

Institute for Dispute Resolution

COMPLAINANT:

eUniverse, Inc.
Attention: Ms. Lisa Parker
6300 Wilshire Boulevard, #1700
Los Angeles, California 90048
Telephone: (323) 658-9089, Ext. 122
FAX: (323) 658-5414
E-Mail: lparker@euniverse.com

File No. CPR0210
Date of Commencement: May 10, 2002
Domain Name(s): "Cupidjunction.com"
Registrars: Computer Services Langenbach
GMBH DBA Joker.com
Rathausufer 16, Duesseldorf,
NRW 40213, DE

Internet Corporation for
Assigned Names & Numbers
(ICANN)
4676 Admiralty Way, #330
Marina del Rey, CA 90292
Arbitrator: Hon. Sherman G. Finesilver

vs.

RESPONDENT:

RaveClub Berlin
Attention: Mr. John Zaccarini, d/b/a
RaveClub Berlin
600 Haddonfield Road
Cherry Hill, New Jersey 08034

Before: Hon. Sherman G. Finesilver, Arbitrator

The Complaint was filed with CPR on May 10, 2002, and after review for administrative compliance, was timely served on the Respondent. The Respondent did not file a Response on the Response date – May 30, 2002. I was appointed Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules promulgated by the Internet Corporation for Domain Names and Numbers (ICANN).

PROCEDURAL HISTORY AND SUMMARY

The domain matter is before the Arbitrator on the Complaint of eUniverse, Inc. Upon the written record, I find as follows:

The domain name “cupidjunction.com” is confusingly similar to the Service Mark “Cupid Junction”. The Service Mark was registered February 5, 2002, and is the proprietary property of Complainant. Misspelling of the URL of “cupidjunction.com” dating site redirects the customer to a pornography site at “amaturevideos.nl”. There is no bona fide web page at “cupidjunction.com” that maintains an offering of goods or services. There is simply a blank “bridge” page that immediately redirects the user to Respondent’s commercial website.

(a) The Respondent-Registrant has not demonstrated any intent to use the domain name “cupidjunction.com” in connection with a bona fide offering of goods or services. The consumer and interested parties are simply redirected to a pornography site at “amaturevideos.nl” and the actual domain name entered does not appear in any of the browser windows that display the Respondent’s commercial website; and

(b) It is significant that the Respondent is not known by the domain name. The Respondent’s name is “RaveClub Berlin,” not “Cupid Junction”; and

(c) It is apparent that Respondent has not made a noncommercial or fair use of the domain name. Respondent has demonstrated intent for commercial gain by misleading customers by utilizing an intentional misspelling of “cupid junction” and “redirecting” the customers to a pornography website. The computer vehicle channels the consumer into a different milieu of programming.

(d) In its use of the domain name, Respondent has demonstrated “bad faith” by intentionally attempting to attract, for commercial gain, internet users and to another on-line location, by creating a situation where there is a likelihood of confusion with the Complainant’s mark (by a misspelling of the name). Respondent’s domain name then redirects the user to another site from the infringing domain name. A casual view of domain name and service marks indicates similarity in name that, on its face, can confuse the consumer.

By way of further procedural history, an exhibit to the Complaint includes a Complaint for permanent and other equitable relief filed against John Zuccarini, d/b/a RAVECLUB BERLIN, by the Federal Trade Commission. The Complaint (Civil Action No. 01-CV-4854, U.S.D.C., E.D. Pa.), requests legal and injunctive relief to “redress injury to consumers and the public interest from Defendant’s deceptive and unfair acts and practice in violation of [federal law].” The Complaint alleges the Defendant has frequently programmed special variations of domain names, some of which include misspelling of existing domain names. Through artifice,

Defendant directs consumers to Defendant's website and secures them in a series of advertising web pages, enticing them into further inquiry through a rapid series of new and separate browse windows, each containing advertisements. It is alleged that by misuse of computer programming, Defendant's procedures "can force consumers to navigate through dozens of unwanted advertising windows."

The Complaint in the federal court action further alleges that actions and representations of Defendant are misleading and false to the detriment and injury of computer consumers. Legal and equitable support of the position of the Federal Trade Commission is spelled out in an articulate way.

-- -- -- -- --

From the totality of the recitals in the Complaint in the domain case, which remain unrefuted, it appears that Respondent seeks to use the good will and mark owned by the Complainant for its own commercial purposes, without regard to the legal and common law proprietary interests of Complainant.

