

DECISION

Date of decision : 28 March 2013

Case number : 2013/02

Appellant : The trading partnership A-meubel,
respectively Mr AG Damen

Respondent : Foundation for Internet Domain Registration in the
Netherlands

Appeal against : Decision by the Foundation for Internet Domain Registration
in the Netherlands
dated 10 October 2012

Subject : Appeal against decision to undo a registrant change for the
domain name woonkamer.nl

Introduction

- 1.1 In an e-mail dated 8 November 2012 and by letter, the Appellants appealed to the Complaints & Appeals Board for .nl Domain Names (referred to below as 'the C&AB'), against a decision made by the Foundation for Internet Domain Registration in the Netherlands (referred to below as 'SIDN') dated 10 October 2012 (referred to below as 'the Decision').
- 1.2 The documents sent by e-mail to the C&AB by the Appellant included a copy of the notice issued by SIDN regarding the decision against which the appeal was made. The decision was made on the basis of Article 13, clause 1, of the General Terms and Conditions for .nl Registrants (referred to below as 'the General Terms and Conditions') and entailed the reversal of a change in the name of the registrant of the domain name woonkamer.nl, which had been made on 9 August 2012, as provided for in Article 9 of the General Terms and Conditions.
- 1.3 Prior to its Decision, SIDN issued a notice entitled 'Proposed decision to undo the change to the registrant of woonkamer.nl', dated 5 October 2012, stating that, on 10 August 2012, a complaint had been received from the registrant of the domain name woonkamer.nl concerning the domain name's transfer to a different registrar and the change in the domain name's registrant. SIDN had ascertained that the party in question, Parknet BV (referred to below as 'the Registrant'), had been the domain name's registrant since 19 January 2006. The Registrant had asserted that no consent had been given for the transfer or for the registrant change. In the notice regarding its proposed decision, SIDN asked Mr Nosrati, Mr Nosrati's registrar and Mr AG Damen (who had sold the domain name to Mr Nosrati) to provide documentation demonstrating that the Registrant had given consent for the registrant change made on 9 August 2012.

In its Decision of 10 October 2012, SIDN indicated that no evidence had been provided showing that the Registrant had given the required consent or instructions. Because the Registrant had previously submitted a valid request for the registrant change to be undone, SIDN had decided to undo the registrant change.

The consequence of the Decision was that the change in the name of the registrant, as recorded in SIDN's database, was reversed ('undone'). The former and original registrant, Parknet BV, was thus reinstated as the registrant of the domain name. In the notice of its Decision, SIDN drew attention to Article 13, clause 3, of the General Terms and Conditions, which states that appeal to the C&AB may be made against a decision made on the basis of Article 13, clause 1. A copy of the decision was sent to each of the Appellants.

The Appellant's case

- 1.4 The appeal document was submitted by the Appellants' lawyer on behalf of both Mr AG Damen and the trading partnership A-meubel (in which Mr Nosrati is a partner). The appeal document asserted that Mr Damen had been the lawful owner of the domain name woonkamer.nl since 1999 and had transferred it in 2005. The 2005 transfer had apparently been arranged by Mr Damen's hosting firm, Provider BV, trading under the name VIP Internet. Mr Damen had been paying registration and hosting fees to VIP Internet in respect of the domain name since 2006.

At the start of August 2012, Mr Nosrati's firm A-meubel had contacted Mr Damen through VIP Internet with a view to purchasing the domain name. The sale had been completed on 7 August 2012, following which the registrant change had been registered with SIDN on 9 August 2012. On 10 August 2012, Parknet BV, acting as the registrant of the domain name woonkamer.nl, had submitted an objection to the registrant change of 9 August through its own registrar, Blixem Internet Services. In its objection, Parknet BV stated that no instruction had been given for the registrant change. SIDN accordingly had decided to undo the registrant change.

