



**BENELUX OFFICE FOR INTELLECTUAL PROPERTY**  
**CANCELLATION DECISION**  
**N° 3000314**  
**of 2 February 2023**

**Claimant:** **Baidu Online Network Technology (Beijing) Co., Ltd.**  
3F, Baidu Campus, Shan gdi 10th Street 10  
100085 Haidian District, Beijing  
China

**Representative:** **Leeway Advocaten**  
James Wattstraat 100  
1097 DM Amsterdam  
The Netherlands

*against*

**Defendant:** **Baidu Europe BV**  
Keizersgracht 62  
1015 CS Amsterdam  
The Netherlands

**Representative:** **Bavelaar & Bavelaar Advocaten**  
Postbus 11014  
1001 GA Amsterdam  
The Netherlands

**Contested trademark: Benelux registration 1398336**

**BAIDU**

## **I. FACTS AND PROCEEDINGS**

### **A. Facts**

1. On 16 June 2021 the claimant filed an application for cancellation in accordance with Article 2.30bis of the Benelux Convention on Intellectual Property (hereinafter: "BCIP"), invoking the following ground:

- The application for the contested trademark was filed in bad faith (Article 2.2bis(2) BCIP).

2. The application for cancellation is aimed at Benelux registration 1398336, filed on 2 July 2019 and registered on 19 September 2019, of the word mark 'BAIDU'.

3. The cancellation claim is directed against all goods and services of the contested trademark, namely:

Class 16: Paper; cardboard; printed publications; printed matter; computer printers (Inking ribbons for -); bookbinding materials; books; adhesives for stationery or household purposes; artists' paint brushes; music sheets; music scores; periodical magazines; photographs; stationery and educational supplies; typewriters; Instructional and teaching material (except apparatus); plastic materials for packaging; printing blocks.

Class 35: Provision of information and advice to consumers regarding the selection of products and items to be purchased; exhibitions for commercial or advertising purposes; arranging of exhibitions for commercial purposes; demonstration of goods for promotional purposes; Publicity and sales promotion services; provision of business and commercial information; business consultancy services; assistance and advice regarding business organization and management; advertising; advertising particularly services for the promotion of goods; arranging of contracts for the purchase and sale of goods and services, for others; market research and marketing studies; compilation of computer databases; office functions; risk management consultancy [business]; employment agency services; personnel recruitment services; temporary personnel employment services; placement of permanent personnel.

Class 36: Financing services; management of investment funds; investment of funds; capital investment; investment advisory services relating to real estate; raising of capital; financial management and planning; brokerage; portfolio management; real estate affairs; real estate appraisal.

Class 38: Telecommunication services; communication services for the electronic transmission of voices; transmission of data; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; transmission of data, audio, video and multimedia files; simulcasting broadcast television over global communication networks, the Internet and wireless networks; provision of telecommunication access to video and audio content provided via an online video-on-demand service; satellite communication services; telecommunications gateway services.

Class 42: Technical design and planning of telecommunications equipment; technical research services; computer software technical support services; technical consultancy relating to the application and use of computer software; technical assessments relating to design; graphic design services; fashion design; creating and maintaining web sites.

4. The language of the proceedings is English.

**B. Course of the proceedings**

5. The application for cancellation is admissible and was notified by the Benelux Office for Intellectual Property (hereinafter: "Office" or "BOIP") to the parties on 22 June 2021. During the administrative phase of the proceedings both parties filed arguments. The course of the proceedings meets the requirements as stated in the BCIP and the Implementing Regulations (hereinafter: "IR").

**II. LEGAL GROUNDS AND ARGUMENTS OF THE PARTIES****A. Claimant's arguments**

6. The claimant explains that he (Baidu) is a multinational technology company established in China in the year 2000, specializing in both internet-related services and products as well as artificial intelligence. For many years, he claims, Baidu has been one of the world's largest companies in this sector, sometimes referred to as the Chinese Google. Baidu has been the world's second-largest internet search engine for some time, and also operates a mapping service, an online encyclopaedia, a cloud storage service and a discussion forum, among others. Baidu went public on Wall Street in 2005 and has been the first Chinese company listed on the Nasdaq-100 since late 2007, which has led to considerable media attention, including in the Benelux region.

7. The defendant is, according to the claimant, a Dutch company, whose sole shareholder is a Singapore-based company, which is controlled by Mr Michael Gleissner. Mr Gleissner is, according to the claimant, one of the most notorious "trademark squatters" in history and his activities are "ranked high in the imaginary charts of bad faith activity".

