



CPR Institute for Dispute Resolution

CPR INSTITUTE FOR DISPUTE RESOLUTION

_____)	Domain Name Dispute
D'SAR COMPANY,)	Forum File No. CPR 05-05
Complainant,)	
v.)	
DOMAIN DELUXE)	
Respondent)	
_____)	

Date of Commencement: March 23, 2005

Domain Name(s): dsar.com

Registrar: Info Avenue Internet Services, LLC

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

THE PARTIES

1. The Complainant, d'SAR Company, is a corporation or other entity having its principal place of business in Stamford, Connecticut.
2. The Respondent, Domain Deluxe, is a corporation or other entity having its principal place of business in Hong Kong, SAR, China.

PROCEDURAL HISTORY

3. The Complaint was filed with CPR on March 23, 2005 and, after review for administrative compliance, was served on the Respondent. A response was due on April 12, 2005. The Respondent failed to file a response.
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. The Respondent's registered domain name, dsar.com was registered with Info Avenue Internet Services, LLC. In registering the name, the Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

6. 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

7. The following information is derived from the Complaint.

8. The Complainant first was registered with the State of Connecticut in April 1975. For almost 30 years, the Complainant has provided custom built computer systems and digital solutions to customers, throughout the northeast, across the country and around the world.

9. With the advent of the internet, the Complainant has been expanding the interpretation of its name to include digital Search And Rescue, to help people who are lost and drowning in a world where computers are needed, just to keep your head above water.

10. Since the inception of the Complainant, the d'SAR mark has been applied to hardware marketed by the Complainant and appears on software and documentation created by it.

11. In December 2001, the Complainant registered "dsarcompany.com" as its web address and began using that mark as well.

12. The Respondent registered the subject domain name in March of 2003.

13. Since then, it has either had the words “The domain is for sale at Domain Deluxe” or “This domain is for sale” with a link to the Respondent’s web-site, DomainDeluxe.com. The price range is expressed as between \$1,500 and \$10,000. The site will not allow bids of less than \$500.

14. The Respondent has not used the subject domain name other than in conjunction with its web-site where it offers the subject domain name for sale.

15. The Respondent appears to be attempting to divert visitors to “Hong Kong Hotel Deals” and “Oliver Tickets” and other pay-per-click search engine destinations.

16. The Respondent is in the business of registering names that have either been released from previous owners, or are similar to current domain names, for the purposes of:

- (a) diverting traffic away from the sites with valid rights in those marks;
- (b) diverting that traffic through their own search engine to pay-per-click advertising sites, and reaping the commercial gain, and to their own site for selling domain names;
- (c) placing prices on these domains that either restrict access to people who have legitimate rights in these marks;
- (d) or will make astronomical profit for the Respondent, therefore allowing them to continue to register thousands of names in which they have no legitimate interest.

17. In a previous UDRP case, it was contended that the respondent had done this with as many as 2,000 names. The complainant found proof of at least that many names and the possibility of as many as 68,000 names.

18. The website to which the subject domain name resolves points to a placeholder site on the IP address 64.40.102.42. This also is identified as cluster1.domaindeluxe.com. The Complainant found evidence that there were as many as 68,495 domains that were hosted on that site and in a random sampling of those sites, found that all were registered to the Respondent. All had similar placeholder sites associated with the name, with links that led back to the domain sales web-site.

19. The Complainant made offers to buy the subject domain name, but they were ignored.
20. The Respondent did not participate in this proceeding.

DISCUSSION

21. The Complainant relies on its use of the name d'sar and contends that the subject domain name is confusingly similar to it because it differs only in the use of punctuation and the addition of ".com". The Complainant asserts that the Respondent does not have a legitimate interest in the subject domain name and points to the fact that it is not being used and is posted for sale. Pointing to the Respondent's history of obtaining and selling domain names, the Complainant contends that the subject domain name has been registered and is being used in bad faith.

22. The Complainant appears to rely on a common-law trademark based on its corporate registration as d'SAR company and use of the word d'sar for over 30 years. It clearly has common-rights to d'sar. The subject domain name differs from d'sar only by the deletion of an apostrophe and the addition of ".com". The latter is of no significance. The deletion does not distinguish the subject domain name from d'sar.

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

24. A respondent is not obliged to participate in a domain name dispute proceeding, but if it were to fail to do so, it would be open to the usual inferences that flow from assertions of fact by a complainant that are not unreasonable.

25. The only use of the subject domain name by the Respondent is to offer it for sale at an amount that clearly exceeds the legitimate costs of acquiring the subject domain name. This evidences a clear intention to violate the letter and spirit of the Policy and a willingness to dispose of the subject domain name.

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


27. A finding that a respondent does not have a legitimate interest in a domain name that is confusingly similar to the mark of a complainant does not lead automatically to a conclusion of bad faith, but the facts that support the finding may be relevant to the bad faith inquiry.

28. The Respondent appears to have a history of acquiring domain names for sale. It has done so with the subject domain name. No use is being made of the subject domain name.

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

CONCLUSION

30. Based on the information provided to it and on its findings of fact, the Administrative Panel concludes that the Complainant has established its claim. The Complainant seeks the transference to it of the subject domain name. The Administrative Panel so orders.



Signature of Administrative Panel

April 25, 2005