

DECISION OF THE THIRD-PARTY DECIDER

Brouwerij Haacht NV / Gelske Jongerden

Case no. 44435 : brouwerijhaacht.be

1. The parties

- 1.1. Complainant: Brouwerij Haacht NV,
with registered office at Provinciesteenweg 28,
3190 Boortmeerbeek, Belgium
- 1.2. Licensee: Gelske Jongerden,
residing at Apollo 189, 3824 MA Amersfoort,
The Netherlands

2. Domain name

Domain name: **"brouwerijhaacht.be"**
Registered on: 27 March 2017

hereafter referred to as "the Domain Name".

3. Background to the case

The Complainant filed its complaint with CEPANI on 7 September 2017. The Complaint is made in English.

In its complaint, the Complainant offered the possibility to the Licensee to voluntarily proceed with the execution of the relief sought within 7 calendar days.

The Licensee did not submit a Response and did not voluntarily proceed with the execution of the relief sought.

CEPANI appointed the Third-Party Decider on 10 October 2017.

Pursuant to Article 13 of the CEPANI Rules for Domain Name Dispute Resolution, the deliberations were closed on 17 October 2017.

4. Factual information

a. About the Complainant

The Complainant is the third-largest beer brewery in Belgium (www.haacht.com) and is a well-known company in Belgium.

According to the Belgian Crossroads Bank for Enterprises (Complainant's Exhibit 1), the Complainant operates under the corporation name "Brouwerij Haacht" since at least 1 January 1975. Its website indicates that "Brouwerij Haacht" is also its trade name. "Brouwerij" is Dutch for "brewery" and "Haacht" is the name of a Belgian city.

The Complainant is the owner of the EU word trademark "Haacht" for beers (Nice class 32), which was registered on 25 July 2012 (Complainant's Exhibit 2).

b. About the Licensee

Apart from the information contained in the Domain Name's Whois data, no specific information is known about the Licensee.

c. About the website available under the Domain Name

The Complainant's Exhibit 3, which is a screenshot of the website currently available under the Domain Name, shows that this website contains texts and images of an explicit pornographic nature. The website does not contain any information about who operates it. Besides the pornographic texts and images, the sole text on the website is merely a copyright notice "© brouwerijhaacht.be" at the bottom.

5. Position of the parties

5.1. Position of the Complainant

The Complainant argues as follows: *"The domain name is identical to the company name of the complainant "Brouwerij Haacht" (see attachment 1) and confusingly similar to the trademark "Haacht" for beers, property of the complainant (see attachment 2). The registrant has no rights or legitimate interests in the domain name. The registrant's domain name has been registered and is being used in bad faith: the domain name is used for an explicit sex website (see attachment 3) which is an attack on our reputation and an infringement on our commercial rights."*

The Complainant requests that the Domain Name be transferred to it.

5.2. Position of the Licensee

The Licensee has not submitted a 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 10(b)(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 licensee'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*
- *the licensee has no rights or legitimate interests in the domain name; and*
- *the licensee's domain name has been registered or is being used in bad faith."*

6.1. Identical or similar to

The Domain Name is clearly identical to the Complainant's corporation name and trade name "Brouwerij Haacht".

The Third-Party Decider agrees with the Complainant that the Domain Name is also confusingly similar to its EU word trademark "Haacht", which was registered for beers. The Complainant's trademark "Haacht" is recognizable as such within the Domain Name and is the dominant or principal component of the Domain Name. The word "brouwerij" (Dutch for "brewery") is merely a generic or descriptive word added to the word "Haacht". It is generally accepted that the addition of merely generic or descriptive wording to a trademark in a domain name is normally insufficient in itself to avoid a finding of confusing similarity under the first condition. Third-Party Deciders have usually found the incorporated trademark to constitute the dominant or principal component of the domain name ([WIPO Overview 2.0, Par. 1.9](#)).

In addition, by precisely adding the word "brouwerij" ("brewery") while the Complainant's trademark has been registered for beers (Nice class 33), and taking into account the fact that the Complainant is a well-known company in Belgium, and the highly-distinctive character of the trademark "Haacht" for beers, there is a risk that internet users may actually believe there to be a real connection between the Domain Name and the Complainant and/or its goods.

The Licensee has not submitted any counterarguments in this respect.

Furthermore, it is well-established domain name case law that the “.be” extension is of no incidence on the appreciation of the identity and confusing similarity between the Domain Name and the trademark (e.g., CEPINA cases No. [44003](#) and [44021](#) and [WIPO Overview 2.0, Par. 1.2](#)), as the use of a top-level domain is technically required to operate a domain name (T. BETTINGER, *Domain Name Law and Practice. An International Handbook*, Oxford, Oxford University Press, 2005, p. 1035, No. IIIA.230).

For these reasons, the Third-Party Decider finds that the first condition of Article 10(b)(1) is met.

6.2. Rights and legitimate interests

Preliminarily, it is established domain name case law that a complainant’s burden of proof under this second condition could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent (*negativa non sunt probanda*). Therefore, a complainant is merely required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied the second condition (CEPINA Cases No. [44013](#), [44030](#) and [44085](#); [WIPO Overview 2.0, Par. 2.1](#); [NAF Case No. FA0712001118553](#)).

First, there is no evidence that the Licensee would have any trademark, tradename, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity with respect to the Domain Name.

Second, there is no evidence that the Licensee has been commonly known by the Domain Name.

