



CPR Institute for Dispute Resolution

File Number:	CPR 0404
Date of Commencement:	May 7, 2004
Domain Names:	OBJECTIVETECHNOLOGIES.COM
Registrar:	Network Solutions, Inc.

COMPLAINANT

Name: Objective Technologies, Inc.
Address: 90-07 68th Avenue, Forest Hills, NY 11375
Tel: 718-997-9741
Fax: 718-997-9742
E-mail: info@object.com

vs.

RESPONDENT

Name: Objective Technologies, Inc.
Address: PO Box 300, 41 Lamplighter Lane, Easton, MA 02334-0300
Telephone: 617-548-5997
Fax: N/A
E-mail: info@objectivetechologies.com

Before Thomas M. Pitegoff, Esq., Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR Institute for Dispute Resolution (CPR) on May 7, 2004. After review for administrative compliance, CPR served the Complaint on Respondent. Respondent filed a Response on May 25, 2004. On June 1, 2004, CPR appointed me as Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Rules for UDRP (the "Rules") promulgated by the Internet Corporation for Domain Names and Numbers (ICANN).

Upon the written submitted record including the Complaint and its attachments, and the Response, I find as follows:

FINDINGS

Respondent's domain name, OBJECTIVETECHNOLOGIES.COM, was registered with Network Solutions, Inc. on September 17, 1998. In registering the name with Network Solutions, Inc., an ICANN accredited registrar, Respondent agreed to submit to this forum to resolve any dispute concerning the domain names, 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 must be 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

UDRP Paragraph 4(a)(i) calls for a finding that Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

Complainant alleges that the domain name OBJECTIVETECHNOLOGIES.COM is identical or confusingly similar to Complainant's registered trademark, OBJECTIVE TECHNOLOGIES, INC., which is also Complainant's corporate name. Complainant's trademark was registered in the U.S. Patent and Trademark Office September 8, 1992, in International Class 39, for use in conjunction with desktop publishing computer software. Complainant alleges use of the mark since 1990 in connection with its software and services.

Because the domain name in dispute is the same as Complainant's federally registered trademark, I conclude that the registered domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

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 has not been authorized by Complainant to use Complainant's federally registered mark and is not affiliated with Complainant in any way. Respondent formerly conducted business under the name James Maciolek & Associates, Inc., which was registered as a Massachusetts corporation in 1994. On September 4, 1998, six years after Complainant obtained its federal registration for the mark OBJECTIVE TECHNOLOGIES, INC., Respondent apparently changed its corporate name to Objective Technologies, Inc.

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 alleges that it has been using the disputed domain name in an ongoing business continuously since the domain name was registered in 1998, shortly after Respondent changed its corporate name. Respondent has been commonly known by that name since 1998, years before this dispute arose.

This is not a trademark dispute. It is a domain name dispute that is decided strictly under the UDRP. Even if this were a trademark dispute, and assuming Respondent's use of the name constituted trademark use in addition to use as a company name and domain name, Respondent alleges that the products and services identified by the mark differ for Complainant and Respondent, and that their markets are different. Respondent alleges that its expertise is in consulting services for clients that use Microsoft Windows or Unix operating systems, while Complainant principally develops and markets software products running on Apple and NeXT operating systems.

I therefore conclude that Respondent does have rights or legitimate interests with respect to the domain name at issue. Because of this conclusion, there is no need to reach the question of bad faith.

CONCLUSION

In light of the finding above that Respondent does have rights or legitimate interests with respect to the domain name at issue, I find in favor of Respondent.

REMEDY

Complainant's request to transfer the domain name OBJECTIVETECHNOLOGIES.COM is hereby DENIED.

June 9, 2004

Thomas M. Pitegoff, Esq.

Date