8. The claimant refers to various news articles which, according to the claimant, show that the 'ultimate beneficial owner', Michael Gleissner, is notorious for hijacking trademarks (either by applying for huge numbers of trademarks or by buying trademarks). Companies linked to Mr Gleissner have filed thousands of trademark applications worldwide, including common first names and trademark that are identical to the names of well-known companies. According to the claimant, this demonstrates a pattern of unfair intent and the bad faith intentions of Mr Gleissner have already been established in other legal proceedings, both before the Office, national courts and in other jurisdictions. The claimant adds that it is clear that the defendant has no intention to participate in trade in accordance with honest commercial practices, and that he acquired the contested trademark, in line with his '*modus operandi*', with a purpose other than that covered by the functions of a trademark.

9. The claimant further states that the mark is not genuinely used and the only use made is clearly 'token use', which also demonstrates the defendant's bad faith. The claimant submits that he has conducted extensive (internet) research. The defendant's various websites have only a landing page with no working functionality and the links (general terms and conditions, privacy policy, company and contact information, login...) appearing thereon do not work. A Facebook page created in 2017 has only a handful of clear 'ghost messages'. A 'Baidu TV' app does not work and has only one user, according to the Google Chrome Webstore. An office building in the Limburg town of Swalmen bears a Baidu Europe logo, but no activity takes place in the building, which, according to local media, has been vacant for considerable time. In short,

according to the claimant, the defendant is nothing more than a 'ghost company' and there is no evidence of any serious activity or genuine use of the contested trademark.

10. Given the notoriety of Baidu outlined above (point 7), the claimant argues it is impossible that the defendant was unaware of the claimant's activities. Both at the time of filing of the contested trademark (2019) and at the time the defendant's legal predecessor registered a BAIDU trademark for the first time (2005), Baidu was well-known. According to the claimant, by registering the contested trademark, the defendant solely intended to adversely affect the claimant's interests. The claimant further notes that there are four other cancellation proceedings between the same parties pending before the Office, and states that this establishes a clear pattern of bad faith.

11. The claimant concludes that the contested trademark should be invalidated for bad faith and the defendant should be ordered to pay the costs.

## **B. Arguments of the defendant**

12. The defendant states that the company Baidu Europe has been active since 2003, first as a sole proprietorship and since 2012 as a private limited company, as an internet services provider focusing on software consultancy, automation and web-portal design. In October 2015, the owner at the time entered into negotiations with Michael Gleissner to sell the shares in Baidu Europe to one of Mr Gleissner's companies. According to the defendant, Mr Gleissner is a highly successful serial entrepreneur, film producer, director, screenwriter and actor, who has invested in numerous companies worldwide since 2002, including technology and internet companies, especially in China, Taiwan and Japan. In the trademark world, Gleissner is known for filing and defending numerous trademarks owned by his companies. However, he is no "trademark squatter" or "trademark troll", as stated by trademark professionals in various specialized media. Mr Gleissner's trademark strategy, which has raised eyebrows in the trademark world for several years, is part of his current and future business plans that he undertakes and explores, apart from his current running businesses. Gleissner is not interested in selling his trademarks. The defendant argues that all trademarks owned by his companies are intended to be used genuinely in the course of trade and it is solely up to him to decide when and how a trademark will be used.

13. However, the acquisition of Baidu Europe was not part of Mr Gleissner's trademark activity, which only is a part of his business interests and plans in Chinese, Japanese and Taiwanese companies. Baidu Europe is and has always been a Dutch company. Mr Gleissner was interested in acquiring the company because it is an internet company that was already past its start-up phase and he has long been active with companies in that field. The sale and transfer took place in December 2015.

14. Years before Mr Gleissner acquired the company, Baidu and Baidu Europe were already in a dispute. In 2010, Baidu applied for several EU trademarks against which opposition was filed by Baidu Europe. Baidu then claimed the invalidity of Baidu Europe's Benelux trademarks in proceedings before the District Court of Noord-Nederland, which dismissed the claims in 2013. There were also proceedings concerning an EU trademark, in which the claimant's claim was rejected in 2015 by OHIM's (now EUIPO) Board of Appeal. The claimant was thus ruled against in both cases but, the defendant argues, still failed to pay the litigation costs. These judgments are final and, according to the defendant, relate to the same grounds, so they

constitute *res judicata*. The defendant further claims that the claimant is trying to mislead the Office by holding back this important information.

