



CPR Institute for Dispute Resolution

COMPLAINANT CarDay Inc.

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Address

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File Number: CPR 0102

Date of Commencement: February 16, 2001

Domain Name(s): carsday.com

Registrar: BulkRegister.com, Inc.

vs.

Arbitrator: David W. Plant

RESPONDENT Capital Results, Inc.

Address 14 Holly Lane

Address Jericho, NY 11753

Address

Telephone 516 978 9103

fax

E-mail david@salestoolbox.com

Before David W. Plant, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on February 14, 2001. Complainant transmitted a copy of the Complaint to Respondent. After review for administrative compliance, CPR transmitted a copy of the Complaint to Respondent on February 16, 2001, via mail and via email. CPR referred Respondent to CPR's website for information regarding the filing of a Response. On February 16, 2001, Respondent transmitted to CPR an email stating "I cannot open the file you had sent. Please feel free to resend." On February 19, 2001, CPR resent the Complaint to Respondent via email. Respondent did not file a Response or any other communication with CPR. On March 19, 2001, CPR advised Respondent it was in default, CPR would appoint a single Panelist, and the Panel would proceed to decide the matter based upon the Complaint. On March 20, 2001, CPR appointed the undersigned as 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 which comprises the Complaint and accompanying exhibits, the Arbitrator finds as follows:

FINDINGS

Respondent's registered domain name, carsday.com, was registered with BulkRegister.com, Inc. on May 21, 2000. In registering the name with BulkRegister.com, Inc., an ICANN accredited registrar, 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.

Paragraph 4. (a) of the UDRP further provides that Complainant bears the burden of proving all three elements.

IDENTITY/CONFUSING SIMILARITY: Complainant alleges that carsday.com is confusingly similar to Complainant's trademark, CarDay. Notwithstanding abundant authority to the effect that the addition of a single letter (here "S") and the ".com" suffix to a trademark does not prohibit a finding of identity for purposes of this kind of proceeding, Complainant does not argue that carsday.com is identical to the mark CarDay.

It is plain on the faces of the domain name and the mark they are confusingly similar. This conclusion is reinforced by the similarity in the services offered by Complainant's online sale of used vehicles and the reference to car buyers at the web page reached through the domain name in dispute. Exhibits C and E to the Complaint are printouts of December 27, 2000 and February 12, 2001 versions of the web page.

It is also clear that Complainant has rights in the CarDay mark. Complainant or a predecessor first used the mark in commerce on March 1, 2000. On September 26, 2000, the mark was registered on the principal register at the United States Patent and Trademark Office. Complainant certifies that it has continuously used the mark in connection with its online used car exchange business since May 1, 2000.

On the basis of this record, the Arbitrator concludes that the registered domain name in dispute is confusingly similar to the CarDay mark, and Complainant has rights in that 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 avers Complainant became aware of Respondent's domain name in December 2000. At that time, the domain name resolved to a single web page for "GrooveCar.com -- Where Car Buyers Find the Groove" (Exhibit C to the Complaint). At the top of the page, appeared "This Site is Coming January 1, 2001." At the bottom of the page, appeared "For information, please email Carsday, Inc." Complainant avers that, after its counsel sent a cease and desist letter to Respondent on December 27, 2000 (Exhibit D), the web page disappeared for a short while. However, the web page reappeared with the same GrooveCar.com message, and alterations in the other two messages, viz. the January 1 date was now January 15, and for more information, one was to email "info@groovecar.com" (Exhibit E).

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 did not answer the December 27 letter. It has not responded to the Complaint in this proceeding. Respondent registered its domain name on May 21, 2000, three weeks after Complainant launched its online vehicle exchange business. Nothing in this record supports any inference that any of the three illustrative circumstances of UDRP Paragraph 4.(c) exist. It is fair to infer from Respondent's silence that it has no evidence to support a finding that it has rights or legitimate interests in the domain name in issue.

On the basis of this record, the Arbitrator concludes 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, Complainant avers that (1) it has spent millions of dollars to promote its mark and the goods and services sold under the mark, (2) the public associates the services provided by Complainant with the mark, (3) Respondent registered the domain name three weeks after Complainant launched its online used vehicle business, (4) Respondent did not respond to Complainant's counsel's letter, (5) Respondent's website disappeared after the letter and shortly thereafter reappeared in modified form -- still, however, directing the visitor to GrooveCar.com, (6) Respondent is not currently using and has not used the domain name in connection with the provision of any goods or services, (7) Respondent has not been commonly known by the domain name, and (8) Respondent's registration is a clear attempt to benefit wrongly and in bad faith from Complainant's investments and efforts. Complainant infers that Respondent registered the domain name either (1) with the intention to sell or otherwise transfer the domain name

to Complainant, or (2) in an attempt to attract, for commercial gain, Internet to Respondent's website by creating a likelihood of confusion with Complainant's mark.

Paragraph 4.(a) of the UDRP requires that Complainant establish bad faith with respect both registration and use. Complainant does not address bad faith use specifically, perhaps because of its averments of non-use by Respondent. It is clear from many other decisions under Paragraph 4. that non-use under the circumstances prevailing here can be tantamount to bad faith use.

Paragraph 4.(b) of the UDRP provides that indications of bad faith include, without limitation, (1) registration for the purposes of selling, renting or transferring the domain name to the Complainant for value in excess of Respondent's cost; (2) a pattern of registration in order to prevent Complainant from reflecting the mark in a corresponding domain name; (3) registration for the primary purpose of disrupting the business of a competitor; or (4) 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's certified averments are entirely plausible. Its inferences are not unreasonable. Respondent has elected to stand silent. It is fair to accept Complainant's averments and inferences.

Accordingly, on this record, the Arbitrator concludes that Respondent did register and use the domain name in bad faith under Paragraph 4.(a)(iii).

CONCLUSION

In light of the findings above that (a) the registered domain name is confusingly similar to Complainant's mark; (b) Respondent does not have rights or legitimate interests with respect to the domain name at issue; and (c) Respondent has registered and used the domain name in bad faith, the Arbitrator finds in favor of Complainant.

REMEDY

Complainant's request to transfer the domain name carsday.com to Complainant is GRANTED. The domain name shall be transferred to Complainant CarDay, Inc.

Signature of Arbitrator

Date

