

DECISION

Date of ruling	:	1 May 2024
Case number	:	2024/01
Appellant	:	Mr HW van den Bergh
Respondent	:	Foundation for Internet Domain Registration in the Netherlands
Existing registrant	:	Vakgarage van den Bergh
Appeal against	:	Decision by the Foundation for Internet Domain Registration in the Netherlands dated 12 October 2023
Regarding	:	Appeal against decision to maintain the registration of the domain name autobedrijfvandenbergh.nl

Introduction

- 1.1 On 17 October 2023, the Appellant's representative lodged an appeal by e-mail with the Complaints and Appeals Board for .nl Domain Names (referred to below as 'the C&AB') against a decision by the Foundation for Internet Domain Registration in the Netherlands ('SIDN') dated 12 October 2023 to refuse to annul a register amendment pertaining to, and thus to uphold the existing registration of, the domain name autobedrijfvandenbergh.nl ('the Contested Decision'). SIDN communicated the Contested Decision to the Appellant's representative on 12 October 2023.
- 1.2 The register amendment in question was a change to the registrant of the domain name autobedrijfvandenbergh.nl (referred to below as 'the Contested Domain Name') from Autobedrijf van den Bergh to Vakgarage van den Bergh ('the Existing Registrant'), made on 2 August 2023 on the basis of Article 9 of the General Terms and Conditions for .nl Registrants ('the Terms and Conditions').

Appeal proceedings

- 1.3 The parties submitted the following documents:
 - The Appellant's appeal document, received on 17 October 2023, with 3 supporting documents
 - The Appellant's authorisation of his representative, received on 23 October 2023
 - SIDN's response, received on 28 November 2023, with 12 supporting documents
- 1.4 Following a request from the Existing Registrant's legal counsel dated 8 November 2023, the C&AB decided on 11 December 2023 to allow the Existing Registrant to participate in the ongoing appeal process. That decision was taken on the basis of Article 5, clause 8, of the Complaints and Appeals Regulations in order to enhance the C&AB's ability to establish and verify the relevant facts of the case. Hence, the Existing Registrant was given the opportunity to respond in writing to the various documents submitted by the Appellant and SIDN, and to provide oral input at the hearing.
- 1.5 On 9 January 2024, the Existing Registrant's legal counsel accordingly submitted a written response.
- 1.6 The appeal was considered at the C&AB hearing of 7 March 2024. The hearing was attended by the Appellant's representative, SIDN's representatives, the indirect manager of the Existing Registrant and the Existing Registrant's legal counsel.

Appellant's case

- 2.1 In the appeal document, the Appellant asked the C&AB to recognise the Appellant as "still the rightful owner" of the Contested Domain Name.
- 2.2 In support of that petition, the Appellant made the arguments summarised below.
- 2.3 On 26 April 2003 the Appellant's business, Autobedrijf van den Bergh, of which he was the sole proprietor, registered the Contested Domain Name. The Appellant asserted that a sole proprietorship is not a legal entity, that its ownership cannot be transferred, and that its

assets and liabilities always remain the proprietor's. On that basis, it was asserted that the Appellant remained the rightful registrant of the Contested Domain Name.

- 2.4 Moreover, according to the Appellant, the Contested Domain Name had not been legally transferred when Car Centre Capelle B.V. took over the running of the business on 21 May 2012. According to the Appellant, it did not matter whether Car Centre Capelle B.V. had acquired the trading name Autobedrijf van den Bergh. According to the Appellant, SIDN was wrong to assume that the owner of the trading name should also be the owner of all the possessions of a sole proprietorship of the same name, including the Contested Domain Name.

