

# CPR Institute for Dispute Resolution

**COMPLAINANT** Evan Scent, Inc.

Address P.O. Box 549  
Address Gauley Bridge, WV 25805  
Address  
Telephone (304) 340-1197  
fax (304) 340-1080  
E-mail [mhussell@jacksonkelly.com](mailto:mhussell@jacksonkelly.com)

File Number: CPR00 0317Date of Commencement: July 22, 2003Domain Name(s): evanscent.comRegistrar: Godaddy.comArbitrator: Steven Brower

vs

**RESPONDENT** Ozark Mountain Gifts, Inc.

Address 15172 Koyle Road  
Address Winslow, AR 72959  
Address  
Telephone (501) 634-5741  
fax (479) 635-5742  
E-mail [barbie@ozarkgifts.com](mailto:barbie@ozarkgifts.com)

Before STEVEN BROWER, Arbitrator

## PROCEDURAL HISTORY

The Complaint was filed with CPR on July 19, 2003 and, after review for administrative compliance, served on the Respondent on July 22, 2003. The Respondent DID NOT file a Response on or before October 9, 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 (1) Complaint, including Exhibits A-G; (2) Procedural History; (3) Notice of dates of commencement;; (4) July 22 letter from CPR to Respondent; (5) Registrar response of July 22, 2003 from BigDaddy.com; and (6) Request for delay of appointment dated August 14, 2003, I find as follows:

## FINDINGS

Respondent's registered domain name, evanscent.com, was registered with BigDaddy.com on a date alleged to be November 1, 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 evanscent.com is identical or confusingly similar to Complainant's trademark, EVAN SCENT, which applies to candles.

The mark Evan Scent is the same as the domain name evanscent.com except for the deletion of a space and the change in

capitalization, both of which are technical restraints of domain names. The uncontradicted evidence shows that Respondent has, at times, directed the domain name to a display of candles.

Further, it appears that Complainant has a registration for the mark, number 2666697, with another registration pending (based on review of public records of the USPTO).

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 Respondent, or Respondent's successor in interest, was a customer of Complainant and purchased goods, bearing the mark, from Complainant, prior to Respondent registering the domain name. Respondent, on the other hand, has not filed a response.

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.

Respondent has elected not to oppose this proceeding. The e-mail for counsel for Respondent, which was submitted as part of the Complaint, is not evidence and does not materially raise any of the noted defenses.

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 several items, including Respondent's prior purchase of goods bearing the Mark and Respondent's use of the domain name as a redirector to a web page offering candles, a competitive good. Respondent has not filed any opposition.

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 allegations of bad faith usage are undisputed. There is no evidence that Respondent's usage was predicated on any independent basis.


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 the COMPLAINANT.

## REMEDY

Complainant's request to transfer the domain name evanscent.com is hereby GRANTED. The domain name shall be transferred to Complainant Evan Scent, Inc.



Signature of Arbitrator

10/24/03  
Date