

CPR Institute for Dispute Resolution

COMPLAINANT

Southwest Texas State University
601 University Drive
San Marcos TX 78666
T: 512.245.2530
F: 512.245.9633
Email: Wf01@swt.edu

File Number: CPR00 0231

Date of Commencement: 12/18/02

Domain Name(s): southwesttexasstateuniversity.com

Registrar: eNom

vs.

Arbitrator: Steven M. Weinberg

RESPONDENT

Mike Flynn
235 W. 102 Street, Apt. 14ff
New York NY 10025
T: 718.543.3664
F: None
Email: mikeflynn4567@hotmail.com

Before Steven M. Weinberg, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on 12/16/02, and, after review for administrative compliance, served on the Respondent on [12/18/02. The Respondent did not file a Response on or before January 7, 2003. 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). Upon the written submitted record including Complainant's Complaint and correspondence from the CPR Institute for Dispute Resolution to Respondent, I find as follows:

FINDINGS

Respondent's registered domain name, southwesttexasstateuniversity.com, was registered with eNom on 2/5/02. 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 <southwesttexasstateuniversity.com> is identical or confusingly similar to Complainant's trademark, Southwest Texas State University which applies to educational services.

Complainant has used the name Southwest Texas State University for its educational services since 1968, and registered the name with the State of Texas in 1983. With the exception of the .com TLD, the domain name is identical to the Complainant's mark. Further, Complainant cites a number of cases of actual confusion by users of the domain name.

I therefore conclude that the registered domain name 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. In support for this allegation, Complainant notes that Complainant has used and

owned the Southwest Texas State University mark exclusively since 1968. Complainant also contends that Respondent uses the domain name to drive user traffic to inappropriate web sites such as pillsstore.com and abortionismurder.com that have no relationship to the Complainant. Respondent has not responded, and therefore cannot demonstrate any rights or legitimate interests in the domain name under UDRP Paragraph 4(c), which 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 fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In the absence of a response from the Respondent and evidence that the domain name was registered by Respondent long after the Complainant started using the Southwest Texas State University mark, I therefore conclude that Respondent does not have rights or legitimate interests with respect to the domain name at issue.

BAD FAITH: In support of the contention of Respondent's bad faith registration and use, Complainant notes that the domain name had been owned by a previous owner who was put on notice of Complainant's rights, who offered to sell the domain name to the Complainant for \$500. Complainant claims that the Respondent took subject to the original owner's bad faith and, given the nature of the mark, had a duty to investigate whether there was a Southwest Texas State University. The failure to have made an inquiry by the Respondent, Complainant asserts, is evidence of bad faith.

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 web site or location, or of a product or service on Respondent's web site or location.

The nature of the domain name being the obvious name of a University should have put the Respondent on notice that he was not acquiring from the original owner any legitimate rights in the domain name. By purchasing the domain name, the Respondent became party to a pattern of registration in order to prevent the Complainant from reflecting the mark in a corresponding domain name.

I therefore 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 Complainant.

REMEDY

Complainant's request to transfer the domain name southwesttexasstateuniversity.com is hereby GRANTED. The domain name shall be transferred to Complainant Southwest Texas State University.

Steven M. Weinberg
Signature of Arbitrator

January 23, 2003
Date