Third, there is no evidence that the Licensee would have any connection or affiliation with the Complainant or that the Licensee would have been licensed or otherwise authorized to use the Complainant’s trade name, corporation name, or trademark or to apply for or use any domain name incorporating these names or trademark.

Fourth, there is no evidence that, prior to the dispute, the Licensee 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. On the contrary, the website related to the Domain Name does not contain any information about who operates it. Besides the pornographic texts and images, the sole text on the website is merely a copyright notice “© brouwerijhaacht.be” at the bottom. A company or organisation with a *bona fide* offering of goods or services would certainly not conceal its identity and contact data.

In addition, as other Third-Party Deciders have held, while many adult porn sites are perfectly legal and constitute *bona fide* offerings of goods or services, the use of somebody else's trademark, trade name, or corporation name as a domain name clearly does not constitute a *bona fide* offering of goods or services when the registrant has no rights to the trademark, trade name, or corporation name, since in such case the only reason to use the trademark, trade name, or corporation name as a domain name is to attract internet users who were not looking for a porn site, but were instead looking for the goods or services associated with the trademark, trade name, or corporation name (e.g., [WIPO Case No. D2003-0848](#)).

Fifth, the Licensee is not 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 trade name, corporation name, or trademark at issue. Using the Complainant's well-known trade name, corporation name, and trademark in the domain name of a porn website that has no affiliation with the Complainant is clearly with the intent to tarnish these names and trademark or for another illegitimate or non-fair use.

Sixth, as the Complainant has made a *prima facie* case that the Licensee lacks rights or legitimate interests, the burden of proof has shifted to the Licensee to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the Domain Name. However, as the Licensee failed to do so, the Complainant is deemed to have satisfied the second condition.

Seventh, as the Licensee did not submit a Response, its lack of rights or legitimate interests can also be inferred therefrom. Non-response is indeed indicative of a lack of interests inconsistent with an attitude of ownership and a belief in the lawfulness of one's own rights ([WIPO Case No. 2000-0493](#) ("*non-response is indicative of a lack of interest inconsistent with an attitude of ownership and a belief in the lawfulness of one's own rights*"); [WIPO Case No. D2005-0090](#) ("*The Panel finds that the Respondent's lack of legitimate interest in the disputed domain name is evidenced by the fact that Respondent did not respond to Complainants Complaint.*"); [WIPO Case No. D2012-1179](#) ("*the Respondent's lack of rights or legitimate interests in the disputed domain names may also be inferred by the fact that no response was filed by the Respondent*")).

Eighth, the fact that the Licensee registered and uses the Domain Name in bad faith (see below) also supports a finding of lack of any rights or legitimate interests ([WIPO Case No. D2001-1216](#) ("*Although the Policy draws a clear distinction between the requirement of showing absence of legitimate right or interest in paragraph 4(a)(ii), and the showing of bad faith registration and use in paragraph 4(a)(iii), in reality it is difficult to separate the consideration of the one from the other. Absence of any right or interest on the part of Respondent may be of assistance in determining bad faith registration and use, and bad faith registration and use may be of assistance in determining the legitimacy of the claimed right or interest.*")).

For these reasons, the Third-Party Decider finds that the second condition of Article 10(b)(1) is met.

6.3. Registration or use in bad faith

Frist, as the Licensee did not submit a Response, it is appropriate for the Third-Party Decider to infer a *prima facie* case of bad-faith registration ([WIPO Case No. 2011-1084](#) (“the Panel notes that there has been no Response and, in such case, [...], it is open for the Panel, in appropriate circumstances, to infer a *prima facie* case of bad faith registration.”)).

Second, the circumstances of the case further support a finding of bad faith registration or use:

- As other Third-Party Deciders have held, using someone else’s trade name, corporation name, or trademark in a domain name for a website with pornographic content that has no affiliation with the owner of the trade name, corporation, or trade mark, is *ipso facto* evidence of registration or use in bad faith (e.g. [WIPO Case No. D2004-0048](#), [NAF Case No. FA0501000408246](#), and [WIPO Case No. D2006-1271](#)). This is all the more so when the trade name, corporation name, or trademark is well-known and the trademark is highly distinctive. One can image no reason for someone to register or use the Domain Name for a porn site but to do so in bad faith.
- The Complainant rightfully argues that having a pornographic website related to the Domain Name can tarnish the distinctiveness and reputation of the Complainant’s rights and business generally. Having such a website associated with the Domain Name is clearly an intentional attempt to attract users to the website and creates confusion as to the source, sponsorship, affiliation, or endorsement of the website. The fact that such confusion may be dispelled and replaced by annoyance or disgust once the nature of the website is revealed, does not negate the fact of the initial confusion ([WIPO Case No. D2001-0761](#) and [WIPO Case No. D2004-0048](#)).
- The Complainant’s trade name, corporation name, and trademark are well-known and its trademark is highly distinctive. In addition, when one types the words “brouwerij haacht” in a search engine, the search results reveal that these words are linked to a well-known brewery. As a result, the Third-Party Decider is of the opinion that the Licensee knew or, through some basic research on the internet, should have known about the existence of the Complainant and/or its trade name, corporation name and trademark when it registered and used the Domain Name.

Third, the fact that the Licensee registered and uses the Domain Name without any rights or legitimate interests (see above) also supports a finding of registration and use in bad faith ([WIPO Case No. D2001-1216](#)).

For these reasons, the Third-Party Decider finds that the third condition of Article 10(b)(1) is 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 "**brouwerijhaacht.be**" domain name is to be transferred to the Complainant.

Brussels, 19 October 2017

Frederic Debusseré,
Third-Party Decider