15. The defendant argues that Baidu Europe has been active from 2003 until today. Long before Mr Gleissner became involved in the company, there was already normal use in commerce, as has been established by the court according to the defendant. One of the current plans is to start a tech campus in the town of Swalmen (near Eindhoven) for the Chinese companies in which Gleissner invests, as a hub to the western world. The defendant has searched for suitable locations and acquired premises that it plans to set up as a bar to make the place attractive to young tech workers. To create local goodwill, the defendant has sponsored a sports team. Although immigration issues and the Covid pandemic have delayed realisation, these plans are still ongoing. The defendant further claims that he is an accredited ICAN registrar, has company vehicles and premises on which his logo is displayed. According to the defendant, this clearly proves that Baidu Europe is not a ghost company but an independent company that has nothing to do with Baidu.

16. In addition to exhibits relating to the above-mentioned activities, the defendant submits some credit notes, invoices, affidavits, a document from the Dutch Tax Authority, a printout of a website which according to the defendant relates to "Baidu TV app". The defendant states that, although non-usus is not a ground in these proceedings, the proof of use also shows that Baidu Europe is not a ghost or shelf company.

17. There is and was, in summary, according to the defendant, no bad faith on his part. Baidu Europe did not file any trademark in bad faith, is an active company and uses its trademark in the regular course of trade. According to the defendant, the truth is that it is precisely the claimant who has been harassing him and hunting his trademarks almost since the beginning of its existence. The claimant seems to see Mr Gleissner's involvement as an opportunity to attack the Baidu trademarks again after the earlier failed attempts.

18. The defendant concludes that the application for cancellation should be fully rejected and the claimant, as the losing party, should be ordered to pay the costs of the proceedings.

### **III. GROUNDS FOR THE DECISION**

#### **A.1 Bad faith – legal framework**

19. Pursuant to Article 2.30bis (1)(a) BCIP an application for invalidation may be filed with BOIP based on the grounds set out in Article 2.2bis (2) BCIP. Article 2.2bis (2) BCIP provides that a trademark shall be declared invalid if the application for registration was made in bad faith. The relevant time for assessing the existence of bad faith on the part of the defendant is therefore the time of filing the application for the trademark.<sup>1</sup>

20. Neither the BCIP nor Directive 2015/2436 contains a definition of the concept of 'bad faith'. Since this is an autonomous provision of Union law, it must be interpreted uniformly and the meaning and scope

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<sup>1</sup> CJEU 11 June 2009, C-529/07, ECLI:EU:C:2009:361, point 35 (Chocoladefabriken Lindt & Sprüngli).

of the concept of 'bad faith' must be determined in the light of the context of the provision concerned and the objective of the Directive<sup>2</sup>.

21. In this regard, the Court has held that bad faith within the meaning of Article 2.2bis (2) BCIP must be subject of an overall assessment, taking into account all relevant factors<sup>3</sup>. The defendant's (subjective) intention must be determined by reference to the (objective) circumstances of the particular case<sup>4</sup>. In this respect, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith, which becomes apparent, in particular, where the applicant has applied for registration of a sign registered as a trademark without intending to use it, but merely to prevent a third party from entering the market<sup>5</sup>. In such a case, the trademark does not fulfill its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned, so that they can distinguish them from products or services of different origins, without any confusion<sup>6</sup>.

22. In the *Sky and Others* case<sup>7</sup>, this was further specified. The Court recalls at the outset that, in accordance with its usual meaning in everyday language, the concept of 'bad faith' presupposes the presence of a dishonest state of mind or intention and that its interpretation must take account of the specific context of trademark law, which is that of the course of trade and the system of undistorted competition<sup>8</sup>. While the court adds that bad faith cannot be presumed on the basis of the mere finding that, at the time of filing its application for registration, the applicant had no economic activity corresponding to the goods and services referred to in that application<sup>9</sup>, it goes on to conclude that the provision "must be interpreted as meaning that a trademark application made without any intention to use the trademark in relation to the goods and services covered by the registration constitutes bad faith, within the meaning of those provisions, if the applicant for registration of that mark had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trademark."

