CPR INSTITUTE FOR DISPUTE RESOLUTION

File: CPR-05-20
Domain Name: www.muddonline.com
Registrar: Wild West Domains, Inc. Blaze Domains

COMPLAINANT

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

v.

RESPONDENT

DotaCom.com
7410 Tiffany Drive
Orland Park, IL 60452

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 from Respondent was due on December 19, 2005, but CPR advises that no response has been received. 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).

Paragraph 5 (e) of the Rules provides that if a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint. The Arbitrator is not aware of the existence of any such exceptional circumstances, and will therefore decide the dispute in accordance with the Rule.

CONTROLLING UDRP PROVISIONS

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

(i) the domain name at issue is 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 at issue; and

(iii) the domain name at issue has been registered and is being used in bad faith.

Upon a careful study of the complaint, and consideration of UDRP and the Rules, the Panel 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. Neither Complainant nor Complainant's predecessors have ever abandoned or discontinued using the MUDD trademark.

Respondent's domain name at issue, www.muddonline.com, was registered by or transferred to Respondent on September 30, 2005. This domain name is not identical with the domain name of Complainant. There is, however, a similarity between the domain name of Respondent's domain name and that of Complainant. Respondent's domain name adds the words "on line" to the word "mudd", thus incorporating the MUDD trademark. This addition does nothing to avoid confusion in the similarity of the two domain names.

In a similar recent case Complainant secured transfer of the domain name www.muddproducts .com. The Panel in that case held that the domain name was confusingly similar to Complainant's trademark. In so ruling the Panel in that case stated regarding the word "products", "The addition of such generic word is not enough to avoid similarity, nor does it add anything to avoid confusion." Mudd, USA, LLC v. Unasi, Inc., WIPO Case No. D2005-0591, pg. 4.

The Panel finds that Respondent's domain name is confusingly similar to that of Complainant.

RIGHTS AND LEGITIMATE INTERESTS

Complainant states that it has no relationship with Respondent and has never licensed or granted permission to Respondent to use the MUDD mark or a domain name incorporating that mark or variations thereof. Complainant further states that Respondent is not making a legitimate or fair use the domain name at issue, but rather that Respondent's intent is to enhance its commercial gain by misleadingly diverting consumers and/or tarnishing Complainant's MUDD trademark. Complainant further states that, as in Unasi, cited

above, Respondent is not using the website associated with the disputed domain name to offer its own products or services, but rather to show sponsored links with the name of products competing with those of Complainant.

The Panel accordingly finds that Respondent has no rights or legitimate interests in the domain name at issue.

BAD FAITH

Complainant alleges that Respondent has acquired the domain name primarily to rent space, by providing links, to Complainant's competitors, and that consumers are likely to purchase competitors' goods, believing they are Complainant's goods, thereby resulting in loss of sales by Complainant. The links which Respondent provides take consumers to the websites of competitors who market and sell the identical products as Complainant. Consumers are thus likely to purchase competitors' goods, believing they are Complainant's goods, thereby resulting in a loss of sale to Complainant.

These activities of Respondent are also designed, Complainant alleges, to disrupt and harm Complainant's business by driving potential "MUDD" Jeans and other "MUDD" Products to competitors, thereby inducing consumers to purchase other brand and non-brand jeans and products. Because of this confusion engendered by Respondent, Complainant's valuable goodwill with respect to its MUDD trademark is at the mercy of Respondent.

Complainant also states that these activities of Respondent constitute misappropriation of Complainant's trademark and misrepresentation, and that Respondent had constructive notice that Complainant owned the MUDD mark prior to the date upon which Respondent Registered its domain name.

In accepting the foregoing uncontroverted statements of Complainant, the Panel finds that the record supports a conclusion that the domain name at issue has been registered and is being used in bad faith.

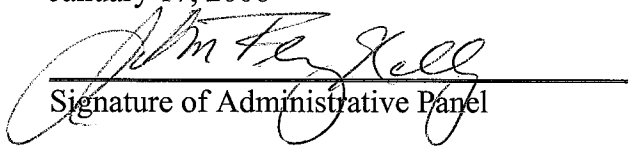
CONCLUSION

In view of the above findings, the Administrative Panel concludes that the Complainant has met the three elements required under Paragraph 4.a. of the Rules.

REMEDY

The remedies available to a Complainant's pursuant to any proceeding before an Administrative Panel are limited to the cancellation of the domain name or the transfer to of registration to the Complainant. UDRP Paragraph 4.i. Accordingly, and as requested by Complainant, transfer of domain name www.muddonline.com to Complainant is hereby ordered.

January 17, 2006



Signature of Administrative Panel