SIDN's case

- 3.1 In response, SIDN asked the C&AB to dismiss the appeal.
- 3.2 SIDN indicated that its investigation had ascertained that Car Centre Capelle B.V. had taken over the running of Autobedrijf van den Bergh on 21 May 2012, and that the sole proprietorship was removed from the Chamber of Commerce's Trade Register on the same date. Ownership and control of Car Centre Capelle B.V. was subsequently transferred from Bergh Holding BV to M. Verdoold Beheer B.V. by means of a share transfer on 2 October 2015. An extract of Car Centre Capelle B.V.'s Trade Register listing dated 5 October 2015 includes the trading name Autobedrijf van den Bergh. Furthermore, Car Centre Capelle B.V. continues to use the internet address www.autobedrijfvandenbergh.nl and the e-mail address info@autobedrijfvandenbergh.nl. In 2016, management of the Contested Domain Name's registration was transferred to a new registrar.

- 3.3 SIDN also stated that the name of the registrant of the Contested Domain Name had been changed several times:

- On 26 April 2003, the Contested Domain Name was first registered with Autobedrijf van den Bergh, i.e. the trading name of the Appellant's business, named as the registrant.
- On 7 June 2023, the name of the registrant was changed to Hendricus Wouderinus van den Bergh.
- On 1 August 2023, the name of the registrant was changed to Autobedrijf van den Bergh.
- On 2 August 2023, the name of the registrant was changed to Vakgarage van den Bergh.

The registrant change of 1 August 2023 was made by the registrar because, according to the registrar, the Appellant was no longer entitled to represent Autobedrijf van den Bergh. The registrant change of 2 August was initiated via the customer control panel of the Contested Domain Name's registrar.

- 3.4 When investigating whether the 2023 registrant change was made in accordance with the regulations, SIDN sought clarification from both the Appellant and the Existing Registrant. In response, the Existing Registrant's legal counsel informed SIDN that the Existing Registrant's parent company, M. Verdoold Beheer B.V., had acquired ownership of Car Centre Capelle B.V. by means of a 100 per cent share transfer. By doing so, M. Verdoold Beheer B.V. also became the (indirect) owner of the trading name Autobedrijf van den Bergh and the Contested Domain Name. The Appellant responded that ownership of the

trading name and the Contested Domain Name had not been transferred at the time of the share transfer, since no explicit provision to that effect had been made. According to the Appellant, the trading name and the Contested Domain Name were merely made available to Car Centre Capelle B.V. on a temporary basis. In response to that assertion, the Existing Registrant's legal counsel indicated that the trading name was specifically included in the goodwill acquired with the business, and that there was no evidence to support the Appellant's claim that the names were merely made available on a temporary basis.

- 3.5 On the basis of its investigation, SIDN concluded that the registrant change was made in accordance with the regulations. SIDN stated that the consent required under the regulations was implicit in the continuation of the business by the B.V. and the associated share transfer. In support of that assertion, SIDN made the arguments summarised below.
- 3.6 SIDN stated that, generally speaking, decisions regarding domain name registrations do not take account of who has the strongest entitlement claim to a domain name. SIDN considers only whether the rules and procedures applicable to its contractual relations with registrants and registrars have been adhered to. In the case under consideration by the C&AB, SIDN was of the opinion that its decision was consistent with the law, the Terms and Conditions and its own published procedures.
- 3.7 In its response document, SIDN described the steps it had taken to ascertain whether Autobedrijf van den Bergh had consented to the name of the registrant being changed to Vakgarage van den Bergh.
- 3.8 SIDN stated that it had established that the Contested Domain Name was first registered in 2003, with Autobedrijf van den Bergh named as the registrant. At that time, Autobedrijf van den Bergh was a trading name of the Appellant's business. SIDN stressed that, in 2003, the Contested Domain Name was not originally registered with the Appellant named personally as the registrant.
- 3.9 In the course of its investigations, SIDN ascertained that Car Centre Capelle B.V. had taken over the running of the Appellant's business, and that all the shares had been transferred to Car Centre Capelle B.V..
- 3.10 SIDN gave the Appellant opportunity to demonstrate that the Contested Domain Name was excluded from the business takeover and/or from the associated share transfer. However, according to SIDN, the Appellant had been unable to do so. Nor, according to SIDN, had any evidence been provided that the Contested Domain Name was merely made available on a temporary basis.

