYSTEM" does not resolved to relevant results. (Annex 2).*

*According to the information provided by DNS BELGIUM on August 11, 2022, the Domain Name Holder is even not domiciliated in Belgium or in a close territory in the European Union which could suggest a potential interest for the extension .be.*

*There are also no indications that the Domain Name Holder will use the Domain Name in connection with a bona fide offering of goods and services. A contrario, the Domain Name Holder is using the Domain Name for a parking page displaying commercial links targeting the Complainant's field of activity and even, the websites of the Complainant such as moncoyote.com.*

*Copies of the website of the Domain Name are provided in Annex 3.*

As the burden of proof of this second condition is considered to be satisfied when, taking into account all the facts of the case, the Complainant can credibly state that it is unaware of any reason or circumstance which could be indicative of a right or legitimate interest of the Domain Name Holder in the Domain Name (CEPANI 444110; CEPANI 444122), the Complaint consider having fulfilled the demonstration of this point.

(iii) The Domain Name was registered and is being used in bad faith.

It is hard to believe that the Domain Name Holder was unaware of the existence of the Complainant and its prior trademarks at the time of registration of the Domain Name, taking into account the long and strong exploitation in Belgium of the trademarks COYOTE by the Complainant.

The Domain Name Holder is using the Domain Name for a parking page displaying pay-per-click links which are likely to generate revenues for the Domain Name Holder. It is moreover quite surprising that the Domain Name Holder registered this Domain Name which is very close of the domain name exploited by the Complainant for Belgium territory (which only differs by the adjunction of a final letter S in the Complainant's domain name coyotesystems.be) »

## 5.2. Position of the Domain name holder

The Domain name holder did not submit any response.

## **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 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."*

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

It is undisputed that the Complainant has rights, amongst others, in the trademarks COYOTE, COYOTE C, COYOTE MINI, COYOTE GROUP and in the company names COYOTE SYSTEM (name of the complainant), and COYOTE SYSTEMS BENELUX (Belgian company with registration number 0810.293.062 – a company belonging to the same group as the Complainant).

According to the Cepani case-law, the suffix "be" is not relevant for establishing the identity or the similarity between a domain name and a trademark.

The relevant part of the Domain Name "coyotesystem" shows clear similarity to the complainant's trademarks and company names.

In many WIPO decisions, Panels considered that the incorporation of a well-known trademark in its entirety may be sufficient to establish that the domain name is identical or confusingly similar to the Complainant's trademark (WIPO Case No. D2019-0670; WIPO Case No. D2011-1627; WIPO Case No. D2010-1059; WIPO Case No. D2000-0113).

Furthermore, the word "system" is generic and refers to the characteristics of the products which the Claimant trademarks were registered for (namely, amongst others, "satellite navigation systems"). Its addition in the domain name does not avoid the risk of confusion with the Complainant's trademarks.

On the contrary, it reinforces such risk as it refers to goods and services for which the Complainant's trademarks have been registered, and it create a greater confusion with the Complainant's name.

Therefore, the Third-Party Decider finds that the Domain Name is confusingly similar to the Complainant's trademarks and company names.

It follows that the first condition is met.

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

According to Article 10 (b) 1 of the Policy, the Complainant has to prove that the Domain name holder has no rights or legitimate interests to the Domain Name.

Considering the difficulty of proving such a negative fact ("negativa non sunt probanda"), this burden of proof is considered to be satisfied when, taking into account all the facts of the case, the Complainant could credibly state that he is unaware of any reason or circumstance which could be indicative of such a right or legitimate interest (see for instance CEPANI case No. 44039; CEPANI case No. 44030; CEPANI case No. 44013).

Art. 10 (b) 3 of the Policy provides that the Domain name holder can prove that he has a right or a legitimate interest to the Domain name due to the following circumstances: "prior of any notice of the dispute, he used the domain 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; he has been commonly known by the domain name, even if he has acquired no trademark; he is making a legitimate and non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers 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."

However, the Domain name holder has not submitted any response, and has therefore not provided any such evidence.

Furthermore, it seems indeed that the Domain Name Holder is using the Domain Name for a parking page displaying commercial links targeting the Complainant's field of activity and even, the websites of the Complainant such as moncoyote.com . This does not correspond to situations described in art. 10(b) 3 of the Policy. On the contrary, it is, at first sight, a way to misleadingly divert consumers in view of obtaining remunerations from internet advertising mechanisms.

In the case at hand, the Third-Party Decider considers that the Complainant has sufficiently proven that the Domain name holder has no rights or legitimate interests to the Domain name: the Complainant makes it plausible that the Domain name holder has no rights or legitimate interests in the Domain Name, and the Complainant's assertions remain undisputed by the Domain name holder.

It follows that the second condition is also met.

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

The evidence of a registration or use in bad faith of a domain name can be provided by the circumstances mentioned in the non-exhaustive list under art. 10 (b) 2 of the Policy, i.e.:

- "circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the company name or to a competitor of the complainant for a price that exceeds the costs that the registrant can show are directly related to the acquisition of the domain name;
- the domain name was registered in order to prevent the owner of a company name to use the domain name and that the Domain name holder has engaged in a pattern of such conduct;
- 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 Domain name holder's website or other on-line location, by creating a likelihood of confusion with the complainant's company name;
- the Domain name holder registered one or more personal names without the existence of a demonstrable link between the Domain name holder and the registered domain names. "

The circumstances enlisted above are not exclusive but merely intended to assist the parties in establishing the strengths or weaknesses of their position (WIPO Case No. D2000-1228; CEPANI case No. 44010; CEPANI Case No. 44002).

Bad faith must be proven but may also be derived from reasonable assumptions in certain circumstances, for example when the domain name consists of a well-known trademark. (CEPANI Case No. 44233; CEPANI Case No. 44080; CEPANI Case No. 44494).

In the case at hand, the Complainant raises the following arguments to demonstrate that the Domain Name has been registered or used in bad faith:

- It is hard to believe that the Domain Name Holder was unaware of the existence of the Complainant and its prior trademarks at the time of registration of the Domain Name, taking into account the long and strong exploitation in Belgium of the trademarks COYOTE by the Complainant.
- The Domain Name Holder is using the Domain Name for a parking page displaying pay-per-click links which are likely to generate revenues for the Domain Name Holder.
- It is moreover quite surprising that the Domain Name Holder registered this Domain Name which is very close of the domain name exploited by the Complainant for Belgium territory (which only differs by the adjunction of a final letter "S" in the Complainant's domain name coyotesystems.be)

The Third-Party decider tends therefore to agree with the Complainant regarding the "non-accidental" character of the registration, an additional proof being that the Domain name holder's website refers explicitly to navigation systems and includes sponsored links to the official websites of the Complainant.

Furthermore, it must be stressed that the assertion of bad faith is not disputed by the Domain name holder since he did not submit any response.

It follows that the third condition is also met.

## **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 "**coyotesystem.be**" domain name **is to be transferred to the Complainant**.



Brussels, 7 December 2022.

-----  
Philippe LAURENT  
The Third-party Decider