



CPR Institute for Dispute Resolution

File Number: CPR 016
Date of Commencement: October 14, 2000
Domain Name: BABYSITTERCLUB.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: Stewart Consulting/Randy Stewart
Address: 8019 Ellingson Drive, Chevy Chase, MD 20815
Telephone: (305) 588-9000
Fax: (305) 565-0912
E-Mail: StewartConsulting@msn.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, BABYSITTERCLUB.COM, was registered with Network Solutions on June 15, 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 it is the exclusive U.S. publisher of The Baby-Sitters Club books, by Ann M. Martin, one of the most popular and enduring series of children's books. The series includes more than 130 "Baby-Sitters Club" titles, which chronicle the adventures of a group of pre-teen girls who form a baby-sitting business, more than 120 "Baby-Sitter's Little Sister" titles, geared towards children ages seven to nine, and eleven new titles in the "Baby-Sitters Club Friends Forever" series.

Complainant also alleges that it offers readers a wide selection of "Baby-Sitters Club" merchandise to purchase, including educational CD-ROMs, dolls and videotapes. Complainant is the owner of thirteen registered U.S. trademarks for the words "The Baby-Sitters Club", "Baby Sitter's Little Sister" and related designs. These registrations are in classes including Class 3 (beauty products and makeup), Class 9 (video tapes featuring fictional stories), Class 14 (costume jewelry), Class 16 (paperback books and other paper articles and printed matter, Class 18 (luggage, wallets and purses), Class 25 (clothing), Class 28 (dolls and games) and Class 41 (interactive computer programs).

In 1993, Complainant created a "Baby-Sitters Club" web site. Consumers may access the "Baby-Sitters Club" web site through Complainant's home page at www.scholastic.com or directly through a domain name Complainant owns called BABYSITTERSCLUB.COM. The web site includes a link to author Ann M. Martin's home page, the complete catalog of Baby-Sitters Club books, promotions for Baby-Sitters Club merchandise, information about the Baby-Sitters Club characters and baby-sitting tips.

Complainant has expended millions of dollars to promote its BABY-SITTERS CLUB 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 mark, BABY-SITTERS CLUB, at least in the children's market, with the goods and services provided by Complainant.

It is our conclusion that Respondent's domain name BABYSITTERCLUB.COM is confusingly similar to Complainant's protected BABY-SITTERS CLUB 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 BABYSITTERCLUB.COM in connection with the provision of any goods or services. In fact, the domain name BABYSITTERCLUB.COM does not resolve to an active web site. Respondent has failed to submit a Response in this proceeding to 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 August 7, 1999, 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 mark.

Respondent having failed to refute both the allegations and the implications of its correspondence, 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 BABYSITTERCLUB.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