- 1.5 The appeal document asserted that SIDN's decision wrongly overlooked the fact that Mr Damen had been the domain name's rightful registrant since 1999. Mr Damen was convinced that, when the domain name was transferred in 2005, either VIP Internet had submitted incorrect registrant details or SIDN had incorrectly processed the submitted data. Mr Damen had neither been informed of nor given his consent to any registrant change in 2006. The Appellants argued that SIDN had failed to consider the latter circumstances when arriving at its decision of 10 October 2012. SIDN should have investigated the validity of the earlier changes to the domain name's registration, rather than merely the validity of the change made in August 2012.

Acknowledgement by the C&AB

- 1.6 The C&AB wrote to the Appellant on 9 November 2012, acknowledging receipt of the appeal document. Immediately thereafter, in accordance with Article 5, clause 4, of the Complaints and Appeals Regulations, the C&AB sent a copy of the appeal document to SIDN. The C&AB additionally informed the Registrant of the appeal and gave the Registrant the opportunity to respond to the contents of the appeal document, as provided for in Article 5, clause 8, of the Complaints and Appeals Regulations. The C&AB decided to inform the Registrant because the outcome of the appeal process would have direct consequences for the Registrant.

The Registrant's case

- 1.7 On 15 January 2013, the Registrant stated by e-mail that it regarded itself as the entirely rightful owner of the domain name woonkamer.nl. At the end of 2003, the domain name had still been registered to a firm called WDS, of which Mr Damen was a director. However, WDS had at that time been in a state of insolvency, having been declared insolvent from 1 January 2002. Thereafter, the name was released for

reregistration and the Registrant accordingly registered the domain name in 2006, it being at that time unregistered and freely available for registration. In its response, the Registrant additionally indicated that it was unwilling to enter into an appeal procedure.

SIDN's response

- 1.8 SIDN responded by e-mail on 25 January 2013 and by post. In the response, SIDN stated that the domain name woonkamer.nl had been registered to WDS, Dutch Dynamic Media Design BV, on 14 June 1999. That registration had been cancelled on 19 January 2006 by XS4ALL, then the registrar for WDS. Following its cancellation, the domain name had become freely available for re-registration. It was accordingly registered to Parknet BV by the registrar Blixem Internet Services on 19 January 2006. It had remained registered to Parknet BV until being transferred on 9 August 2012. On that date, the registrar Registrar.eu had first arranged the transfer of the domain name woonkamer.nl and then changed its registrant; thus Registrar.eu had become the managing registrar and Mr Nosrati had become the registrant.
- 1.9 In its response, SIDN drew attention to the fact that only two parties were entitled to appeal against a decision by SIDN to undo a registrant change: the party from whom registrant status had been removed and the party to whom registrant status had been restored. In this case, therefore, SIDN argued, Mr Nosrati was entitled to appeal (as the party from whom registrant status has been removed), but neither Mr Damen nor the trading partnership A-meubel (the parties that had submitted the appeal) was entitled to do so.

Furthermore, SIDN argued that, if Mr Damen and/or the trading partnership A-meubel were nevertheless judged to be entitled to appeal, the appeal should be dismissed in light of the following relevant facts.

On 10 August 2012, SIDN had been approached by the registrar acting for Parknet BV, the former registrant of the domain name woonkamer.nl, regarding the transfer and the registrant change. This registrar in question, Blixem Internet Services, was not only the registrar for Parknet BV, but also the registrar for VIP Internet, since the latter firm was not itself a registrar. Blixem Internet Services had told SIDN that the transfer token needed to transfer the domain name had been mistakenly issued as a result of an administrative error, and that the registration should be restored to the name of Parknet BV. SIDN had made contact with Mr Nosrati's registrar, Registrar.eu, asking for evidence that the transfer and the registrant change had been arranged with the consent of the registrant, as required under the regulations. According to SIDN, Mr Nosrati's registrar had provided no such evidence.

