

Complaints and Appeals Board

FOUNDATION FOR INTERNET DOMAIN REGISTRATION IN THE NETHERLANDS

DECISION

Place and date of decision : Arnhem, 8 June 2007

Case number : 2007/15

Complainant : Mr H. Stokhorst

Registrant of the domain name to which the complaint relates : R.O.B. Praktijk voor Reïncarnatie Therapie

Domain name to which the complaint relates : *nymphhe.nl*

1 Introduction

- 1.1 Article 20 of the Regulations on the Registration of '.nl' Domain Names (referred to below as 'the Regulations') states that anyone who believes that a particular domain name or third-level domain name is inconsistent with public order or decency may submit a reasoned complaint to the Complaints & Appeals Board (also referred to below as 'the C&AB') about the name's registration.
- 1.2 By e-mail dated 6 February 2007, supported by further information sent by e-mail on the same date and by post (received by the C&AB on 15 February 2007), Mr H. Stokhorst (also referred to below as 'the Complainant') complained to the C&AB about the domain name *nymphhe.nl*.
- 1.3 In the communications referred to, the Complainant stated that Nymphe Poolman had been a young girl who went missing, following which a man had been arrested and convicted of her murder. According to the Complainant, the case received extensive media coverage over a period of years. The girl's unusual forename, the Complainant said, was forever associated with the case throughout the north of the Netherlands and beyond. Both the girl's forename and full name had been registered as domain names by the R.O.B. Praktijk voor Reïncarnatie Therapie (the Reincarnation Therapy Practice, referred to below as 'the Registrant'). The Registrant was apparently using the names for a website. From material that has appeared in the press, the Complainant concluded that the Registrant had registered the name to get publicity for his Reincarnation Therapy Practice. According to the Complainant, these actions were offensive to the name and memory of the murdered child. In a supplementary e-mail, the Complainant indicated that the Registrant had told the media that he intended to take down the website; however, he had in fact merely modified the content somewhat. Since, according to the Complainant, the website was still presenting information about the Registrant's practice and his supposed ability to contact the murdered girl, the Complainant was not persuaded to withdraw his complaint.
- 1.4 To 'put an end to the abuse of the familiarity of Nymphe Poolman's name by its use as a domain name, and to prevent its future use', the Complainant petitioned the C&AB to order the domain names to be removed from the Register and made available to the child's parents.
- 1.5 In accordance with Article 10 of the Regulations Governing the Composition, Working Methods and Procedures of the Complaints & Appeals Board (referred to below as the 'Complaints and Appeals Regulations'), the C&AB informed the Registrant of the complaint. The Registrant did not take advantage of the opportunity afforded to him to submit a defence statement or otherwise respond to the C&AB's communication.

- 1.6 The complaint was considered at the C&AB session on 2 April 2007. At the session, the Complainant made an oral statement in support of his complaint. In this statement, the Complainant said that the Nymphe Poolman case was still very well known throughout the north of the Netherlands. He also said that he felt a personal link to the case, partly because of his involvement in a similar case. The Complainant did not, however, know the parents of the girl and had not been in contact with them. The Complainant was unhappy mainly about the use of the girl's name as a domain name associated with a commercial website promoting socially controversial activities. The name Nymphe is quite unusual and most occurrences of it on the Internet relate to Nymphe Poolman. The Complainant indicated that the complaint was based primarily on a matter of principle. The C&AB's decision, he said, would set a precedent with implications for surviving relatives in similar circumstances. At the session, it was established that the domain name at the centre of the complaint points to a website under the domain name www.wiewasik.nl, where the modified material to which the Complainant referred was published.

2 **Judgement**

- 2.1 The C&AB has interpreted the complaint made against the domain name *nymphe.nl* as a complaint of the kind referred to in Article 20 of the Regulations. The complaint satisfied the conditions set out in Article 9 of the Complaints and Appeals Regulations. Furthermore, the Complainant made prompt payment to SIDN of the fee due in accordance with Article 9, clause 3, of the Complaints and Appeals Regulations and the C&AB Costs Order.
- 2.2 The question to be decided by the C&AB was whether the domain name in question was inconsistent with public order or decency. The C&AB observes that, as indicated by the Complainant, the forename Nymphe, as used in the domain name at the centre of this case, is an unusual name, most occurrences of which on the Internet relate to Nymphe Poolman. Consequently, the CvKB concludes that the domain name *nymphe.nl* is a reference to Nymphe Poolman. The Registrant is using the domain name to direct Internet users to a website at www.wiewasik.nl, where some material relating to Nymphe Poolman is published and information about the Registrant's commercial activities is available. The C&AB considers it likely that the Registrant sought to register the domain name with the intention of using it to publicise his activities.
- 2.3 The C&AB's authority to rule on the complaint is defined by the constitution of SIDN, by the Regulations and by the Complaints and Appeals Regulations. The C&AB notes that, in accordance with the provisions of Article 4, clause 3, of the Complaints and Appeals Regulations, the C&AB is obliged to base its ruling primarily on the current Regulations. The Board may additionally take account of jurisprudence regarding the application of the Regulations, general legal principles and its own

interpretations. The C&AB is not permitted or able to take account of legal considerations that lie outside the terms of reference described above.

- 2.4 The C&AB rules that, although the use of a domain name may under certain circumstances be unlawful, it does not follow that any such name is inconsistent with public order or decency. To be deemed inconsistent with public order or decency, the nature of the domain name must be undeniably such that the majority of the general public would find the name sufficiently shocking to make its continued registration unacceptable.
- 2.5 Although the consideration of a complaint, as provided for in Article 20 of the Regulations, is essentially concerned with the relevant domain name itself, this does not preclude the C&AB from taking account of the content of any related website when assessing whether the name is inconsistent with public order or decency. In this context, the C&AB observes that the domain name at the centre of this case currently points to a website at www.wiewasik.nl, where the material that originally gave offence was published and where modified material has since been published. However, the current content of the website to which the domain name *nymphie.nl* points is not such as to persuade the C&AB that the domain name should be deemed inconsistent with public order or decency.
- 2.6 The C&AB does not consider the arguments presented by the Complainant to be sufficiently compelling to support any other decision.
- 2.7 The C&AB has not been able to consider the Complainant's request that the C&AB should order the transfer of the relevant domain name to another party. If the C&AB considers a complaint to be justified, the C&AB has the authority under Article 12, clause 3, of the Complaints and Appeals Regulations only to deny the Registrant use of the domain name in question, and to order its removal from the Domain Name Register.

3 **Decision**

The Complaints & Appeals Board of the Foundation for Internet Domain Registration in the Netherlands rules the complaint made on 6 February 2007 by Mr H. Stokhorst concerning the domain name *nymphhe.nl* to be unfounded.

This decision has been issued by Meester A. Oskamp, chairman, in the presence of Meester A.P. Meijboom, Meester H. van Oers and Meester R. Eissens, members, and Meester H.J.M. Gardeniers, member of and secretary to the Complaints & Appeals Board.

The chairman

The secretary

Meester A. Oskamp

Meester H.J.M. Gardeniers