

INTERNATIONAL INSTITUTE FOR CONFLICT PREVENTION AND RESOLUTION

ARBITRATOR'S DECISION

COMPLAINANT

Name: Kahn Lucas Lancaster, Inc.
Address: 100 West 33rd Street
Suite 921
New York, NY 10001
Telephone: 973-292-1700
Fax: 973-292-1767
E-Mail: cquinn@grahamcurtin.com

File Number: CPR-06-24

Date of Commencement: 12/18/06

vs.

Domain Name: <youngland.com>

RESPONDENT

Name: This Domain For Sale
Address: 3215 Mission Boulevard
San Diego, CA 90210
Telephone: Unknown
Fax: Unknown
E-Mail: admin@domaintramp.com

Registrar: Intercosmos Media Group, Inc.
d/b/a Directnic.Com

Before Gaynell C. Methvin, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on December 18, 2006 and, after review for administrative compliance, served on the Respondent on December 19, 2006. The Respondent named in the Complaint has not filed a Response. However, a Kenny Youngland, unilaterally asserting he was the Respondent, filed a response. The legal problems raised by this filing will be discussed in detail below, but clearly Mr. Youngland did not establish a legitimate link between himself and the Respondent and Respondent has not filed a statement authorizing Mr. Youngland to act on its behalf.

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:

- 1.) Complaint and all attachments
- 2.) Response
- 3.) Procedural History
- 4.) Whois information
- 5.) Further Statement of Complaint,

I find as follows:

FINDINGS

Respondent's registered domain name, <youngland.com>, was registered with Intercosmos Media Group, Inc. d/b/a Directnic.Com on July 17, 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 <youngland.com> is identical or confusingly similar to Complainant's trademark, YOUNGLAND, which applies to a line of girls' dresses and clothing.

Complainant asserts that "[t]he registered domain name of Respondent, www.youngland.com, is obviously identical to Complainant's registered YOUNGLAND trademark, and to Complainant's other registered domain names (e.g., www.youngland.net, www.youngland.org). Given the popularity of domain names ending in .com, it is highly likely that customers and potential customers of Complainant will be confused into believing that Complainant's YOUNGLAND products (or information about them) are unavailable if they mistakenly seek to find such goods at Respondent's dormant www.youngland.com site. Indeed, Respondent has apparently never used the domain name in issue to operate a legitimate website. ICANN Rule 3(b)(ix)(1). (See Complaint, Page 3.)"

I agree with the factual assertions and legal conclusions of Complainant, and, accordingly conclude that the registered domain name is identical or 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 "[r]espondent should have no right or legitimate interest in the domain name www.youngland.com because YOUNGLAND is a registered trademark of Complainant and has been used by Complainant for more than forty years to identify its line of girls' clothing. Moreover, YOUNGLAND is not

generic, and it is not descriptive of any product offered by Respondent. As noted, it appears that Respondent has never used the domain name in issue to offer any goods or services to the public, or for any other legitimate purpose. See Exhibit D, ICANN Rule 3(b)(ix)(2).” (See Complaint, Page 3.) Respondent, on the other hand, as noted above, filed no response. The right of Mr. Youngland to respond for Respondent is challenged by Complainant. The full challenge by Complainant is entitled “Further Statement of Complainant” and is attached to this decision as Attachment 1, and incorporated herein. Neither Mr. Youngland, nor Respondent has filed any response to this Further Statement by Complainant. I agree with both the factual statements and the legal conclusions asserted by Complainant in its Further Statement.

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.

Respondent has not responded to Complainant’s allegations and has not demonstrated any rights or legitimate interests with respect to the domain name at issue. 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 “[i]t is readily apparent that, in violation of paragraphs 4(b) and (c) of the ICANN Uniform Domain Name Dispute Resolution Policy, Respondent registered www.youngland.com primarily for the purpose of renting or otherwise transferring this domain name to Complainant, a competitor of Complainant, or a third party in a different area of commerce with rights similar to those of Complainant. This is especially so given that Respondent operates as This Domain for Sale (see Exhibit A, WHOIS Search Results for youngland.com), and because Respondent has apparently never used www.youngland.com for any purpose (see Exhibit D) For these reasons, Respondent should be deemed to have registered www.youngland.com in bad faith. ICANN Rule 3(b)(ix)(3).” (See Complaint, Page 4.) Respondent has not filed a response so all of the allegations by Complainant relating to whether Respondent acted in bad faith are considered true and correct.

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.