23. Pursuant to Rule 1.31 IR, the claimant must substantiate the application for invalidity with arguments and supporting documents. A claimant invoking the invalidity of an application on the ground of bad faith must state the relevant facts and circumstances<sup>10</sup>. It is therefore for the claimant to prove the circumstances on the basis of which it can be established that an application for registration was made in bad faith<sup>11</sup>.

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<sup>2</sup> CJEU 27 June 2013, C-320/12, ECLI:EU:C:2013:435 (*Malaysia Dairy*).

<sup>3</sup> CJEU, *Chocoladefabriken Lindt & Sprüngli*, cited above, point 37.

<sup>4</sup> CJEU, *Chocoladefabriken Lindt & Sprüngli*, cited above, point 42.

<sup>5</sup> CJEU, *Chocoladefabriken Lindt & Sprüngli*, cited above, points 43-44.

<sup>6</sup> CJEU, *Chocoladefabriken Lindt & Sprüngli*, cited above, point 45.

<sup>7</sup> CJEU 29 January 2020, C-371/18, ECLI:EU:C:2020:45 (*Sky and Others*).

<sup>8</sup> CJEU, *Sky and Others*, cited above, point 74.

<sup>9</sup> CJEU, *Sky and Others*, cited above, point 78.

<sup>10</sup> BenCJ 21 November 1983, A 82-6 (*Cow Brand II*).

<sup>11</sup> BenCJ 18 October 2022, C 2021/9 (*BOBO BIRD*), General Court (EU) 21 April 2021, T-663/19, ECLI:EU:T:2021:211 (*MONOPOLY*).

## **A.2 Bad faith – analysis of the case**

24. Based on the facts and arguments presented by the parties, the Office concludes that it has been sufficiently established that the defendant was acting in bad faith when he filed the application on 2 July 2019. In fact, all the circumstances indicating bad faith mentioned in the case law apply in this case.

25. Firstly, it is out of the question that the defendant was unaware of the claimant's intensive use of the BAIDU trademark when he filed the application. Not only was this known worldwide at the time, the parties were by no means strangers to each other. After all, they had been engaged in a legal dispute for some time. So the defendant certainly had this knowledge when he filed the application.

26. Secondly, the claimant's reasoned contentions about the lack of any actual activity by Baidu Europe (point 9) are insufficiently refuted by the defendant (points 15-16). Based on exactly the same evidence, moreover, in four other cancellation proceedings pending between the same parties (cases 3000312, 3000313, 3000315 and 3000316, all dated 29 December 2022), the Office held that no genuine use had been demonstrated and declared the trademarks in question to be revoked.

27. Furthermore, the defendant does not explain what his intentions and the underlying commercial logic were to file, in addition to the earlier registrations mentioned in the previous paragraph which have been revoked, the present application for essentially the same trademark.

28. The contested trademark is not yet subject to a use obligation. However, the defendant does not provide evidence of any economic activity corresponding to the goods and services for which the trademark is registered or any serious intentions to use the trademark in relation to these goods and services.

29. The Office therefore concludes that it is not only established that the defendant filed the application with the intention of obtaining an exclusive right for purposes other than those falling within the functions of a trademark, but also that he had the intention of undermining, in a manner inconsistent with honest practices, the interests of a specific third party, namely the claimant.

## **B. Other factors**

30. To the extent that the defendant argues that rulings in other proceedings would constitute *res judicata* (point 14), it should be recalled that BOIP has its own responsibility to take a decision on its own merits and is not bound by decisions of other instances. Moreover, these proceedings concern other trademark registrations with a different factual history and a different moment of examination.

## **C. Conclusion**

31. The Office concludes that the defendant filed the application for registration of the contested trademark in bad faith. In brief, the knowledge of the claimant's BAIDU trademark and its reputation, the lack of use of the previous trademarks of the defendant and the subsequent filing of the contested sign, as well as the lack of any explanation on the reason for filing the contested sign and its commercial logic, makes that the Office finds that there is a dishonest intention.

**IV. DECISION**

32. The application for cancellation with number 3000314 is justified.
33. Benelux trademark registration 1398336 is invalidated.
34. The defendant shall pay the claimant 1,420 euros in accordance with Article 2.30ter (5) BCIP in conjunction with rule 1.44 (2) IR, as the cancellation application is upheld in its entirety. This decision constitutes an enforceable order pursuant to Article 2.30ter (5) BCIP.

The Hague, 2 February 2023



Pieter Veeze  
(*rapporteur*)

Eline Schiebroek

Marjolein Bronneman

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