

CPR INSTITUTE FOR DISPUTE RESOLUTION

File: CPR-05-19
Domain Names: Muddyboy.net and Muddyboy.org
Registrar: Enom, Inc.

COMPLAINANT

MUDD (USA), LLC
1407 Broadway, Suite 2004
New York, NY 10018

v.

RESPONDENTS

Muddyboy.org
Owen Vincent
Ronald Vincent
2445 Russell Street
Berkeley, CA 94705

Administrative Panel: John Fleming Kelly, Esq.

PROCEDURAL HISTORY

The Complaint in this matter was filed with CPR Institute for dispute Resolution (“CPR”) on November 29, 2005. A Response was received on December 21, 2005. The Arbitrator was appointed on January 5, 2006 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).

CONTROLLING UDRP PROVISIONS

Paragraph 4.a. of UDRP requires a complainant to prove that each of the following three elements is present:

- (i) the domain name(s) at issue are identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name(s) at issue; and

- (iii) the domain name(s) at issue have been registered and are being used in bad faith.

Upon a careful study of the written record as filed by the parties, and consideration of UDRP and the Rules, the Arbitrator finds as follows:

THE ELEMENTS EXAMINED AGAINST THE RECORD

IDENTITY/CONFUSING SIMILARITY

Complainant's domain name is MUDDJEANS.COM. Complainant's trademark, MUDD, has been registered by Complainant or its predecessors in interest since 1995 in the United States and elsewhere in the world under a large number of Registrations in various international classes relating to a wide variety of women's and girls' apparel and accessories.

Respondents' domain names at issue, muddyboy.net and muddyboy.org are clearly not identical with the domain name of Complainant. While Respondents' domain names are similar, the information available on those websites is quite different. Respondents assert that the use of the root word "mud" to arrive at the adjective "muddy" and the addition of the noun "boy" result in a distinctly different name than Mudd. "Muddyboy" does not seem confusing with a domain name associated with apparel for women and girls.

The Panel finds that Respondents' domain names are not confusingly similar.

RIGHTS AND LEGITIMATE INTERESTS

Complainant alleges that Respondents are not making a legitimate or fair use of the domain names at issue, but rather that their intent is to enhance their commercial gain by misleadingly diverting consumers and/or tarnishing Complainant's MUDD trademark.

Respondent Owen Vincent has used "muddyboy" as a screen name for more than seven years. He registered the domain name muddyboy.org in 2001 and since then has used it for personal purposes. He is not a commercial organization. This website is also used by Owen's parents for their personal email. There is no evidence in the record that either of the domain names in question is used for commercial gain.

The Panel finds that the Respondents do have legitimate interests with respect to the domain names at issue.

BAD FAITH

Complainant asserts that Respondents are using Complainant's trademark in a domain name containing links to racist, sexist and violent language, with the result that the trademark and Complaint's goodwill is tarnished. Complainant attaches Exhibit A as evidence to establish this assertion.

It has already in this decision been found that Respondents' domain names at issue are not confusingly similar to Complainant's mark. While material included in Exhibit A is certainly sexual in nature and sexist, Respondents' websites are certainly not the only extant domain names providing such material or links to such material. Such content doesn't result in and of itself in bad faith toward Complainant.

The Panel finds that the record fails to support a conclusion that the domain names at issue have been registered and are being used in bad faith.

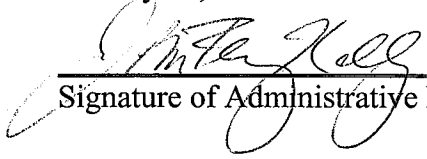
CONCLUSION

In view of the above findings, the Administrative Panel concludes that the Complainant has failed to prove the three elements required under Paragraph 4.a. of UDRP.

REMEDY

Complainant's request that the domain names WWW.MUDDYBOY.NET and WWW.MUDDYBOY.ORG be transferred to Complainant is denied.

January 13, 2006



Signature of Administrative Panel