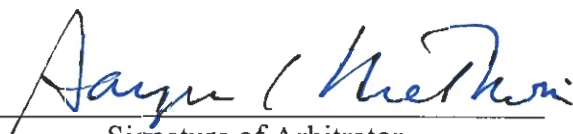
In light of the above conclusions that Complainant has satisfied the foregoing requirement(s), I find and conclude that Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

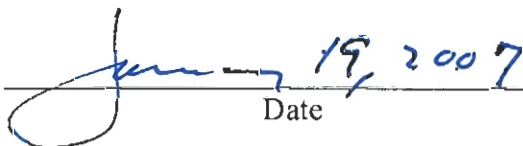
In light of my findings above that (a) the registered domain name is identical or confusingly similar to Complainant's protected mark; (b) Respondent does not have rights or legitimate interests with respect to the domain name at issue; and (c) Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy, I find in favor of the Complainant.

REMEDY

Complainants request to transfer the domain name www.youngland.com is hereby GRANTED. The domain name shall be transferred to Complainant Kahn Lucas Lancaster, Inc.



Signature of Arbitrator
Gaynell C. Methvin



Date

INTERNATIONAL INSTITUTE FOR CONFLICT PREVENTION & RESOLUTION

Kahn Lucas Lancaster, Inc. v. This Domain for Sale

CPR Case Number: CPR-06-04

Domain Name: <youngland.com>

Further Statement of Complainant

1. Complainant Kahn Lucas Lancaster, Inc. submits this statement in further support of its Complaint in this matter pursuant to CPR Supplemental Rule 10 and Rule 12 of the Rules for Uniform Domain Name Dispute Resolution Policy (the "ICANN Rules").

2. This statement addresses two points:

First, the response to the Complaint submitted by Kenny Youngland is not entitled to any consideration, and should be stricken, as he is *not* the registered domain name holder or registrant of youngland.com, as required by the ICANN Rules and the Uniform Domain Name Dispute Resolution Policy (the "ICANN Policy"). The domain name holder and registrant of record of youngland.com is This Domain for Sale, the Respondent herein. Mr. Youngland thus has no standing to contest Complainant's right to youngland.com.

Second, even if Kenny Youngland had an interest in youngland.com, he has not overcome Complainant's evidence that This Domain for Sale registered this domain name in bad faith under Paragraph 4(b) of the ICANN Policy, and has utterly failed to demonstrate that either he or This Domain for Sale has a legitimate interest in youngland.com under Paragraph 4 (c) of the ICANN Policy.

A. Mr. Youngland Has No Standing

3. The ICANN Policy is incorporated by reference in all Registration Agreements for the purpose of setting "forth the terms and conditions in connection with a

dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name *registered by you*." ICANN Policy, Paragraph 1 (emphasis added). Note 3 of the ICANN Policy establishes that "registered by you" means the domain name holder or registrant:

The policy is between the registrar . . . and its customer (*the domain-name holder or registrant*). Thus, the policy uses 'we' and 'our' to refer to the registrar and it uses 'you' or 'your' to refer to the domain-name holder [or registrant].

ICANN Policy, Note 3 (emphasis added). Thus, the ICANN Policy expressly contemplates and provides that only the domain name holder or registrant of record has standing to defend a domain name registration dispute.

4. The ICANN Rules likewise provide that only the domain name holder or registrant is a proper party to a domain name registration dispute. This is so because Rule 1 defines "Registrar" as "the entity with which the Respondent has registered a domain name that is the subject of a Complaint," and "Respondent" as "the holder of a domain-name registration against which a Complaint is initiated."

5. This Domain for Sale was the domain name holder and registrant of youndland.com upon the commencement of this dispute. Complaint, ¶ 4 and Ex. A. This Domain for Sale remains the registrant. See Ex. E attached hereto. There is no evidence that Mr. Youngland has any interest in This Domain for Sale or youngland.com, or that he played any part in the registration of this domain name. Hence, This Domain for Sale is the only party that may contest the Complaint. Mr. Youngland's response should be rejected out-of-hand, accordingly.

**B. Neither This Domain for Sale Nor Mr. Youngland
 Has a Legitimate Interest in youngland.com**

6. The Complaint establishes that Complainant's federally registered YOUNGLAND trademark is identical to youngland.com; that Complainant's customers will be confused into believing that Complainant's products are unavailable if they visit youngland.com; and that This Domain for Sale registered this name for the purpose of renting or selling it to others in view of the registrant's name and the fact that youngland.com has never been used for any purpose. Complaint, ¶7(a)-(c) and Exs. B, C, and D. Given the absence of any evidence proffered by This Domain for Sale -- the true registrant -- to contradict Complainant's showing under Paragraph 4(b) of the ICANN Policy, this dispute should be resolved in Complainant's favor.

7. The same result should obtain even if the Panel determines -- improperly in our view -- that it will consider Mr. Youngland's submission. Mr. Youngland does not deny that the act of registering youngland.com under the name This Domain for Sale signaled intent of the registrant to sell or lease the name. Nor does Mr. Youngland dispute that youngland.com was not used prior to the initiation of this dispute. He has also failed to offer any evidence of "demonstrable preparations" by anyone to use youngland.com prior to receiving notice of this dispute, and does not contend that either he or his band "have been commonly known by the domain name." See Paragraphs 4(c)(i), (ii) and (iii) of the ICANN Policy.

