



# **CPR** Institute for Dispute

## Resolution

**COMPLAINANT: Her Style, Inc.**

Address: Her Style, Inc.

Address: 11-22 44<sup>th</sup> Road

Address: Long Island City, NY 11101

Telephone: 718 937-4738

fax: 718 937-4745

E-mail: amerhaven@aol.com

File Number: CPR009

Date of Commencement: 10/5/00

Domain Names: HERSTYLE.COM

Registrar: Internet Domain Registrars a/k/a

Registrars.com, 475 Sansome Street, #1730, San Francisco, CA 94111

vs.

Arbitrator: Judith P. Meyer

**RESPONDENT: Wesley J. Barrios**

Address: Wesley J. Barrios

Address: 699 Ashford Oaks Drive, #103

Address: Altamonte Springs, FL 32714

Telephone: 407 786-5320

fax

E-mail: wesleybarrios@hotmail.com

Before JUDITH P. MEYER, Arbitrator

## **PROCEDURAL HISTORY**

The Complaint was filed with CPR on October 3, 2000 and, after review for administrative compliance, served on the respondent on October 5, 2000. The Respondent did not file a Response on or before October 20, 2000. 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 Domain Name Dispute Complaint Form, Complaint, Certificate of Registration of Principal Trademark with United States Patent and Trademark Office, copy of contract to establish website and domain name, copies of Claimant's correspondence to Respondent, and attached exhibits, I find as follows:

## **FINDINGS**

Respondent's registered domain name, HERSTYLE.COM, was registered with Internet Domain Registrars on March 14, 1998. 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 Complaint 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:** Complainant alleges that HERSTYLE.COM is identical or confusingly similar to Complainant's trademark, HERSTYLE.COM, which applies to ladies' wearing apparel.

Her Style, Inc. owns the trademark registration for Her Style and Her Style Boutique, registration numbers 1893185 and 2154818, respectively. Her Style's web site was operational from on or about March 14, 1998 and was continually maintained until in or about November 1999 when the registration lapsed for late payment of continuing registration fees. On December 22, 1999 Respondent registered HERSTYLE.COM. Upon notice by Complainant of its interest in HERSTYLE.COM Respondent demanded \$50,000 to relinquish the use of the name.

I therefore 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 interest with respect to the domain name at issue. In support for this allegation, Complainant notes that Respondent has demanded a payment of \$50,000 to relinquish his use of the domain name without showing any legitimate or legal interest in the name. Respondent, on the other hand, has failed to respond to Complainant's complaint.

UDRP Paragraph 4(c) provides that Respondent's rights or legitimate interests in a domain name may be demonstrated, without limitation, by (a) before notice to Respondent of the dispute, Respondent's use of, or 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 has been continuous using Her Style since November 11, 1993 and first registered Her Style as a trademark with the United States Patent and Trademark Office on March 11, 1997 and again on May 5, 1998. Complainant opened its web site on or about March 14, 1998.

I therefore conclude that Respondent does not have rights or legitimate interest 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 that Respondent has demanded \$50,000 for relinquishment of the domain name, HERSTYLE.COM.. Respondent has failed to respond to Complainant's complaint initiated after

Respondent's demand.

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.

Respondent's bad faith is evidenced by its demand for \$50,000 from Complainant, a value in excess of Respondent's cost of registration.

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 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 interest 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**

Complainant's request to transfer the domain name HERSTYLE.COM is hereby GRANTED. The domain name shall be transferred to Complainant Her Style, Inc.

Judith P. Meyer, Arbitrator

Date: November 7, 2000