Existing Registrant's case

- 3.1 The Existing Registrant asked the C&AB to reject the Appellant's appeal, and to uphold SIDN's decision.
- 3.2 The Existing Registrant's legal counsel said that little could be added to the evidence already provided by SIDN. The C&AB was accordingly asked to consider the substance of SIDN's response as being also the substance of the Existing Registrant's response.
- 3.3 On behalf of the Existing Registrant, in a document already submitted to SIDN, the legal counsel additionally made the point that the share acquisition included goodwill to the value of €60,000. Moreover, following the share transfer, Car Centre Capelle B.V. made use of the trading name Autobedrijf van den Bergh for more than 8 years, without any objection being made. According to the Existing Registrant, there was no evidence to support the Appellant's assertion that the trading name had been made available for use merely on a temporary basis.

Hearing

- 3.4 The appeal was considered at the C&AB hearing of 7 March 2024, where the parties spoke as follows in support of the arguments previously made in writing.
- 3.5 At the hearing, the Existing Registrant stated that, following the share transfer, the Appellant provided the new indirect manager of Car Centre Capelle B.V., Mr M Verdoold, with the information required to manage the previously mentioned website and e-mail account. That assertion was not challenged at the hearing.
- 3.6 The Appellant told the hearing that transfer of the Contested Domain Name was made in error and secured by deception. In that context, reference was made to various pieces of legislation and regulations, including the Trading Names Act.

Consideration

- 4.1 The C&AB received the appeal in good time. Moreover, the appeal fee referred to in Article 4.4 of the Complaints and Appeals Regulations was duly paid.
- 4.2 In accordance with Article 3.7 of the Complaints and Appeals Regulations, the C&AB has accordingly considered whether the contested decision was within the bounds of the law and the applicable rules defined by SIDN (the Terms and Conditions and the published procedures), and whether, taking all circumstances into account, it was reasonable for SIDN to arrive at the decision it made.
- 4.3 In the context of these appeal proceedings, the C&AB has based its opinions on the version of the Contested Decision presented by SIDN in its e-mail of 12 October 2023, as referred to in 1.1.
- 4.4 Article 13.1 of the Terms and Conditions allows SIDN, in response to a request from a third party, to annul a register amendment if SIDN is satisfied that a registrant change

was requested by someone who did not at that time have the authority to act on behalf of the registrant.

- 4.5 The C&AB considers that SIDN's decision was reasonable, and that Article 13.1 was not applicable in this case. There was no satisfactory evidence that the registrant change was requested by a person without appropriate authority.
- 4.6 In that context, it is a moot question whether the Appellant was still the Contested Domain Name's registrant at the time of the registrant change (as contended by the Appellant), or whether the Contested Domain Name had by then been transferred to Car Centre Capelle B.V. (as contended by the Existing Registrant). If Car Centre Capelle B.V. was already the registrant at that time, there is no question of the registrant change being unauthorised. If the Appellant was still the registrant, it cannot be assumed that the registrant change was requested by a person who was not authorised to represent the Appellant, for the following reasons.
- 4.7 It has been established that the registrant change was requested using the registrar's customer control panel and that the request was authorised using a code sent to the e-mail address that the registrant gave to the registrar. It was therefore reasonable for the registrar and SIDN to assume that the registrant change was requested by a person authorised to act for the registrant, unless satisfactory evidence to the contrary was found,
- 4.8 In this case, it has not been satisfactorily demonstrated that the registrant change was requested and authorised by a person who was not authorised to act for the registrant. It is known that the request was made and authorised by Mr M Verdoold, the indirect manager of Car Centre Capelle B.V.. It is also known that, in 2012, the Appellant's business was taken over by and transferred to Car Centre Capelle B.V. and that, in 2015, the shares in Car Centre Capelle B.V. were transferred from the Appellant's management company to the management company owned by Mr M Verdoold. Hence, Mr M Verdoold became the indirect manager of Car Centre Capelle B.V.. The C&AB also established that the Appellant allowed Car Centre Capelle B.V. to continue using i) the trading name Autobedrijf Van den Bergh, ii) the domain name matching that trading name, iii) the website linked to that domain name, and iv) the e-mail address used to authorise the registrant change. Moreover, it is not disputed that the Appellant provided (the indirect manager of) Car Centre Capelle B.V. with the details to enable management of the website and e-mail account.
- 4.9 In light of the circumstances set out above, it is likely that, from the time of the transfer of the Appellant's business in 2012, Car Centre Capelle B.V. could have made claim to the Contested Domain Name, and that the Appellant would have been obliged to cooperate with the transfer of the Contested Domain Name to Car Centre Capelle B.V.. Those circumstances also make it likely that the Appellant at least implicitly consented to Car Centre Capelle B.V. being able to independently amend the Contested Domain Name's registration.
- 4.10 The C&AB dismisses the Appellant's contention that he allowed the new owner of Car Centre Capelle B.V. to use the trading name and the Contested Domain Name merely for a period of roughly a year following the share transfer, during which time the Appellant

