



CPR Institute for Dispute Resolution

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MID-VALLEY ENTERPRISES formerly known as PAHRUMP HOMESTEAD)	Domain Name Dispute
PARTNERS LLC,)	Forum File No. CPR 0320
Complainant,)	
v.)	
HOT SPOTS OF NEVADA)	
Respondent		

Date of Commencement: October 9, 2003
Domain Name(s): sherisranch.com

Registrar: The NamieIt Corporation dba AITdomains.com

Administrative Panel: Edward C. Chiasson, Q.C.

THE PARTIES

1. The Complainant, Mid Valley Enterprises, LLC, formerly known as Pahrump Homestead Partners LLC, is a corporation or other entity having its principal place of business in Las Vegas, Nevada.

2. The Respondent, Hot Spots of Nevada, is a corporation or other entity having its principal place of business in Las Vegas, Nevada.

PROCEDURAL HISTORY

3. The Complaint was filed with CPR on October 9, 2003 and, after review for administrative compliance, was served on the Respondent.

4. The Administrative Panel was appointed pursuant to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) and Rules promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). The Administrative Panel has reviewed and considered all of the material filed by the parties.

5. As a result of problems obtaining electronic and complete copies of the material, the Administrative Panel extended the time for rendering a decision. In addition, the Administrative Panel gave to the Complainant an opportunity to supplement the factual basis for its Complaint. The Complainant did not do so. The time for rendering a decision was extended to December 15, 2003.

6. The Respondent's registered domain names, sherisranch.com was registered with The NamieIt Corporation dba AITdomains.com. In registering the name, the Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

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

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

BACKGROUND

The following information is derived from the Complaint.

The Complainant has registered Sheri's Ranch and The Resort at Sheri's Ranch as trademarks with both the United States Patent & Trademark Office and the Nevada Secretary of State, as follows: Sheri's Ranch, registered in the Principal Register on November 12, 2002, Reg. No. 2,648,775 (the goods in connection with this Mark are clothing, namely, caps, robes and shirts); The Resort at Sheri's Ranch, registered in the Principal Register on November 12, 2002, Reg. No. 2,648,775 (the goods in connection with this Mark are clothing, namely, caps, robes and shirts); Sheri's Ranch, registered with the Secretary of State, State of Nevada on July 16, 2001 (the goods in connection with this Mark are clothing, namely, caps, robes and shirts); The Resort at Sheri's Ranch, registered with the Secretary of State, State of Nevada on July 16, 2001 (the services in connection with this Mark are adult entertainment and related merchandise) Sheri's Ranch, registered with the Secretary of State, State of Nevada on May 21, 2001 (the goods and services in connection with this Mark are adult entertainment and related merchandise); Sheri's Ranch, registered with the Secretary

of State, State of Nevada (the goods in connection with this Mark are clothing, namely, caps, robes and shirts).

The Respondent is not using the subject domain name in connection with any offering of goods and services. The Complainant is not aware of any attempts by the Respondent to obtain trademark protection for the name Sheri's Ranch.

The subject domain name was registered by the Respondent on December 27, 2001, which is after the Complainant had been using the name in commerce, after the Complainant had filed its application for Trademark registration with the United States Patent & Trademark Office and after the Complainant had registered the Marks with the Nevada Secretary of State.

The Respondent is not using the subject domain name.

The Respondent is in the business of providing information on adult entertainment in Nevada, such as the entertainment provided by Complainant. The Complainant sent cease and desist letters dated November 13, 2002, and January 10, 2003 to the Respondent, but it has not been cooperative.

DISCUSSION

The Complainant relies on its use and registration of the words "Sheri's Ranch" and "The Resort at Sheri's Ranch". It asserts that the subject domain name is identical or confusingly similar.

The criteria for the two propositions are not identical.

It is apparent that the Complainant has rights to the words "Sheri's Ranch" and "The Resort at Sheri's Ranch". The subject domain name differs immaterially from the Complainant's marks. At a minimum it is identical to the mark "Sheri's Ranch" in that it differs only by combining the two words, deleting the capital letters and adding .com.

The Administrative Panel is satisfied that the Complainant has satisfied the requirements of paragraph 4(a)(i).

To establish that the Respondent does not have a legitimate interest in the subject domain

name the Complainant states that the Respondent is not using it in connection with any offering of goods and services and has taken no steps to obtain trademark protection for “Sheri’s Ranch”.

The absence of use can raise an inference that a respondent does not have a legitimate interest in a domain name, but generally standing alone it does not establish that fact. There is no obligation on a domain name holder to apply for trademark protection.

In this case, because the subject domain name clearly incorporates the words of the Complainant’s marks, it is difficult to see what legitimate interest it could have in the subject domain name.

Although a respondent is not obliged to respond to a domain name dispute complaint, its failure to do so gives rise to the inferences that flow from reasonable factual allegations advanced by a complainant. The Complainant states: “...it appears that Respondent is in the business of providing information on adult entertainment in Nevada, such as the entertainment provided by Complainant.” This is a legitimate operation, but using the Complainant’s mark in an identical domain name contrary to the Complainant’s wishes is not a legitimate use.

The Administrative Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(ii).

Bad faith is said to flow from the facts that the Respondent registered the subject domain name after the Complainant acquired or while it was acquiring rights to its marks, that the Respondent is not using the subject domain name and that it is in a business similar to that of the Complainant.

The Complainant states:

“Based upon the foregoing, it is apparent that Respondent has acquired the domain name:

1. primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark Sheri’s Ranch or to a competitor of Complainant, for valuable consideration in excess of Respondent’s out-of-pocket costs directly related to the domain name;

2. in order to prevent Complainant from reflecting the Mark in a corresponding domain name;
3. primarily for the purpose of disrupting the business of Complainant; or
4. to intentionally attempt to attract, for commercial gain, Internet users to Respondent's web site by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or of a product or service on Respondent's web site."

There is no information before the Administrative Panel that the Respondent has any intention of selling the subject domain name.

There is not direct information that the Respondent seeks to prevent the Complainant from reflecting its marks in a corresponding domain name. Although there can be an inference of "blocking" by reason of the registration of a domain name that is identical to the mark of another, and the Complainant cannot reflect its marks using .com, there are many other avenues available to it.

There is no information before the Administrative Panel that the subject domain is or has disrupted the Complainant's business or that this was the primary purpose for its registration. As noted, the Complainant states simply that: "...it appears that Respondent is in the business of providing information on adult entertainment in Nevada, such as the entertainment provided by Complainant." While this does not give it a legitimate interest in the subject domain name, it does not suggest bad faith. If anything, it raises an inference that if the Respondent were to use the subject domain name it would foster a greater awareness of the Complainant's affairs.

There is no information to support a conclusion that the Respondent seeks to attract internet users by confusion. It is not using the subject domain name. If it were to do so in the context of providing information on the entertainment provided by the Complainant, there is no information that suggests there would be confusion "with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or of a product or service on Respondent's web site".

The Administrative Panel is not satisfied that the Complainant has met the requirements of

paragraph 4(a)(iii).

CONCLUSION

Based on the information provided to it and on its findings of fact, the Administrative Panel concludes that the Complainant has not established its Complaint. It is dismissed.

December 12, 2003

Signature of Administrative Panel