



CPR Institute for Dispute Resolution

File Number: CPR 0410
Date of Commencement: November 12, 2004
Domain Name: hearstmania.com
Registrar: Go Daddy Software, Inc.

COMPLAINANT

Name: George Randolph Hearst III
Address: c/o Jonathan W. Lubell, Esq., 730 Fifth Avenue, 9th Fl., New York, NY 10019
Tel: 212-659-7775
Fax: 212-659-7805
E-mail: jwlnjpl@aol.com

vs.

RESPONDENT

Name: Matthew Edison
Address: 1105 Second Avenue, New Cumberland, WV 26047
Telephone: 304-564-3732
Fax: N/A
E-mail: cosmosinternational@yahoo.com

Before Thomas M. Pitegoff, Esq., Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR Institute for Dispute Resolution (CPR) on November 12, 2004. After review for administrative compliance, CPR served the Complaint on Respondent. On December 10, 2004, CPR notified Respondent that Respondent failed to file a timely Response, and 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).

On December 13, Respondent sent an e-mail to CPR that was unresponsive to the Complaint. ICANN Rule 5(e) 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."

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

FINDINGS

Respondent's domain name, HEARSTMANIA.COM, was registered with Go Daddy Software, Inc. on February 24, 2004. In registering the name with Go Daddy Software, 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 is the great-grandson of William Randolph Hearst, the founder of the Hearst Corporation, and the son of George R. Hearst, Jr., the Chairman of the Board of Directors of the Hearst Corporation. The Hearst family is known throughout the world as owning and operating successful business and media-related enterprises. Complainant is the Vice President and Associate Publisher of the Capital Newspapers Division of the Hearst Corporation. Complainant holds several business and honorary positions and has received numerous awards for his community and humanitarian service.

Complainant alleges that his family name is famous and that the public associates his services with his family name. As such, Complainant alleges that Complainant has acquired common law trademark rights in the Hearst name.

The domain name in dispute begins with Complainant's distinctive family name, "Hearst", and adds the word "mania". The addition of the word "mania" to Complainant's family name is not sufficient to avoid confusion.

Accordingly, 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.

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.

The HEARSTMANIA.COM website is devoted to a person named Kevin Hearst. Complainant alleges that the website seeks to mislead visitors by informing them that Kevin Hearst is legitimately connected with the Hearst family, presumably to attract the interest of Internet users who otherwise would pay no attention to Kevin Hearst. Complainant alleges that Kevin Hearst is not related to the famous Hearst family in any way. Moreover, the owner of the domain name at issue is not Kevin Hearst, but Matthew Edison. The relationship between Kevin Hearst and Matthew Edison is not clear.

In support of Complainant's allegation that Respondent has no rights or legitimate interests with respect to the domain name at issue, Complainant notes that Respondent has not 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. Complainant notes that the purpose of the website is to deceive visitors by leading them to believe that Kevin Hearst is a legitimate member of the famous Hearst family, and that as a result, any offerings of goods or services through linked advertisements on the site are therefore not "bona fide".

Complainant further states that Matthew Edison is not commonly known as "Hearstmania", and has no license or other authorization to use the Hearst name.

In addition, Complainant notes that Respondent is not making legitimate noncommercial or fair use of the domain name, because the website is deceptive.

I therefore conclude that Respondent does not have rights or legitimate interests with respect to the domain name at issue.

BAD FAITH

Complainant alleges that Respondent's domain name has been registered and is being used in bad faith.

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.

Complainant contends that Respondent registered and used the HEARSTMANIA.COM domain name with the intention of attracting Internet users to Respondent's website for commercial gain 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.

Complainant notes that the domain name has been used to attract Internet users by creating confusion that the site is sponsored by, affiliated with, or endorsed by the Hearst family. The site contains photographs of legitimate Hearst family members, the Hearst family tree and links to authentic Hearst interests. The domain name serves no legitimate purpose, but rather attempts to deceive users into viewing Kevin Hearst as a member of the famous Hearst family.

Complainant further notes that the domain name at issue was originally registered through a proxy service, allegedly to avoid the UDRP and to shield Kevin Hearst from the consequences of his intentionally deceitful activity. On the date Complainant initially filed this Complaint, the Registrant of the domain name at issue was Domains by Proxy, Inc. When I tried to view the HEARSTMANIA.COM website through an Internet browser, the website did not appear. This leads me to conclude that Respondent removed the website, indicating a possible admission that Respondent has been using the disputed domain name in bad faith.

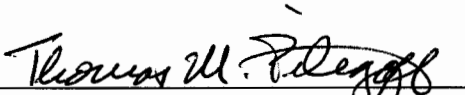
I therefore conclude that Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of the 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 Complainant.

REMEDY

Respondent's domain name HEARSTMANIA.COM is hereby CANCELED.



Thomas M. Pitegoff, Esq.

December 20, 2004

Date