On 30 August 2012, SIDN had received a form from Mr B van der Heijden, on behalf of Parknet BV, asking SIDN to undo the registrant change. On the form, it had been stated that Parknet BV had neither consented to nor given instructions for the registrant change. Following receipt of the form, SIDN had given Mr Nosrati the opportunity to demonstrate that he was entitled, on behalf of Parknet BV, to instruct the registrar to place the domain name's registration in Mr Nosrati's name. In response, Mr Nosrati had

told SIDN that the firm A-meubel had bought the domain name from Mr Damen on 7 August. In support of the latter assertion, Mr Nosrati had furnished SIDN with a communication from Mr Damen, in which Mr Damen said that he was entitled to the domain name. On 7 September 2012, Mr Damen had sent SIDN an e-mail containing a similar claim.

In response to the request for the registrant change to be undone, SIDN had requested additional information from the registrar Blixem Internet Services, since the documentation made available to SIDN included items apparently showing that Mr Damen had been billed for the registration. In response, SIDN had been told that the billing was erroneous and that Mr Damen would be credited accordingly. Thereafter, SIDN had once more asked Mr Nosrati to demonstrate that the registrant change had been made with the Registrant's consent. No response to the latter request had been received.

- 1.10 In an explanation of the regulations and procedures applicable to domain names, SIDN stated that Article 9 of the General Terms and Conditions for .nl Registrants allowed for a domain name's registrant to be changed. The article in question referred to further information on SIDN's website, which describes how a registrant who wishes to have a change made has to arrange the change through the registrar (who may have a special procedure for requesting a change). The registrar is, in turn, bound by the General Terms and Conditions for Registrars (in this case the version dated 20 May 2010).

Article 4.1 of those Terms and Conditions states that a registrar may make changes to a domain name's registration only on the registrant's instructions and that, whenever a registrar is instructed to make a change, the registrar should verify whether the party giving the instructions is entitled to do so on the registrant's behalf. According to SIDN, in the case under consideration, the managing registrar (Registrar.eu) had been unable to demonstrate, when asked to do so, that steps had been taken to verify that Mr Nosrati was authorised by Parknet BV to perform a registrant change for the domain name in question.

- 1.11 SIDN contended that the merit of the appeal ultimately depended on whether SIDN had been right to conclude that Mr Nosrati had been unable to demonstrate that he was entitled to instruct the registrar to arrange the transfer and registrant change on behalf of Parknet BV. SIDN stated that the basis of Mr Nosrati's explanation was that A-meubel had bought the domain name from Mr Damen.

However, SIDN argued, since Mr Damen was not the domain name's registrant at the time of the transfer and registrant change, a transaction between Mr Nosrati and Mr Damen could not legitimise the transfer and registrant change. Furthermore, despite enquiries aimed at revealing any evidence that there might be that the registrant Parknet BV had given consent for the transfer and registrant change, no such evidence had been obtained. The fact that Mr Damen had been the proprietor of the legal entity that had been the domain name's registrant between 1999 and 2006 had no bearing on the matter, according to SIDN. Nor was it relevant that Mr Damen had lawfully acquired the domain name from the receiver who had disposed of the said legal entity's assets

following its insolvency. What mattered was that Mr Damen had never been the domain name's formal registrant, and that the domain name's registration had been cancelled in 2006, with the consequence that the domain name had become freely available for re-registration, a situation of which Parknet BV had legitimately taken advantage. The debate between Parknet BV and Mr Damen as to who was entitled to the domain name and who should be recorded as its registrant was not relevant to the substance of SIDN's decision.

- 1.12 In its response, SIDN indicated that it had considered very superficially whether its decision was likely to have unacceptable (social) consequences. In very exceptional circumstances, where such consequences are anticipated, Article 28 of the General Terms and Conditions allows SIDN to depart from its normal procedures and to decide not to reverse a wrongful change of registrant. However, in the case under consideration, SIDN concluded that there was no reason to depart from its normal procedures.

In arriving at that conclusion, SIDN had considered that, from information provided by the various parties, it was apparent that Mr Damen had an association with the domain name and that there was a difference of opinion as to who was entitled to the name. However, SIDN indicated that it was not SIDN's function to judge entitlement to a domain name. Moreover, SIDN had found no reason to believe that undoing the registrant change would have (socially) unacceptable consequences.

