

Institute for Dispute Resolution

COMPLAINANT:

Cattlemens

Attention: Michael T. Carlson, Esq.
Geary, Shea, O'Connell & Grattan, P.C.
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File No. CPR0304

Date of Commencement: January 29, 2003

Domain Name: "www.cattlemensrestaurant.com"

Service mark upon which complaint is made:
"Cattlemens"

Registrar: Tucows, Inc., an ICANN accredited
registrar

Internet Corporation for Assigned Names
& Numbers (ICANN)

4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292

vs.

RESPONDENT:

Menterprises – Web Development

Attention: Web Master
18700 Van Nuys Boulevard
Van Nuys, California 91401
Telephone: (818) 262-2995
FAX: Unknown
E-Mail: domainbids@lifesadomain.com

Before: Hon. Sherman G. Finesilver, Arbitrator

The Complaint was filed with CPR on January 29, 2003, and after review for administrative compliance, was timely served on the Respondent. The Respondent did not file a Response on the response date of February 18, 2003. On February 19, 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).

PROCEDURAL HISTORY AND SUMMARY

Upon the written record and review of exhibits, I find as follows:

Complainant Cattlemens, a California corporation (“Cattlemens”), has restaurant locations in California and Nevada. It has been in operation, primarily in California, since 1968, and has prominently displayed its mark “Cattlemens” in its family-owned operation. Complainant has spent considerable time and money in marketing its meat and food specialties and restaurant bill of fare. The Cattlemen’s name and logo is a hallmark of its operation.

As set forth in its Complaint, in September, 2002, Cattlemens received complaints from its clientele that, in searching the Internet for background and other information about the restaurant chain, instead of being directed to the corporate website (www.thebeststeakinthewest.com), they were directed to pornographic images at www.cattlemensrestaurants.com. After visiting the site, it is alleged that a user’s computer is met with a web of pornographic advertisements. Also, the user’s web browser defaults to a website, www.sassymama.net, which initially had pornographic images. Since filing of the Complaint, Respondent continues its use of this website, but does not presently point users to pornographic material.

Counsel for Cattlemens found that Respondent was listed as the registrant for the domain name. Efforts to communicate with Respondent by mail and telephonically were unavailing. Also, efforts to contact Life’s a Domain, whose URL appears at the bottom of the www.cattlemensrestaurants.com web page, were unsuccessful. It is alleged by Complainant that this reference is a “means to solicit bids for the purchase of the domain name.” All written correspondence listed for Respondent give an e-mail address of domainbids@lifesadomain.com. Mail sent by Complainant was returned as “undeliverable” and “unclaimed.”

It is represented that Complainant made inquiry with California's Secretary of State, and no information was found relating to Respondent.

There is a total absence of any business activity of Respondent in California, or that it provides any service of product connected with its use of the domain name. Nothing supports the legitimacy or use by Respondent of the domain name.

Complainant's continuous use of the Cattlemen's trademark since 1968 is significant. Under principles of established common law and continuous public use of the name, Complainant is entitled to protection of its mark and trademark "Cattlemens."

The name "Cattlemens" is closely identified with the company and, under established law, the name has achieved sufficient secondary meaning and connection with the company and its business operation.

The Arbitrator further finds as follows:

The domain name www.cattlemensrestaurant.com is confusingly similar to Complainant's service mark, "Cattlemens," and is the proprietary property of Complainant.

(a) The Respondent-Registrant has not demonstrated any intent to use the domain name www.cattlemensrestaurants.com in connection with a bona fide offering of goods or services. The consumer and interested parties are simply redirected to a pornographic site, which site is antagonistic to the legitimate activities of Complainant.

(b) In its use of the domain name, Respondent has demonstrated "bad faith" by intentionally attempting to attract, for commercial gain, Internet users to another on-line location, by creating a situation where there is a likelihood of confusion with the Complainant's mark.

(c) 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.

(d) The service mark of Complainant – Cattlemens -- is entitled to protection and, in the legal sense, that name and identity is protected by law.

(e) 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.

(f) 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 contained in the Complaint, with the signature of a California attorney set forth therein, are entitled to considerable weight – especially where the recitals and allegations are unrefuted.

ADDITIONAL FINDINGS

Upon the written submitted record, I expressly find as follows:

- i. Respondent's domain name is identical or confusingly similar to the Cattlemen's 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.

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

Complainant prevailed in this proceeding and is entitled to an order that the domain name be transferred to Complainant.

IDENTITY/CONFUSING SIMILARITY

Complainant alleges that the domain name of Respondent (www.cattlemensrestaurant.com) is identical or confusingly similar to Complainant's service mark "Cattlemens." I agree.

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 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. As noted, Respondent has not established any legitimate rights in the domain name or any legitimate use.

In sum, I find and 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.

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 legitimate 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 Cattlemens, a California corporation. Respondent shall have no further claim or benefit in and for the domain name.

Entered in Denver, Colorado, on the 28th day of February, 2002.

Hon. Sherman G. Finesilver, Arbitrator

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

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LAW OFFICE OF SHERMAN G. FINESILVER

February 28, 2003

VIA E-Mail & Priority Mail
Aglover@cpradr.org

Mr. Allen Glover
Assistant Director
Panels Management Group
CPR Institute for Dispute Resolution
366 Madison Avenue
New York, New York 10017-3122

Re: Cattlemens, a California Corporation vs.
Menterprises – Web Development
Domain Name: “www.cattlemensrestaurant.com”
CPR Case No.: CPR0304
Date of Commencement: January 29, 2003

Dear Mr. Glover:

I am enclosing three executed copies of the Administrative Panel Decision by the appointed administrator in this interesting domain-related case.

My statement for services is being forwarded to you under separate cover.

I appreciate the opportunity of serving as a neutral in this matter.

Sincerely,

/ S /

Judge Sherman G. Finesilver

SGF:tw

Enclosures