



International Institute for Conflict Prevention & Resolution

File Number: CPR 0616
Date of Commencement: April 11, 2006
Domain Name: MUDDYWOMAN.COM
Registrar: Abacus America, Inc., dba Names4Ever

COMPLAINANT

Name: Mudd (USA), LLC
Address: 1407 Broadway, Suite 2004, New York, NY 10018
Tel: 212-609-6800
Fax: 212-935-1304
E-mail: gfechter@mccarter.com; mwallach@mccarter.com

vs.

RESPONDENT

Name: Mike Climer
Address: 809 ½ East Bay Street, Sebewaing, MI 48759
Telephone: 989-883-9569
Fax: Unknown
E-mail: webmaster@mikeslist.net

Before Thomas M. Pitegoff, Esq., Arbitrator

PROCEDURAL HISTORY

The Complaint in this proceeding was filed with the International Institute for Conflict Prevention & Resolution (CPR) on April 11, 2006. After review for administrative compliance, CPR served the Complaint on Respondent. On May 2, 2006, CPR notified Respondent that Respondent failed to file a timely Response. On May 4, 2006, 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).

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." I know of no exceptional circumstances in this dispute.

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

FINDINGS

Respondent's domain name MUDDYWOMAN.COM was registered with Abacus America, Inc., dba Names4Ever on November 29, 2005. In registering the name with Names4Ever, 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 sells a variety of goods worldwide under the MUDD trademark. The trademark MUDD was registered with the United States Patent and Trademark Office on August 6, 1996, under Registration No. 1992148 for use in connection with jeans, overalls, skirts, shorts and dresses in International Class 25, claiming first use in commerce at least as early as September 1995. Complainant alleges that Complainant and its predecessor have used the trademark MUDD continuously since as early as September 1995 in connection with woman's and girls' apparel and accessories and other goods. The trademark MUDD was registered in the U.S. under Registration No. 2537262 in International Classes 9, 14, 18, 25 and 26 for use in connection with a variety of other goods, with dates of first use in 1998 and 1999. Complainant also uses the MUDD mark abroad and has numerous foreign registrations for this trademark.

Complainant sells MUDD goods through its website MUDDJEANS.COM.

The MUDD trademarks were originally owned by Paper Denim and Cloth, LLC, formerly known as Mudd, LLC ("PD&C"). On May 21, 2004, PD&C assigned to Complainant all of the worldwide MUDD trademark registrations and the goodwill associated therewith. Also on May 21, 2004, PD&C assigned to Complainant the domain name MUDDJEANS.COM.

Complainant alleges that Respondent's domain name MUDDYWOMAN.COM is identical and confusingly similar to Complainant's domain name, MUDDJEANS.COM and Complainant's trademark, MUDD.

The MUDD trademark is the first portion of Respondent's domain name MUDDY-WOMAN.COM. The addition of the word "woman" and the letter "y" does not avoid similarity or avoid confusion.

In the absence of a response, 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.

Complainant alleges that to Complainant's knowledge, Respondent has never been known by or operated a business under the MUDD trademark. Even Respondent's website does not go by a name that includes the MUDD trademark. When I entered www.muddywoman.com in a browser, the website that appeared was www.messychixxx.com. Complainant also alleges that Complainant has never licensed or granted permission to Respondent to use the MUDD mark or a domain name incorporating that mark.

Respondent has submitted no response alleging any rights or legitimate interests with respect to the domain name at issue.

In the absence of a response, I 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 alleges that Respondent has acquired the domain name and is using it as an adult website in violation of UDRP Paragraph 4(b)(i). That paragraph states that evidence of bad faith includes, by way of example,

“circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name....”

Complainant has not alleged or presented evidence that Respondent desires or intends to sell or transfer the domain name registration to Complainant or to a competitor of Complainant for valuable consideration. In fact, Complainant presented no evidence to the effect that Complainant had any communications with Respondent before commencing this proceeding.

Complainant also alleges that Respondent's use of Complainant's trademark in a domain name that takes Internet users to a sexually explicit adult website tarnishes Complainant's MUDD trademark and the goodwill associated with the MUDD trademark. Internet users and MUDD customers may mistakenly believe that Respondent's website is affiliated or associated with or sponsored by Complainant, thereby tarnishing the trademark.

Complainant further alleges that Respondent had constructive notice that Complainant owned the MUDD mark before the date Respondent registered the domain name MUDDYWOMAN.COM.

An intentional attempt to divert Internet users to Respondent's website for commercial gain by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website or of a product or service on Respondent's website does constitute bad faith.

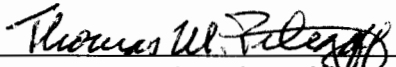
However, Complainant has provided no evidence that Respondent seeks to divert Complainant's customers to Respondent's website. The words "muddy woman" are descriptive of the images that appear on Respondent's website and do not imply any association with a women's apparel company. Moreover, Respondent's website contains no links to competitors, nor does it sell competitive products. Complainant does not allege that Respondent has engaged in a pattern of registration in order to prevent Complainant from reflecting the mark in a corresponding domain name, nor that Respondent registered the disputed domain name for the primary purpose of disrupting Complainant's business.

The registration of a domain name that contains another party's registered trademark, without more, does not constitute bad faith. Other companies use the mark MUDD in whole or in part in ways that do not compete with Complainant, as a trademark or Google search of the word MUDD indicates.

I therefore conclude that Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of my finding above that Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy, I hereby DENY Complainant's request to transfer the domain name MUDDYWOMAN.COM.



Thomas M. Pitegoff, Esq.

May 17, 2006

Date