- 1.13 SIDN concluded its response by stating that neither Mr Damen nor the trading partnership A-meubel was entitled to appeal against SIDN's decision. Even if the C&AB took a different view on that matter, it was clear to SIDN that the registrant's consent for the transfer and registrant change had not been obtained. SIDN took the view that its decision was lawful and consistent with its own procedures and regulations, and that, taking all the circumstances into account, it was reasonable for SIDN to reach the decision it had made. SIDN accordingly asked the C&AB to rule that the appeal by Mr Damen and the trading partnership A-meubel was inadmissible, or otherwise to dismiss their appeal.

2 **Consideration of the appeal**

- 2.1 The appeal was considered at the C&AB session on 13 February 2013. The session was attended by Mr AG Damen, Mr S Nosrati and their lawyer, Mr J Boogaers, as well as by Mr M Simon (SIDN's General Counsel) and Meester AK Vink (also representing SIDN). The Registrant did not attend.
- 2.2 In addition to the information in the appeal document, it was reported that, when Mr Nosrati had enquired whether the domain name was for sale, VIP Internet itself had referred Mr Nosrati to Mr Damen. Mr Nosrati had not therefore continued to check who was listed as the domain name's registrant in the Whois. The documentation produced in evidence included invoices issued to Mr Damen by VIP Internet, which included fees in respect of the domain name's registration. Furthermore, the token required for the transfer had been issued to Mr Nosrati by VIP Internet. There had consequently been no reason to suppose that Mr Damen was not the domain name's registrant.
- 2.3 SIDN added to the information in its response document by stating that SIDN's register records the identity of the party that has a contractual entitlement to SIDN's services in respect of a particular .nl domain name. The register does not state who is entitled to a domain name. Unless evidence is provided to the contrary, SIDN's records are decisive in determining who the registrant is. On the subject of the apparent failure to obtain the consent of the existing registrant, Parknet BV, SIDN stated that explicit consent was necessarily required. Nevertheless, there was no evidence that any form of consent had been obtained from Parknet BV.

SIDN pointed out that the forms completed with a view to arranging the transfer of the domain name woonkamer.nl via VIP Internet, which Mr Damen had presented in support of the appeal, had not led to a transfer being registered on SIDN's system. Moreover, the paper application forms had been intended only for the registrar's internal record-keeping, not for submission to SIDN. Registrars submit applications to SIDN in electronic form. It was believed that no electronic application had been submitted to SIDN and therefore no transfer had ever been performed by SIDN. Furthermore, when a domain name was cancelled, as the domain name woonkamer.nl had been cancelled in 2006, SIDN always sent a notice to the relevant postmaster's e-mail address, as recorded in the register and the Whois. It was not therefore the case that SIDN had cancelled the domain name without informing the registrant.

