



CPR Institute for Dispute Resolution

File Number:	CPR 015
Date of Commencement:	October 14, 2000
Domain Name:	PLANETSCHOLASTIC.COM
Registrar:	Network Solutions, Inc.

COMPLAINANT

Name: Scholastic Inc.
Address: 555 Broadway, New York, NY 10012-3999
Telephone: (212) 343-6560
Fax: (212) 343-6538
E-Mail: tm&c@scholastic.com

vs.

RESPONDENT

Name: Bryan S. Tartus/Floral Visions Inc.
Address: 590 SW 9th Terrace #4, Pompano Beach, FL 33069
Telephone: (954) 782-7484
Fax: not known
E-Mail: btartus@floralvisions.com

Before Louise E. Dembeck, Esq., Jerome T. Wolf, Esq. and Thomas M. Pitegoff, Esq., Panelists

PROCEDURAL HISTORY

The Complaint was filed with CPR on October 11, 2000 and, after review for administrative compliance, served on the respondent on October 14, 2000. The Respondent did not file a Response. In accordance with Complainant's request to have a three-member panel of arbitrators determine this matter, we were appointed Panelists 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 the complaint and its attachments, we find as follows:

FINDINGS

Respondent's registered domain name, PLANETSCHOLASTIC.COM, was registered with Network Solutions in September, 1999. 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 since at least as early as 1922, Complainant has been using the trademark "SCHOLASTIC" and trademarks featuring "SCHOLASTIC", often together with another word or words, in connection with a wide variety of goods and services, including children's books, classroom and professional magazines, software and other educational materials.

Complainant is the owner of more than 65 trademarks registered with the United States Patent and Trademark Office that include the word "Scholastic", in classes including International Class 9 (computer software and related merchandise), Class 16 (periodicals and printed materials), Class 28 (computer games) and others.

In 1993, Complainant registered the domain name Scholastic.com with Network Solutions, Inc. Complainant provides visitors to its www.scholastic.com site with immediate on-line access to its many and varied educational resources and merchandise.

Complainant has expended millions of dollars to promote its SCHOLASTIC trademarks and the goods and services that bear those trademarks. As a result of these expenditures and Complainant's efforts, the public has come to associate the word "Scholastic," at least in the children's market, with the goods and services provided by Complainant.

The domain name PLANETSCHOLASTIC.COM simply combines the word "planet" with the word "scholastic".

It is our conclusion that the subject domain name is confusingly similar to the 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 of this allegation, Complainant notes that Respondent is not currently using, has not used and has made no preparations to use the domain name PLANET-

SCHOLASTIC.COM in connection with the provision of any goods or services. In fact, the domain name PLANETSCHOLASTIC.COM does not resolve to an active web site. Respondent has failed to submit a Response in this proceeding, and correspondence in the record does not refute the allegation that Respondent is not using the domain name in connection with the provision of any goods or services.

UDRP Paragraph 4(c) provides that Respondent's rights or legitimate interests in a domain name may be demonstrated, for example, by any of the following circumstances: (a) before notice to Respondent of the dispute, Respondent is using or has 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 shown that it is using the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services nor that it has made any demonstrable preparations to do so. Respondent has not been commonly known by the domain name, nor is Respondent making legitimate noncommercial or fair use of the domain name.

We therefore conclude that Respondent does not have any rights or legitimate interest with respect to the domain name at issue.

BAD FAITH

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.

Evidence produced by Complainant, including an e-mail it received from Respondent dated July 17, 2000, demonstrates Respondent's willingness, if not clear intention, either to sell, rent or transfer the domain name to Complainant for a value in excess of Respondent's cost or to attract, for commercial gain, Internet users to Respondent's web site for commercial gain by creating a likelihood of confusion with Complainant's marks.

Respondent also evidenced bad faith in his reply to an e-mail of November 8, 2000, from the Panels Administrator of the CPR Institute for Dispute Resolution. In his e-mail reply of November 9, 2000, included as part of the record, Respondent claimed that the legal registrant of the domain name at issue is not Floral Visions Inc., the company named in the caption of the corres-

pondence from the Panels Administrator. Mr. Tartus is the registrant. Both he and Floral Visions Inc. are listed as the administrative contacts. Mr. Tartus did receive adequate notice. He received all correspondence and notices, and he is the person who replied. His attempt to avoid responsibility and his refusal to respond constitute further evidence of bad faith.

Claimant alleges that Respondent intended to use the domain name PLANETSCHOLASTIC.COM either (a) by selling, renting or transferring it to Complainant for value in excess of Respondent's cost or (b) by attracting Internet users to Respondent's website for commercial gain by creating a likelihood of confusion with Complainant's mark.

Respondent having failed to refute both the allegations and the implications of its correspondence with Complainant, we 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 our 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, we find in favor of Complainant.

REMEDY

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

Louise E. Dembeck, Esq.

Date

Jerome T. Wolf, Esq.

Date

Thomas M. Pitegoff, Esq.

Date