

CPR Institute for Dispute Resolution

123 Netgroup LLC
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Fort Lee, NY 07024
Attn: Joseph Berkowitz
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File Number: CPR 0406

Date of Commencement: July 15, 2004

Domain Name(s): www.1234moving.com

Registrar: GoDaddy.com

Arbitrator: Steven Brower

vs.

All American Moving and Storage/1234moving.com
495 Walton Avenue
Bronx, NY 10451
Attn: Remi Ismirly
Telephone: (800) 989-6683
Fax: (888) 851-4044

Before Steven Brower, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on July 15, 2004 and, after review for administrative compliance, served on the Respondent on or about that same date. The Respondent DID NOT file a Response on or before August 5, 2004. On August 9, 2004, CPR sent an email to Respondent indicating that no response has been received. That notice specifically cited and quoted ICANN Rule 5(e) which states "If a respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint." 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 the Complaint (with Exhibits A-H), the email exchange of August 9, 2004 by which Respondent was notified that no response had been received, and the various administrative docket materials, I find as follows:

FINDINGS

Respondent's registered domain name, 1234moving.com, was registered with GoDaddy.com on October 5, 2002. 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 1234moving.com is identical or confusingly similar to Complainant's servicemark, 123movers.com, which applies to "providing information by means of a global computer network in the field of moving furniture, appliances, equipment and other goods and individuals and businesses via moving vans, trucks and trailers" and other and related services.

The mnemonic usage of "123" or "1234" is only entitled to weak protection, at best. However, a mark can acquire value, specifically a secondary meaning, when used in relation to a particular service and/or industry. For example, while the color pink is hardly unique on its own, it has been determined that the color pink, as used in fiberglass, had acquired a sufficient secondary meaning to allow for trademark protection. (*In re. Owens-Corning Fiberglass Corp*, 774 F 2d 1116 (Fed. Cir 1985))

Pursuant to ICANN Rule 5(e), because Respondent has not provided a response within the time allowed, or within the additional time subsequent thereto, this matter shall be resolved based on the allegations in the Complaint, to the extent such allegations appear to be rationally supported by the evidence, law and/or logic

The Complaint adequately alleges usage of the mark since 1999, along with allegations of potential and actual confusion, close proximity in the marketplace, similarity of good and services and other factors which support a "likelihood of confusion" conclusion. Moreover, the Complaint alleges conduct by the Respondent showing an intent to take advantage of such confusions. The intentional acts of the respondent, undertaken in an effort to create and/or take advantage of confusion, can be considered as evidence of likelihood of confusion and inherent distinctiveness, or else why bother copying?

I therefore conclude that the registered domain name IS 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 it had substantial prior use and the Respondent, a former customer, acquired the confusingly similar domain name for the purpose of directly competing with, and diverting business from the Complainant. Respondent, on the other hand, had failed to provide 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.

Pursuant to ICANN Rule 5(e), because Respondent has not provided a response within the time allowed, or within the additional time subsequent thereto, this matter shall be resolved based on the allegations in the Complaint, to the extent such allegations appear to be rationally supported by the evidence, law and/or logic. As such, Respondent is deemed to concede any rights or legitimate interest in the domain name.

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 that the apparent purpose and operation of the disputed domain name was undertaken to compete with, and to divert business from Complainant, through the use of a confusingly similar domain name. Respondent has failed to provide a response.

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.

Pursuant to ICANN Rule 5(e), because Respondent has not provided a response within the time allowed, or within the additional time subsequent thereto, this matter shall be resolved based on the allegations in the Complaint, to the extent such allegations appear to be rationally supported by the evidence, law and/or logic. As such, Respondent is deemed to concede the allegations that its conduct was undertaken in Bad Faith, as defined by the UDRP.

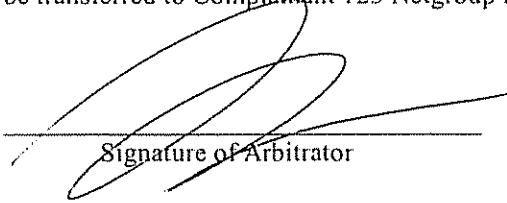
I therefore conclude that Respondent DID register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of my findings above that (a) the registered domain name IS 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 www.1234moving.com is hereby GRANTED. The domain name shall be transferred to Complainant 123 Netgroup LLC.



Signature of Arbitrator

9/15/07
Date