8. In short, neither This Domain for Sale nor Mr. Youngland has rebutted Complainant's evidence of bad faith under Paragraph 4(b) of the ICANN Policy, and neither has

produced any evidence establishing that either has a legitimate interest in youngland.com within the meaning of Paragraph 4(c).

Respectfully submitted,



Charles Quinn, Esq.
Attorney for Complainant
GRAHAM CURTIN, P.A.
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Morristown, New Jersey 07962-1991
E-Mail: cquinn@grahamcurtin.com

Dated: January 10, 2007
Morristown, N.J.

DECLARATION

I hereby declare, pursuant to 28 U.S.C. §1746 and CPR Supplemental Rule 10, that I caused the attached Statement to be served upon the Kenny Youngland by mail and e-mail at the addresses listed in his submission in accordance with ICANN Rule 2(b).

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 10, 2007.



Charles Quinn

EXHIBIT E

WHOIS

Whois lookup for youngland.com.

Whois Server Version 2.0

Domain names in the .com and .net domains can now be registered with many different competing registrars. Go to <http://www.internic.net> for detailed information.

Domain Name: YOUNGLAND.COM
Registrar: INTERCOSMOS MEDIA GROUP, INC. D/B/A DIRECTNIC.COM
Whois Server: whois.directnic.com
Referral URL: <http://www.directnic.com>
Name Server: NS0.DIRECTNIC.COM
Name Server: NS1.DIRECTNIC.COM
Status: clientDeleteProhibited
Status: clientTransferProhibited
Status: clientUpdateProhibited
Updated Date: 19-oct-2006
Creation Date: 17-jul-2002
Expiration Date: 17-jul-2007

>>> Last update of whois database: Tue, 09 Jan 2007 16:09:35 EST <<<

NOTICE: The expiration date displayed in this record is the date the registrar's sponsorship of the domain name registration in the registry is currently set to expire. This date does not necessarily reflect the expiration date of the domain name registrant's agreement with the sponsoring registrar. Users may consult the sponsoring registrar's Whois database to view the registrar's reported date of expiration for this registration.

TERMS OF USE: You are not authorized to access or query our Whois database through the use of electronic processes that are high-volume and automated except as reasonably necessary to register domain names or modify existing registrations; the Data in VeriSign Global Registry Services' ("VeriSign") Whois database is provided by VeriSign for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. VeriSign does not guarantee its accuracy. By submitting a Whois query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to VeriSign (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly

prohibited without the prior written consent of VeriSign. You agree not to use electronic processes that are automated and high-volume to access or query the Whois database except as reasonably necessary to register domain names or modify existing registrations. VeriSign reserves the right to restrict your access to the Whois database in its sole discretion to ensure operational stability. VeriSign may restrict or terminate your access to the Whois database for failure to abide by these terms of use. VeriSign reserves the right to modify these terms at any time.

The Registry database contains ONLY .COM, .NET, .EDU domains and Registrars.

Registration and WHOIS Service provided by directNIC.com

Intercosmos Media Group, Inc. provides the data in the directNIC.com Registrar WHOIS database for informational purposes only. The information may only be used to assist in obtaining information about a domain name's registration record.

directNIC makes this information available "as is", and does not guarantee its accuracy.

Registrant:

This Domain For Sale
3215 Mission Blvd
San Diego, CA 90210
US
1619

Domain Name: YOUNGLAND.COM

Administrative Contact:

Cut Throat Productions, LLC admin@domaintramp.com
3215 Mission Blvd
San Diego, CA 90210
US
1619

Technical Contact:

Cut Throat Productions, LLC admin@domaintramp.com
3215 Mission Blvd
San Diego, CA 90210
US
1619

Record last updated 07-17-2002 04:57:43 PM

Record expires on 07-17-2007
Record created on 07-17-2002

Domain servers in listed order:
NS0.DIRECTNIC.COM 204.251.10.100
NS1.DIRECTNIC.COM 206.251.177.2

By submitting a WHOIS query, you agree you will use this data only for lawful purposes. You also agree that, under no circumstances, will you use this data to: (a) allow, enable, or otherwise support the transmission by email, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or to (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-accredited registrar.

The compilation, repackaging, dissemination, or other use of this WHOIS data is expressly prohibited without the prior written consent of directNIC.com.

directNIC.com reserves the right to terminate your access to its WHOIS database in its sole discretion, including without limitation, for excessive querying of the database or for failure to otherwise abide by this policy.

directNIC reserves the right to modify these terms at any time.

NOTE: THE WHOIS DATABASE IS A CONTACT DATABASE ONLY.
LACK OF A DOMAIN RECORD DOES NOT SIGNIFY DOMAIN AVAILABILITY.