3 **Consideration**

- 3.1 The C&AB received the appeal document within thirty days of the date of the decision in question, as required by Article 13, clause 3, of the General Terms and Conditions, and Article 4, clause 2, of the Regulations on the Composition, Working Methods and Procedures of the Complaints & Appeals Board. The appeal against SIDN's Decision of 10 October 2012 was therefore made in good time. Furthermore, the appeal fee required pursuant to Article 4, clause 4, of the Complaints and Appeals Regulations and Article 1, clause 1, of the Schedule of Appeal and Complaint Fees was paid to SIDN by the Appellant within the prescribed time limit.
- 3.2 The appeal was submitted on behalf of both Mr AG Damen and the trading partnership A-meubel. Article 13, clause 3, of the General Terms and Conditions and Article 4.1 of the Complaints and Appeals Regulations state that only the party that requests a registrant change and the party from whom registrant status has been removed by that registrant change may appeal to the C&AB against a decision made by SIDN concerning that registrant change.
- 3.3 From the submitted documentation and the evidence given to the hearing, it is apparent that Mr S Nosrati became the registrant of the domain name woonkamer.nl at some time after 9 August 2012. At the hearing, it was made known that Mr S Nosrati is a partner the trading partnership A-meubel, with full executive authority. In view of the close association between Mr Nosrati and the partnership, the C&AB takes the view that the appeal by A-meubel is admissible.
- 3.4 However, it was not demonstrated to the hearing that Mr Damen had at any time been the registrant of the domain name woonkamer.nl. The C&AB therefore takes the view that Mr Damen's appeal is not admissible. Indeed, the C&AB notes that it was not demonstrated to the hearing that the registrant change and transfer application made by Mr Damen in 2005 in respect of the domain name woonkamer.nl had ever been received and processed by SIDN.
- 3.5 Those facts having been established, the C&AB considered the legitimacy of SIDN's Decision. Article 9 of the General Terms and Conditions states that the registrant may convey a domain name's registration to another person or entity by arranging for the name of the registrant recorded in SIDN's database to be changed to that of the other person or entity. It is also states that the procedure for effecting such a change of registrant is as defined on SIDN's website. In summary, that procedure provides for the registrar that represents the registrant to effect the change by a method, in the definition of which the registrar is permitted a degree of discretion, subject to the condition that the General Terms and Conditions for Registrars are complied with. Article 4, clause 1, of the General Terms and Conditions for Registrars states that a registrar may amend a registration only on the instructions of the registrant, and that the registrar must always verify that the party giving an amendment instruction is the registrant or someone authorised to represent the registrant.

- 3.6 The C&AB notes that the provisions of Article 4, clause 1, of the General Terms and Conditions for Registrars were not complied with when the registrant of the domain name at the centre of this case was changed. Certainly, when asked to do so by SIDN, Mr Nosrati's registrar was unable to provide any documentary evidence that Mr Nosrati was entitled to request a change of registrant on the Registrant's behalf. It is therefore reasonable to assume that the registrar did not check (or adequately check) whether the party requesting the change was authorised to do so.
- 3.7 The C&AB also takes the view that Mr Nosrati failed to adequately demonstrate, either in his appeal document or at the hearing, that he was entitled to change the registrant of the domain name. It was not demonstrated that the consent of the Registrant had been obtained as required.
- 3.8 The C&AB therefore considers that SIDN's reversal of the change was consistent with the General Terms and Conditions and the General Terms and Conditions for Registrars.
- 3.9 The C&AB also considers that SIDN acted appropriately and in accordance with the General Terms and Conditions in other respects, and sees no grounds for the review of SIDN's decision-making.
- 3.10 The C&AB also emphasises that, in accordance with Article 3.7 of the Complaints and Appeals Regulations, the C&AB has considered only whether SIDN's decision was lawful and consistent with SIDN's own regulations, and whether SIDN acted reasonably at all times in arriving at its decision.
- 3.11 Hence, the C&AB's decision takes no account of the interrelationships of Mr Nosrati, Mr Damen, VIP Internet, Blixem Internet Services and the Registrant. If and insofar as legal matters remain to be resolved, the parties should make use of the appropriate resolution mechanisms, such as the civil courts.

4 **Decision**

The Complaints & Appeals Board of the Foundation for Internet Domain Registration in the Netherlands hereby declares that the appeal of the trading partnership A-meubel dated 7 November 2012 is unfounded. The C&AB accordingly orders SIDN to remove the limitations placed upon the domain name in question and to leave the registration in the name of the current Registrant.

This decision was issued on 28 March 2013 by Professor ThCJA van Engelen (Deputy Chairman of the Complaints & Appeals Board), D van Roode and Professor M Hildebrandt (members of the Complaints & Appeals Board), in the presence of Meester HJM Gardeniers (Secretary to the Complaints & Appeals Board).

[Signature of] The Deputy Chairman

[Signature of] The Secretary

Professor ThCJA van Engelen

Meester HJM Gardeniers