

Complaints and Appeals Board

FOUNDATION FOR INTERNET DOMAIN REGISTRATION IN THE NETHERLANDS

DECISION

Place and date of decision : Arnhem, 8 June 2007

Case number : 2007/13

Complainant : Mrs M.G.B. Breed, on behalf of the Kontext
Foundation

Registrant of the domain name to :
which the complaint relates SY-Web-Invest Ltd.

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

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 letter dated 9 January 2007, received 2 February 2007, Mrs M.G.B. Breed, acting on behalf of the Kontext Foundation (also referred to below as 'the Complainant') complained to the C&AB about the domain name *huiselijkgeweldhaarlem.nl*. Supplementary information was provided by letter dated 30 March 2007.
- 1.3 The letter stated that, until 4 October 2006, the domain name *huiselijkgeweldhaarlem.nl* had been in use by the Kontext Foundation. Following its release, the name had been re-registered on 10 October 2006 by a new registrant, Sy Web-Invest Ltd (referred to below as 'the Registrant'). The Registrant made the domain name point to a German erotic site (*erotize.de*). The Complainant indicated that, until 4 October 2006, the domain name had been used by the Support Service for Victims of Domestic Violence (Dutch Initials, AMHG). The AMHG's aim was to prevent physical and psychological violence within the home by encouraging victims to report abuse. The AMHG's website provided information on this subject and an incident reporting facility. However, the AMHG had become part of a regional collaborative network, and had ceased to maintain a separate website. The domain name was consequently released with effect from 4 October 2006.
- 1.4 The Complainant asserted that the website now associated with the domain name was at odds with the purpose of the site originally associated with it, and that the name's registration was therefore an affront to decency, in the sense of Article 20.1 of the Regulations. The domain name had no logical relationship with the website technically associated with it. The Complainant argued that it was consequently reasonable to conclude that the current Registrant's intention was to lead unsuspecting people who were looking for the AMHG to a pornographic website, apparently with the aim of tempting such visitors to make commercial use of the website in question. The Complainant took the view that this constituted an abuse of the domain name and its familiarity.

The Complainant argued that the name was an affront to decency, primarily because of its use as a means of confronting people with unsought sexually explicit material, because of the contrast between the German website and the website with which the domain name was originally associated, and because of the commercial exploitation of the domain name's high public profile. The Complainant contended that the domain name's release by its previous registrant did not detract from these arguments. Furthermore, the Complainant suggested that the Foundation's image could be harmed by the alleged abuse.

- 1.5 The Complainant asked the C&AB to rule that the Registrant should be denied use of the domain name and that the name's registration should be cancelled.
- 1.6 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.
- 1.7 The complaint was considered at the C&AB session on 2 April 2007. The Complainant had indicated in advance that she did not wish to avail herself of the opportunity to be heard in person by the Board at the session.

2 **Judgement**

- 2.1 The C&AB has interpreted the complaint made against the domain name *huiselijkgeweldhaarlem.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 *huiselijkgeweldhaarlem.nl* was inconsistent with public order or decency. The C&AB observed that the domain name *huiselijkgeweldhaarlem.nl* was originally applied for and used by the Complainant herself. The Complainant subsequently cancelled the domain's registration, after which it was re-registered by its current registrant.
- 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 A domain name may be deemed inconsistent with public order or decency if the nature of the domain name is undeniably such that the majority of the general public would find the name sufficiently shocking to make its continued registration unacceptable. The C&AB rules that the domain name *huiselijkgeweldhaarlem.nl* – a domain name that the Complainant had also used – cannot be deemed inconsistent with public order or decency on that basis.
- 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 currently points to a website where erotic material is available.
- 2.6 The use of a domain name that has previously been associated with a particular website to direct Internet users to another site, such as an erotic site, may be unlawful under certain circumstances. However, in the C&AB's view, it does not follow that the name is inconsistent with public order or decency.
- 2.7 The C&AB's conclusion that the domain name at the centre of this case is not inconsistent with public order or decency is reinforced by the fact that the Complainant is herself the former registrant of the name in question; her foundation having changed its name, she registered another domain name corresponding to the new foundation name, stopped using the old domain name and chose to cancel her old domain name, thus making it available for re-registration and use for other purposes by anyone else. In this particular case, the alternative use to which the domain name has been put is to direct Internet users to an erotic website. The C&AB considers this to be a relatively common form of usage and as such, in view of what the domain name would normally be understood to mean, it is not sufficiently shocking to a majority of the general public to make its continued registration unacceptable.

3 **Decision**

The Complaints & Appeals Board of the Foundation for Internet Domain Registration in the Netherlands rules the complaint made on 9 January 2007 by Mrs M.G.B. Breed, on behalf of the Kontext Foundation, concerning the domain name *huiselijkgeweldhaarlem.nl* to be unfounded.

This decision has been issued by Meester A. Oskamp, chairman, in the presence of Meester A.P. Meijboom, Meester J.C.M. 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