As noted above, Respondent's use of the domain name is likely to cause confusion as to the source and endorsement of the Respondent's website. Respondent is using Complainant's website for commercial gain because, through redirection to its "linkster.com" website, and as represented in the Complaint, visitors to the misspelled website of Respondent are presented with advertisements and hyperlinks to other websites providing goods and services, foreign and antagonistic to activity of Complainant.

The service name of Complainant is entitled to protection and, in the legal sense, that name and identity is protected by law.

As noted, there is a proprietary interest in usage of the Complainant's name and it is entitled to commercial protection in furtherance of documented marks and, in this action, in domain principles. A stranger who seeks to benefit from another's name or identity must, of necessity, have support in law, including appropriate assignments or transfer of name rights. The Complainant correctly seeks to nullify any claimed interest by Respondent in the domain name at issue.

On a further note, the signature of the principal attorney signing the Complaint carries with it the imprimatur that the action is well-founded, appropriate inquiry of law and fact has been made, and there is a basis in fact and law for the action or relief requested. Further, the signature of the attorney signing the pleadings also carries with it the spirit and mandate of Rule 11, Fed. R. Civ. Proc., as it deals with the signature of the attorney in a formal document

such as the Complaint signed herein. Thus, the recitals filed in this action are entitled to considerable weight – especially where the recitals and allegations are unrefuted.

FINDINGS

Upon the written submitted record, I find as follows:

Respondent's registered domain name, "cupidjunction.com" was registered with Computer Services Langenbach GMBH, d/b/a Joker.com on or about August 3, 2001. In registering the name, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

IDENTITY/CONFUSING SIMILARITY:

Complainant alleges that "cupidjunction.com" is identical or confusingly similar to Complainant's service mark "Cupid Junction" and domain name "cupidjunction.com". I agree, as discussed in the Procedural History and Summary above, there is confusing similarity used by Respondent in its domain name.

I therefore conclude that the registered domain is identical or confusingly similar to Complainant's protected mark.

RIGHTS AND LEGITIMATE INTERESTS:

Complainant alleges that Respondent has no rights or legitimate interests with respect to the domain name at issue. As noted in the Procedural History and Summary above, there is support for this allegation.

UDRP Paragraph 4(c) provides that Respondent's rights or legitimate interests in a domain name may be demonstrated, without limitation, by showing that (a) before notice to Respondent of the dispute, Respondent has used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (b) Respondent has been commonly known by the domain name; or (c) Respondent is making legitimate noncommercial or faire use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Respondent has not established any legitimate rights in the domain name.

In sum, I conclude that Respondent does not have rights or legitimate interests with respect to the domain name at issue.

BAD FAITH:

I have discussed Respondent's bad faith registration and use in the Procedural History and Summary above.

Paragraph 4(b) of the UDRP provides that indications of bad faith include, without limitation, (a) registration for the purposes of selling, renting or transferring the domain name to the Complainant for value in excess of Respondent's cost; (b) a pattern of registration in order to prevent Complainant from reflecting the mark in a corresponding domain name; (c) registration for the primary purpose of disrupting the business of a competitor; or (d) an intentional attempt to attract, for commercial gain, Internet users to Respondent's web site by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website or location, or of a product or service on Respondent's website or location.

I conclude that Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of my findings above that (a) the registered domain name is identical or confusingly similar to Complainant's protected mark; (b) Respondent does not have rights or legitimate interests with respect to the domain name at issue; and (c) Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy:

I FIND IN FAVOR OF THE COMPLAINANT.

The intentional misspelling of a key word by Respondent does not lend support to continuous use by a Respondent or entitlement to domain protection.

Respondent's use and registration of the name without appropriate authorization for the purpose of directing users to advertisements lends support to the contention of Respondent's bad faith. Respondent's bad faith is shown by Respondent's attempt to create the likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website and the activities listed and promoted therein, and improperly directs consumers into a maze of channels at variance to Complainant's commercial purposes.

REMEDY

Complainant's request to transfer the domain name registration to Complainant is hereby GRANTED. The domain name shall be transferred from Respondent to Complainant eUniverse, Inc. Respondent shall have no further claim or benefit in and for the domain name.

Entered in Denver, Colorado, on the 17th day of June, 2002.

/ s / Sherman G. Finesilver

Hon. Sherman G. Finesilver, Arbitrator

Law Office of Judge Sherman G. Finesilver (Ret.)

3515 S. Tamarac Drive, Suite 200

Denver, Colorado 80237

Telephone: (303) 785-2815 or 757-5000

Fax: (303) 689-9627

E-Mail: afinesilver@worldnet.att.net