continued to work for the transferred company. That contention is hard to reconcile with the fact that the new owner of Car Centre Capelle B.V. acquired the company, including the associated goodwill, and paid €60,000 for that goodwill. Furthermore, it is known that Car Centre Capelle B.V. continued to make use of the trading name and the Contested Domain Name for more than 8 years following the share transfer, without any objection from the Appellant, despite the fact that the Appellant was well aware of the situation. Also, the Appellant has failed to provide any documentary evidence to support his contention that he consented only to temporary use. The Appellant has supported his contention merely by pointing out that Autobedrijf Van den Bergh is not a formally constituted name of Car Centre Capelle B.V.. However, it does not follow that Car Centre Capelle B.V. did not acquire and make use of the trading name and entitlement to the Contested Domain Name.

- 4.11 The C&AB dismisses the Appellant's assertion that, if it must be assumed that the trading name and the Contested Domain Name were transferred, the transfer was made in error or secured by deception. Noting the absence of any supporting argument, the C&AB sees no reason to believe that the transfer was made in error or secured by deception.
- 4.12 The foregoing leads to the conclusion that the Appellant's appeal against SIDN's decision of 2 August 2023 to reject the Appellant's request to annul the registrant change must be dismissed.
- 4.13 The C&AB also notes that, at the hearing, it became apparent that the Appellant (or the Appellant's representative) is in dispute with the Registrant and the Registrant's indirect manager regarding various matters relating to or arising out of the transaction referred to in 3.2, including the use of the trading name Autobedrijf Van den Bergh, the cancellation of a rental agreement, and entitlement to a telephone number. The appeal made on the Appellant's behalf against SIDN's decision appears to be associated with those disputes. The C&AB emphasises that it is unable to rule on anything other than the decision made by SIDN, and makes no comment regarding any other matter. The C&AB advises the parties to seek alternative means of resolving the other disputed matters, such as mediation.

Decision

The Complaints and Appeals Board of the Foundation for Internet Domain Registration in the Netherlands dismisses the Appellant's appeal of 17 October 2023. As provided for in Article 7.3 (preamble and paragraph b) of the Complaints and Appeals Regulations, the C&AB rules that Vakgarage Van den Bergh should remain recorded as the registrant of the Contested Domain Name.

This ruling was made on 1 May 2024 by C&AB Chair Professor Meester PH Blok, and C&AB members Meester D Kingma, Meester TJM de Weerd and B Goslings, in the presence of C&AB Secretary Meester HJM Gardeniers.

Signed

PH Blok

Signed

HJM Gardeniers

